

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the “Agreement”) is made this ____ day of _____, by and between the Energy and Carbon Management Commission (“ECMC” or the “Commission”), and _____. Collectively, ECMC and _____ are referred to together as “Parties”.

RECITALS

WHEREAS, on November 21, 2019, the Commission promulgated new rules and amendments to its Rules of Practice and Procedure, 2 C.C.R. § 404-1 (“Flowline Rules”), including Rule 1101.e.(1), which provides:

The Director will make Geographic Information System (GIS) data for off-location flowlines, crude oil transfer lines, and produced water transfer systems available through a publicly accessible online map viewer. Line attributes available to the public through the online map viewer will include the spatial location, operator, fluid type, pipe material type, and pipe size. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission’s office.

WHEREAS, at the November 21, 2019 hearing the Commission also promulgated Rule 1101.e.(2), which provides:

Disclosure of Form 44 Data. Upon request from a Local Governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act, the Commission will provide to the Local Government all Geographic Information System (GIS) data submitted through Flowline Reports, Form 44s, for all offlocation flowlines, crude oil transfer lines and produced water transfer systems. The Local Government may only reproduce or publish data that the Commission makes publicly available through its website. A Local Government may share more specific data in person than that which the Commission makes publicly available, but the information must be treated as confidential and may not be reproduced or published.

WHEREAS, on November 23, 2020, the Commission promulgated new rules and amendments to its Rules of Practice and Procedure, 2 C.C.R. § 404-1 (“Mission Change Rulemaking”), including Rule 220.a.(6).D, which provides:

GIS data will be submitted in the NAD of 1983 and in a format approved by the Director. Information submitted pursuant to this Rule 220.a.(6) will be disclosed at the same mapping scale provided in and kept confidential pursuant to the procedures in Rule 1101.e.

WHEREAS, the Parties to this Agreement want to allow for the transfer of GIS data to _____ in accordance with the provisions of Commission Rules 220.a.(6).D and 1101.e.(1) & (2).

NOW THEREFORE, in light of the foregoing, the Parties agree as follows:

1. Transfer of the GIS Data. The ECMC agrees to provide _____ the GIS data submitted to the ECMC on Form 44s for off-location flowlines, crude oil transfer lines, and produced water transfer systems, and on Form 12s for the gas gathering systems("Pipeline GIS Data").

2. Maintaining Confidentiality of the Pipeline GIS Data. _____ agrees that it will maintain the Pipeline GIS Data in accordance with Commission Rules 220.a.(6).D, 1101.e.(1) & (2). Specifically, _____ agrees that it will not display, transmit, publish, provide or make available on-line the Pipeline GIS Data at scales less than 1:6,000. _____ may allow more specific Pipeline GIS Data to be viewed by members of the public if they present themselves in person at _____'s offices. If _____ is to provide more specific Pipeline GIS Data in person to a member of the public, _____ agrees that the Pipeline GIS Data will be treated as confidential and will not be reproduced or published.

3. Nondisclosure of Confidential Information.

a. _____ will take all necessary and reasonable security measures to ensure that the Pipeline GIS Data is maintained, protected and displayed in accordance with the terms of this Agreement.

b. _____ will train its representatives on the responsible and appropriate use, handling, and disclosure of the Pipeline GIS Data. _____ agrees that it will take all necessary and appropriate measures to ensure that any representative granted access to Pipeline GIS Data is familiar with the terms of this Agreement and complies with such terms.

c. _____ will be responsible for the unauthorized access, use, or disclosure of the Pipeline GIS Data by its representatives.

4. Unauthorized Disclosure.

a. Upon _____'s discovery that the Pipeline GIS Data has been displayed, transmitted, published, provided or made available online in a manner that is contrary to or inconsistent with the provisions of Section 2 of this Agreement _____ will notify the ECMC within five (5) business days. Such notice will include all details known concerning the access, use, or disclosure of the Pipeline GIS Data.

b. The Parties agree that the disclosure of any Pipeline GIS Data that

is inconsistent with this Agreement will not waive the confidentiality of the Pipeline GIS Data. The Parties further agree that each will make best efforts to retrieve such improperly disclosed Pipeline GIS Data from the person or entity to which it was disclosed. This provision will survive the termination of this Agreement.

5. _____ agrees and understands that it and the ECMC are subject to the Colorado Open Records Act, Colo. Rev. Stat. Ann. § 24-72-200.1, *et seq.* (“CORA”) and this Agreement does not supersede either Party’s duty to comply with CORA.

6. If _____ receives notice that it may become legally required to disclose any Pipeline GIS Data in contravention of a Commission Rule or this Agreement, _____ will provide ECMC with prompt notice of any proceedings reasonably expected to require such disclosure. ECMC may, if it desires and at its own expense, intervene or seek a protective order preventing the disclosure of the Pipeline GIS Data. If disclosure is required by court order, _____ will disclose only that portion of the Pipeline GIS Data which _____’s counsel advises is required by a court order.

7. Force and Effect. The confidentiality obligations established by this Agreement will remain in full force and effect for any Pipeline GIS Data provided to _____ under the terms of this Agreement as long as that Pipeline GIS Data remains in the possession of _____, without regard to whether the Agreement is terminated pursuant to Paragraph 10.

8. Authority to Enter into Agreement. The person executing this Agreement on behalf _____ of acknowledges and affirms that they are either an elected official or employee of who has the right and authority to bind _____ to the terms and conditions of this Agreement.

9. Suspension of Transmission of Pipeline GIS Data. If the Commission becomes aware of _____’s potential material breach of any of its obligations or duties under this Agreement, the Commission may suspend disclosure of future Pipeline GIS Data until such time as the Commission is satisfied _____ is complying with its obligations and duties under this Agreement.

10. Termination.

a. Either Party may terminate this Agreement by notifying the other Party of its intention to withdraw from this Agreement in writing at least 48-hours prior to termination.

b. If, as determined by the Commission, _____ materially breaches any of its obligations or duties under this Agreement,

the Commission may terminate this Agreement. In such event, the Commission will notify _____ in writing that the Commission is terminating the Agreement, and the termination will be effective upon delivery of the written notice.

c. No later than 30 days after the termination of this Agreement, _____ will return to the ECMC all Pipeline GIS Data within its possession and remove all Pipeline GIS Data from all public and internal websites and systems. _____ further agrees that it will make best efforts to retrieve all Pipeline GIS Data disclosed to its representatives and return it to the ECMC.

11. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado.

12. Entire Agreement. The Parties acknowledge and agree that this Agreement embraces the entire Agreement between the Parties relating to the subject matter described herein.

It is so AGREED, this _____ day of _____, _____.

ENERGY AND CARBON MANAGEMENT COMMISSION

Julie Murphy
Director
Energy and Carbon Management Commission

SIGNATURE: _____

LOCAL GOVERNMENT OR AGENCY: _____

NAME: _____

TITLE: _____