

RESOLUTION NO. 120-17

A RESOLUTION APPROVING AN
INTERGOVERNMENTAL AGREEMENT FOR DATA
SHARING SERVICES BETWEEN THE CITY OF
COLORADO SPRINGS, COLORADO, AND EL PASO
COUNTY, COLORADO

WHEREAS, the City of Colorado Springs (the "City") on behalf of its enterprise Colorado Springs Utilities ("Utilities") is authorized to enter into intergovernmental agreements with other Colorado governmental entities for the provision of any function or service with the approval of the City Council of the City of Colorado Springs ("City Council"); and

WHEREAS, the City of Colorado Springs (the "City"), on behalf of its enterprise Colorado Springs Utilities ("Utilities"), and El Paso County, ("County") previously, in March of 1998, entered into that certain Intergovernmental Agreement under which the County made its County Assessor maps and ownership data along with other geographical data available to Utilities, and Utilities made updates to Utilities' geographic information systems ("GIS") available to the County (the "1998 Agreement"); and

WHEREAS, the City Council has determined that the 1998 Agreement should be terminated and replaced with the attached, updated Intergovernmental Agreement for Data Sharing Services (the "Agreement"), which better reflects the technology used by Utilities and the County in 2017 and provides Utilities and the County with greater flexibility to address changes in technology in the future; and

WHEREAS, cooperation and sharing of GIS information between Utilities and the County is in their mutual best interests and ensures that there is no duplication of efforts and allows Utilities and the County to realize economies of scale in the development of County-wide GIS data; and

WHEREAS, cooperation and sharing of GIS information between Utilities and the County has mutual benefits for purposes including asset management, geodetic control network expansion, transportation issues management, flood control, disaster and emergency response, and public education projects; and

WHEREAS, City Council has determined that approval of the attached Agreement will enhance transparency in government by allowing Utilities and the County to develop certain GIS information that may be shared with the general public, including Utilities' ratepayers, at no cost to the public.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council hereby finds that approval of the attached Intergovernmental Agreement for Data Sharing Services is in the best interests of the citizens of the City of Colorado Springs and the ratepayers of Colorado Springs Utilities, and hereby approves the attached Agreement.

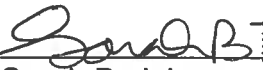
Section 2. The City Council hereby authorizes the Chief Executive Officer of Colorado Springs Utilities, or his designee, to execute the attached Agreement on behalf of Utilities.


DATED at Colorado Springs, Colorado, this 14th day of November, 2017.



Council President

ATTEST:


Sarah B. Johnson, City Clerk



INTERGOVERNMENTAL AGREEMENT FOR DATA SHARING SERVICES

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is hereby entered into as of the 27th day of March, 2018, by and between the CITY OF COLORADO SPRINGS ("City"), on behalf of its enterprise, COLORADO SPRINGS UTILITIES ("Utilities") and EL PASO COUNTY, COLORADO (the "County"), each of which shall be referred to herein individually as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, both Utilities and County have developed comprehensive Geographic Information Systems ("GIS") which involve computerized creation, storage and updating of parcel, planimetric, and other infrastructure vectors and related databases; and

WHEREAS, in December of 1992 Utilities licensed its GIS parcel database, along with related programs, to El Paso County for its internal use in automating its land ownership records/Assessor maps; and

WHEREAS, in March of 1998, the County and Utilities entered into that certain Intergovernmental Agreement (the "1998 Agreement") under which the County made its County Assessor Maps and ownership data, along with other geographical data available to Utilities, and Utilities made its updates to its GIS available to the County; and

WHEREAS, the Parties have determined it is in their mutual best interests to terminate and replace the 1998 Agreement previously entered into based on current practices and technologies; and

WHEREAS, the Parties further wish to restate the manner in which they will comply with the Colorado Open Records Act, with respect to each Party's GIS parcel databases that will be maintained under this Agreement; and

WHEREAS, Utilities and the County are periodically involved in developing data sets of mutual benefit for purposes including, but not limited to, asset management, geodetic control network expansion, transportation issues, flood control, disaster and emergency response, and public education projects (the "Data Sets"); and

WHEREAS, a key goal of this Agreement is to eliminate duplication of effort and conflicting data among the Parties and enable the Parties to realize economies of scale associated with their respective Data Sets; and

WHEREAS, the Parties find it to be in the mutual best interests of their citizens and the community-at-large that the data of each Party continue to be shared with the other and that the 1998 Agreement be amended and replaced in its entirety in order 1) for each Party to increase the overall efficiency of its operations, 2) for each Party to minimize the cost of conducting its business, 3) for the Parties to minimize data development redundancy and data conflicts, 4) to

maximize the amount and type of information which each Party has for making management decisions, 5) to promote compatible mapping and database standards among the Parties, and 6) to update their formal arrangement for managing the copies of the data being exchanged to reflect current practices; and

WHEREAS, the Parties further find it to be in the mutual best interests of their citizens and community at large to allow for the GIS parcel Data Sets described in Appendix C to be open and available to the public for the public's use.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

**ARTICLE 1
TERMINATION OF THE 1998 AGREEMENT**

1.1 The Parties hereby agree that upon the execution in full of this Agreement, that certain Intergovernmental Agreement entered into by and between Colorado Springs Utilities and El Paso County, Colorado, in March 1998 for the exchange of GIS data is terminated and replaced in its entirety by this Agreement.

**ARTICLE 2
COVENANTS OF THE PARTIES**

The Parties represent, covenant, and warrant the following:

2.1 Each Party will do or cause to be done all things necessary to preserve and keep in full force and effect its duties under this Agreement.

2.2 Each Party is duly authorized to execute and deliver this Agreement, and further represents, covenants and warrants that all requirements have been met, and procedures have been completed in order to ensure the enforceability of this Agreement.

2.3 Each Party agrees to recognize and honor in perpetuity the licensing agreements, copyrights, and other proprietary claims for software, databases, collateral information, and products established or produced by the other Party and the vendors furnishing said items to such Party.

2.4 The Data Set each Party is licensing to the other, under this Agreement, contains, information derived from many sources, public, and private. Each Party acknowledges that it has the right to incorporate such data into its Data Set and to license it to other Parties. Each Party represents and warrants, to the best of its knowledge, that it has the right to incorporate the data described below into its Data Set and that neither the Data Set nor its use by the other Party in accordance with the terms of this Agreement, shall infringe upon or violate any third party rights, including any patent, copyright, trademark, trade secret or other proprietary right of any third party.

**ARTICLE 3
GRANT OF LICENSE**

3.1 The Dataset each Party will provide the other under this Agreement is the result of computer processing of information contained in its Geographical Information System (GIS) database. This digital data is in the form of graphics, annotation and attributes to graphics. Neither Party is under a legal obligation to provide its Dataset to the other Party, and the decision of each Party to exchange its digital data with the other is solely within the discretion of the parties.

3.2 Each Party agrees that the Datasets of each of the Parties are original works of authorship, protected by the copyright laws of the United States, and that such Datasets shall remain the exclusive property of the respective Party. Each Party is furnishing its Datasets to the other Party with all rights reserved, including the right to copying and distribution. Notwithstanding any of the above provisions regarding ownership of the Datasets, the Parties acknowledge that derivative products prepared by either Party from the other Party's Dataset may be made publicly accessible in accordance with this Agreement and each Party's policies concerning the availability of such information.

3.3 Except as provided below, each Party shall use the other Party's Dataset for internal purposes only and shall use reasonable care to secure, protect, and prevent unauthorized acquisition, use, dissemination, or disclosure of each other Party's Dataset as described in Article 9 of this Agreement.

3.4 Except as provided below, the Dataset supplied by each Party to the other shall not be assigned, licensed or transferred to a successor affiliate or other person, firm, corporation or organization, either voluntarily, by operation of law, or in any other manner without the prior written consent of the Party that created the Dataset. Any purported assignment without such consent is null and void.

UTILITIES GRANT OF LICENSE TO COUNTY

3.5 Utilities grants the County, subject to the provisions of the Agreement and during the term of this Agreement, a personal non-transferable, royalty-free, non-exclusive right and license to use Utilities' proprietary digital data (hereafter referred to as "Utilities' Datasets") as further described in Appendix A of this Agreement, for use by the County, including creation of derivative products as described in Article 9 herein. Utilities represents that it is authorized by resolution of the City Council of the City of Colorado Springs to enter into this Agreement. The Director of the County's Department of Information Technology Department is to retain control of Utilities' Datasets, plus any copies that may need to be generated for archival or business recovery purposes.

3.6 Utilities reserves all rights in the Utilities' Datasets not expressly granted to the County by this Agreement, except as provided in Article 9 herein.

3.7 The County agrees to make no additions, deletions, and/or changes to Utilities' Datasets without the consent of Utilities, except for derivative products as contemplated by this

Agreement. The County understands the rights of the license are for the original Utilities' Datasets provided and subsequent associated updates to Utilities' Datasets provided by Utilities to the County. For purposes of the contemplated exchange of information, it is estimated that the value of such updates will be roughly equal to the value of the updates the County makes to its Dataset.

COUNTY GRANT OF LICENSE TO UTILITIES

3.8 The County grants Utilities, subject to the provisions of the Agreement and during the term of this Agreement, a personal, non-transferable, royalty-free, non-exclusive right and license to use the County's proprietary digital data (hereafter referred to as "County's Datasets") as described later in this Agreement, for use by Utilities, including creation of derivative products as described in Article 9 herein. The County represents that it is authorized, by resolution of the Board of Commissioners of the County of El Paso, to enter into this Agreement. The Manager of Utilities' Asset Management/Geospatial Technology Department is to retain control of the County's Datasets, plus any copies that may need to be generated for archival or business recovery purposes.

3.9 The County reserves all rights in the County Datasets not expressly granted to Utilities by this Agreement, except as provided in Article 9 herein.

3.10 Utilities agrees to make no additions, deletions, and/or changes to the County's Datasets without the consent of the County, except for derivative products as contemplated by this Agreement. Utilities understands the rights of the license are for the original County Datasets provided and subsequent associated updates to the County Datasets provided by County to Utilities for purposes of the contemplated exchange of information, it is estimated that the value of such updates will be roughly equal to the value of the updates Utilities makes to its GIS Parcel Dataset.

ARTICLE 4 TERM AND TERMINATION

4.1 TERM. This Agreement, the license of the use of each other's GIS Parcel Dataset and all terms and conditions contained herein shall remain in full force and effect and be binding upon the Parties for a period of five (5) years, except as provided in this Article 4. At the end of the term, continued use of each other's Dataset must be pursuant to a new agreement between the Parties.

4.2 BREACH BY ONE OF THE PARTIES. Subject to the provisions of Article 11, which requires an alternative dispute resolution prior to litigation, each Party may terminate the license granted herein:

i. If the other Party or its employees, consultants or other agents violate any provision of this Agreement and the violation is not remedied within thirty (30) days of the Party's receipt of written notice of the violation; or

ii. If at any time either Party, in its reasonable judgment, determines that the other Party's performance is inadequate, unsatisfactory, or substantially nonconforming to

the provisions, warranties, or representations contained herein and the problem is not remedied within sixty (60) days of the Party's receipt of written notice describing the problem.

In the event of such breach or failure to perform, upon the expiration of the time requirements, or the unsuccessful conclusion of the dispute resolution procedures outlined in Article 11, the Party causing such breach shall immediately cease all use of the other Party's Dataset, delete the said Dataset in its entirety from any computer system and other electronic media on which it has been installed, and return to the other Party all portions of the Dataset delivered or disclosed to such Party under, or in connection with this Agreement, except for any data which has been made publicly available. Said Party shall certify to the other Party in writing that it has complied with the provisions of this Section 4.2. The license granted herein shall terminate and the other Party shall have the right to any and all legal or equitable remedies including, but not limited to, injunctive relief and the right to require an accounting by the other party of any profits which that Party may have realized by its use of the Dataset in violation of this Agreement. Any and all such profits realized by said Party by its use of the injured Party's Dataset in violation of this Agreement shall be immediately paid to such injured party.

4.3 RIGHT TO TERMINATE FOR CONVENIENCE. The Parties hereto are governmental entities, exchanging databases which are currently of equivalent value, in compliance with statutes and ordinances, including the existing City Charter and the public policies of their respective governing bodies. Said databases have been created and are held by each Party in trust for its citizens and it is not the intention of either Party to violate said trust or to impair the powers of their subsequent governing bodies. Each Party recognizes that unforeseen circumstances may arise which impair the usefulness of the other Party's Dataset or which render this arrangement unreasonably burdensome for either or both Parties. These circumstances might include, but are not limited to, the sale of either Party's Dataset, reduced need for the other Party's Dataset, increased cost of creating, changing or maintaining the database, excessive cost of administering this contract, changes in public policy, and other circumstances similar to the circumstances contemplated by Sections 4.4 and 4.5 below. In the event said circumstances arise, either Party may terminate this Agreement in accordance with the procedure described in either Section 4.4 or 4.5, whichever appears more clearly applicable, provided, however, that said Party may not be in breach of this Agreement and, provided further, that the Parties will first attempt to negotiate in good faith necessary changes to this Agreement, including the use of the dispute resolution process described in Article 11 herein. In such cases, both Parties shall cease all use of the other Party's non-public Datasets. Each Party shall certify to the other Party in writing that it has complied with the provisions of this Section 4.3; the licenses granted herein shall terminate; and neither Party shall have the right to any legal or equitable remedies.

4.4 NON-APPROPRIATION OF FUNDS. Failure of either Party to appropriate funds to pay for any costs that may be associated with the exchange of the Datasets under this Agreement shall not constitute a breach or failure to perform by such Party. Each Party's obligation to exchange their Datasets is expressly subject to the availability and appropriation of funds by the respective legislative body. In the event that funds are not appropriated in whole or in part, sufficient for performance of the Party's obligations under this Agreement, then the other Party

may suspend delivery of its Datasets and initiate termination for convenience. In such instance, the Parties shall cease all use of the other Party's non-public Datasets.

4.5 **FORCE MAJEURE.** In the event either Party is unable to perform any of its obligations under this Agreement because of natural disaster or actions or decrees of governmental bodies, the Party who has been so affected immediately shall give notice to the other Party and shall do everything practicable to resume performance. Upon receipt of notice, the Agreement may immediately be suspended by the effected Party and may remain suspended until performance can commence again. If the period of suspension exceeds sixty (60) days, then either Party may terminate this Agreement at its option upon ten (10) days prior notice to the other Party. In the event of termination under this Section, the Parties shall cease all use of the other Party's non-public Datasets.

4.6. **ADMINISTRATIVE UPDATES OF APPENDICES.** Due to the pace in which Datasets may change based on current technology and practices, the Parties anticipate making adjustments and modifications to the Appendices on an as-needed basis, mutually agreed upon by the Parties. Accordingly, the Parties desire to be able to make adjustments and modifications to the Appendices without the need to bring the Agreement back to the governing bodies for signature. Therefore, any adjustments and modifications may be made by letter agreement signed by the appropriate Utilities and County administrative officials. All other adjustments and modifications to the substance of the Agreement shall require written amendment of the Agreement approved by the governing body of each Party, respectively.

ARTICLE 5 DELIVERY AND ACCEPTANCE

5.1 Each Party is responsible for delivering its Dataset to the other Party. Each Party shall deliver its Dataset to the other Party in a mutually agreeable format and timeframe as set forth in Appendices A and B. Datasets from either Party may be delivered through digital transfer in lieu of a physical delivery.

5.2 In no event shall either Party, its employees, officers, or agents or a subcontractor of either Party be liable for any direct, special, indirect, incidental, consequential losses or damages or penalty resulting from or arising from the loss of use, data, property, goodwill or profits increased costs, claims or damages of either Party, or any other third Party for delay in delivery or failure to give notice of delay in delivery.

5.3 Each Party acknowledges that its Dataset is complex and that it may contain some non-conformities, defects and/or errors, the discovery of which may elude detection. Neither Party warrants that its Dataset will meet the other Party's needs or expectations.

5.4 Except as provided for herein, each Party acknowledges and agrees that no warranty of any kind, expressed or implied including, but not limited to, warranties of performance or merchantability or fitness for a particular purpose and any and all warranties arising from a course of dealing or usage of trade, are granted by or received by either Party under this Agreement. Each Party shall be solely responsible for the selection, use efficiency, and suitability of the data and

neither Party shall have no liability therefor. In no event shall either Party be liable to the other Party for any direct, indirect, special, consequential, exemplary or incidental loss or damages, including lost profits arising out of or related to this Agreement, even if said Party has been advised of the possibility of such damages.

**ARTICLE 6
CONSIDERATION**

6.1 Each Party agrees that for purposes of the contemplated exchange(s) of information, the value of the other Party's Dataset is equal to the value of its Dataset. Furthermore, as consideration for the promises made by each Party in this Agreement, each Party shall exchange Datasets with the other Party.

**ARTICLE 7
CONTRACT ADMINISTRATION**

7.1 The Parties agree that Utilities' Manager of Asset Management/Geospatial Technology, or his or her designee, and the County's IT Director, or his or her designee, shall serve as the Principals-in-Charge and, as such, shall be responsible for administering their respective Party's responsibilities of, and affairs under this Agreement. The Parties further agree that the duties of the Principals-in-Charge shall be to:

- i. Direct and coordinate their respective Party's responsibilities set forth in this Agreement.
- ii. Transmit to and receive correspondence from each other, as may be necessary, regarding issues that arise from time to time concerning technical, operational and legal aspects of this Agreement.
- iii. Establish and enforce policies, standards and specifications needed to properly manage each Party's responsibilities and obligations under this Agreement.
- iv. Review and approve their respective Party's performance required under the Agreement.
- v. Plan, design, construct, and maintain a communications connection between the Parties through which data exchanges and updates can easily and more efficiently be accomplished.
- vi. Negotiate terms and conditions and accomplish additional data exchanges to the extent they are deemed beneficial to both Parties, which supplemental agreements shall become addenda to this Agreement.
- vii. Ensure that business transactions subsequently negotiated and accomplished between the Parties, as permitted under this Agreement, are fair and reasonable and that each Party receives equal benefit over the life of this Agreement.

viii. Delegate responsibility for the day-to-day activities needing to be accomplished under this Agreement.

ix. Perform other activities as may, from time to time, be necessary in the performance of this Agreement.

ARTICLE 8 DEVELOPMENT AND UPDATING OF GIS DATASETS

8.1 The Parties will coordinate and cooperate in the development and updating of the Datasets. The Parties agree to provide updated metadata and database schemas when necessary as agreed on by each Party with the new Datasets at the time such Datasets are transferred or exchanged between the Parties.

ARTICLE 9 RESTRICTIONS ON USE

9.1 Each Party understands and acknowledges that each other's Datasets are subject to constant change and that the accuracy and completeness of each other's Datasets cannot be guaranteed. Under no circumstance shall Utilities or the County's Datasets be used for final design purposes. Additionally, the County agrees not to use Utilities' Datasets for the purpose of resolving property or boundary line disputes or disputes with regard to property tax responsibilities.

9.2 Except as otherwise provided herein, each Party is authorized to use the other party's Dataset for all internal purposes. Both Parties acknowledge that some incidental public distribution of printed materials containing information from the other Party's Dataset may occur as a result of each Party's internal use of the other Party's Dataset.

CONFIDENTIALITY

9.3 Each Party's Dataset constitutes a valuable asset to that Party. Each Party agrees that the Datasets shall be treated confidentially by the receiving Party, its employees, and representatives and shall not be disclosed without written consent, except as specifically allowed by and in accordance with the terms and conditions of this Agreement including, but not limited to, the following:

i. Not to disclose, publish, sell, assign, lease, sublicense, market or transfer the other Party's Dataset, or any portion thereof, without the written consent of that Party.

ii. To use reasonable care to secure, protect, and prevent unauthorized acquisition, use, dissemination, or disclosure of the other's Dataset; such care is the same care normally used by the Party to protect any third party licensed data or software which that Party has incorporated into derivative works for its internal use. These measures shall include adoption of policies which prohibit dissemination of the other Party's Dataset,

except in accordance with this Agreement or other applicable laws. Each Party agrees to take appropriate action, such as instruction of its employees, or agreements with consultants or other agents who are permitted access to the other Party's Dataset, to satisfy its obligations under this section.

9.4 The County may use Utilities' Datasets for application needs of El Paso County governmental agencies which include, but are not necessarily limited to, the Board of County Commissioners, the County's administrative departments, the County's elected offices, and the County's contractors, their subcontractors and affiliated contractors. No portion of Utilities' Datasets is to be released to a County contractor, subcontractor or affiliated contractor except by means of a written license agreement which requires compliance with all terms of this Agreement.

9.5 Utilities may use the County's Datasets for application needs of all Utilities' departments and supporting operations and agencies. Also, the contractors, their subcontractors and affiliated contractors of Utilities may use such data. No portion of the County's Datasets is to be released to a Utilities contractor, subcontractor or affiliated contractor except by means of a written license agreement which requires compliance with all terms of this Agreement.

9.6 The Parties agree that for purposes of compliance with the requirements of C.R.S. 24-72-201, *et seq.*, the Colorado Open Records Act, particularly the inspections and copying of public records, the official custodian of records for any records request received by one of the Parties, which are kept and maintained by the other Party, shall be the Party who created the records or caused them to be delivered to the other Party. The Parties agree that all public records requests in such cases shall be directed to the official custodian of such records who shall take steps to satisfy the requirements of the Open Records Act. For purposes of this Agreement and the Open Records Act, if there is a request for a copy of records of the other Party, that Party shall tell the person making the request that such records are officially in the custody and control of the other Party and a copy may be requested of the other Party.

9.7 Reserved.

DERIVATIVE PRODUCTS

9.8 For the purposes of this Agreement, "derivative products" are products or works resulting or derived from either: 1) modification, transformation, or enhancement by one Party of the other Party's Dataset, and/or 2) creation of a visual representation by one Party of the other Party's Dataset. These products may include, but are not limited to, the following:

- Paper Maps
- Digital Image Format Maps
- Web applications utilizing the data in question (or other visualizations)
- Digital Data
- GIS Rest Services

9.9 The Parties acknowledge and agree that either Party may create derivative products containing all or a portion of the Dataset provided by the other Party. The Parties further

acknowledge that derivative products may be subject to the Open Records Act, in which case such party may be required to furnish a copy of such product to members of the public upon request.

9.10 The County anticipates that its GIS data will be used as a basis for maps and web applications. The County, therefore, grants Utilities the right to distribute derivative products as described in Section 9.8, provided such derivative products conform to the following requirements:

- i. The maps and web applications shall cite the source data as El Paso County, Colorado where applicable.
- ii. The maps and web applications, are produced in the course of official Utilities' business.

9.11 Since the Parties cannot envision all of the potential derivative products or opportunities which may arise, the Parties agree that the representatives identified in Article 7 herein shall promptly meet (in person or by telephone) upon request and negotiate in good faith all requests to obtain the necessary consent. Said consent shall not be unreasonably withheld and may be provided by email, except when to give such consent will cause undo harm or liability for Utilities and its rate payers and/or the County and its taxpayers.

The Party creating or distributing a derivative product shall take reasonable steps necessary to protect the copyright, patent or other proprietary rights of the other Party, as may be applicable.

Nothing in these provisions shall be construed as an acknowledgment or entitlement by a third party to request or obtain custom-made products pursuant to the Open Records Act.

9.12 Neither Party may use the Dataset of the other Party in any manner or for any purpose not expressly authorized by this Agreement.

9.13 Each Party recognizes and agrees to abide by the other Party's copyright to its Dataset.

9.14 The restrictions contained in this Article are subject to judicial interpretation that may relate thereto, including decisions interpreting the Colorado Open Records Act.

9.15 Reserved.

9.16 Notwithstanding any term of this Agreement, the Parties fully agree that either Party may make derivative products created or derived from the Datasets described in Appendix C available to the public through any medium and that such derivative products shall not be deemed to be confidential, proprietary, or non-disclosable by either Party for any reason.

ARTICLE 10 LIMITATION ON LIABILITY; INDEMNITY

10.1 Utilities and the County make no representation or warranty, either expressed or implied, with regard to the fitness of the Dataset each is providing the other under this Agreement, for any particular purpose, whatsoever, and further specifically exclude any implied warranties of merchantability or the ability of the other to use its Dataset on any particular hardware platform.

10.2 In the event the Dataset provided to the other Party is found to contain an error, or causes any damage directly or indirectly to the other Party, the Party which furnished such Dataset shall have no responsibility for any claim from any persons or firms, including claims for indirect, consequential, incidental or other damages that in any way arise out of, or are in connection with the use of its Dataset.

10.3 Each Party waives any right of action against the other, including those in contract or in tort for damages or any liability caused by the acts or omissions of any person or firm in the use of or reliance upon, the other Party's Dataset provided under this Agreement.

10.4 Neither Party shall be responsible for the accuracy of maps created from the use of their Dataset or completeness of the mapping and related information that may be represented in their Datasets.

10.5 The Parties agree that they do not waive or, intend to waive by this Agreement or any provision hereof, including the provisions of this Section, the monetary limitations, or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*, as from time to time amended, or otherwise available to each Party.

ARTICLE 11 DISPUTE RESOLUTION

11.1 The Parties intend that all disputes, as defined below, shall be resolved in accordance with these dispute resolution procedures. Both Parties shall continue to perform their respective obligations under the terms of this Agreement until the stages of dispute resolution have been completed. Participation in this dispute resolution process shall be deemed a condition precedent to initiation of any litigation and/or breach of this Agreement.

11.2. The Parties shall address any dispute through an elevated three-step process. The Parties shall first endeavor to resolve any dispute using good faith efforts at a staff level. If the Parties are unable to resolve the dispute within ten (10) business days, then the dispute shall be referred to the Parties' respective Department Directors/Managers, as listed in Paragraph 12.15. If the Parties are still unable to resolve the dispute within an additional ten (10) business days, then the dispute shall be referred to the Chief Executive Officer of Colorado Springs Utilities, or his/her designee, and the County Administrator, or his/her designee. If the dispute is unable to be resolved within twenty (20) business days at the executive level, then the Parties are deemed to have completed the dispute resolution process.

11.3 All deadlines specified by this Article may be extended by mutual agreement of the Parties.

ARTICLE 12 MISCELLANEOUS

12.1 This Agreement contains no financial commitments on the part of Utilities or the County, and any financial commitments on the part of Utilities or the County which become a part of this Agreement are subject to provisions requiring appropriation by the City Council of the City of Colorado Springs and the Board of Commissioners of the County of El Paso, if any.

12.2 This Agreement, and the attached Appendices A, B, and C constitute the complete and exclusive agreement between Utilities and the County relating to this subject matter. This Agreement supersedes all prior and contemporaneous representations, correspondence, proposals, or agreements relating to this subject matter, whether oral or written.

12.3 This Agreement may be amended or modified only by a written amendment, signed by both Utilities and the County, and may not be altered or supplemented by course of dealing or trade usage. Modifications and/or amendments to the Appendices are to be made pursuant to Paragraph 4.6.

12.4 Neither this Agreement nor any of the rights granted by it may be assigned or transferred by either Utilities or the County without the written consent of the other Party and, if such event occurs, this Agreement shall inure to the benefit and be binding on any permitted successor or assignee of the Parties. This restriction on assignments or transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger or consolidation. Any attempted assignment or transfer in derogation of this prohibition is void.

12.5 Neither, Utilities nor County shall, in the performance of this Agreement, discriminate or permit discrimination against any person because of race, sex, age, or political or religious opinions or affiliations in violation of federal or state or local ordinance.

12.6 No failure or delay in enforcing any right or remedy under this Agreement shall be construed as a waiver of any future or other exercise of such right or remedy by Utilities or the County.

12.7 This Agreement shall be governed by the laws of the State of Colorado.

12.8 The exclusive jurisdiction and venue for any lawsuit between the Parties arising out of this Agreement shall be the District Court of the Fourth Judicial District, El Paso County, Colorado.

12.9 In the event that any one or more of the provisions of this Agreement shall be found to be illegal or unenforceable, then notwithstanding same, this Agreement shall remain in full force and effect, and such term or provision shall be deemed severed.

12.10 Neither Party's right to require performance of the other Party's obligations under this Agreement shall be affected by any previous waiver, forbearance, or course of dealing.

12.11 No agency, partnership, joint venture or other joint relationship is created by this Agreement and neither Party has any authority of any kind to bind the other Party in any respect whatever.

12.12 Notwithstanding anything in this Agreement to the contrary, no default, delay or failure to perform on the part of either Party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due entirely to causes beyond the reasonable control of the Party charged with a default including, but not limited to, causes such as strikes or other labor disputes, riots, civil disturbances, actions of governmental authorities, epidemics, war, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy, nuclear disasters or default of a common carrier.

12.13 Wherever in this Agreement either Party's consent is required, such consent shall not unreasonably be withheld or delayed. Consent shall be given in writing of which email is acceptable. In the event of an emergency where the Parties require immediate action to address an imminent need (e.g., sharing data to FEMA after a disaster) then verbal consent shall be acceptable, to be ratified no later than twenty (20) calendar days upon said verbal consent, via email or other written means.

12.14 Reserved.

12.15 Any notice required to be made pursuant to this Agreement shall be delivered by first class mail, postage prepaid, return receipt requested, and addressed as follows:

UTILITIES

Colorado Springs Utilities
ATTN: Manager, Asset Management/Geospatial Technology
1521 S. Hancock Expy, MC-1812
Colorado Springs, CO 80947-1812

COUNTY

El Paso County, Colorado
ATTN: Director of Information Technologies Department
325 S. Cascade Ave.
Colorado Springs, CO 80903

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement in the day, month, and year first above written.

CITY OF COLORADO SPRINGS
ON BEHALF OF ITS ENTERPRISE
COLORADO SPRINGS UTILITIES

By: 
Earl Wilkinson III
Chief Water Services Officer
Colorado Springs Utilities

Approved as to Form:

Colorado Springs City Attorney's Office – Utilities Division

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY COLORADO

By: *Darryl Glenn*
Darryl Glenn, President

ATTEST:
By: *Chuck Broerman*
Chuck Broerman
El Paso County Clerk and Recorder

Approved as to Form:
[Signature]

Assistant County Attorney, El Paso County Attorney's Office

Appendix A – Description of Utilities’ Datasets

Feature Class	Description	Data Type
PARCEL INFORMATION (Updates provided Monthly)		
Lots	Updates to this layer provided on a monthly basis. Contains lot number, block, lot type, and address pointer, and document number attributes.	Poly
Rights of Way	Updates to this layer provided on a monthly basis. Contains document number attributes.	Poly
Subdivisions	Updates to this layer provided on a monthly basis. Contains document number attributes.	Poly
PLANIMETRIC INFORMATION (Data provided on Request)		
Buildings	Buildings. Newly constructed buildings added as addressed.	Poly
CenterlinesMaster	Master Street Centerline File. Created and updated by Utilities for internal purposes only. New street information is added as received. Contains Street Names and address ranges but not in all cases. Updated regularly.	Line
Streets	Contains Bridges, Curbs, Alleys, Driveways, Parking, and Roads. Updated as new area are built.	Line
Lakes	Contains Lakes, Ponds and reservoirs. Last updated in 2013.	Poly
Other	Any Utilities’ Datasets not currently described above and based on the approval of the Utilities administrative official.	TBD

Appendix B – Description of County’s Datasets

Feature Class	Description	Data Type
PARCEL INFORMATION (Updates provided Monthly)		
Parcels	Updates to this layer provided on a monthly basis. Contains parcel number, parcel ID and annotations. Updated monthly.	Poly
Parcel/Improvement Tables	Updates to these tables provided on a monthly basis.	Table
Cities	Contains incorporated city boundaries. Updated as needed.	Poly
PLANIMETRIC INFORMATION (Data provided on Request)		
Buildings	Buildings. Newly constructed buildings added as addressed.	Poly
Roads	CO highways, major and minor roads within in El Paso County. Updated regularly. Updated as needed.	Line
County Facilities	El Paso county facility building data. Updated as needed.	Point
Subdivisions	Platted areas for El Paso County, platted areas under 35 acres parcels are classified as subdivisions. Updated as needed.	Poly

Appendix C – Generalized Parcel Dataset – Allowed for Public Distribution

1. GENERALIZED PARCELS – BACKGROUND

- **Description:** The parcel dataset depicts land of any size with a code number that serves as an abbreviation of, or replacement for, a parcel's legal description. This number is utilized to facilitate the storage and use of land data in an information system for taxation purposes.
- **History:** This dataset was derived by El Paso County in conjunction with Colorado Springs Utilities in 1997 with coordinate geometry tied to survey quality GPS coordinates. This is a dynamic dataset that is updated on a weekly basis.
- **Purpose:** This dataset was developed to help show ownership and more easily display taxation based on parcels within El Paso County.
- **Restrictions:** The original El Paso County parcel data outside of the CSU service territory has a minimum accuracy of +/- 50 feet. The parcels are further generalized by removing small fluctuations or extraneous bends from boundaries within a minimum area of 1 foot, while preserving essential shapes. Accuracy tolerances should be carefully considered for all overlay and analysis uses.

2. GENERALIZED PARCELS – DELIVERABLE DATASET INFORMATION

Spatial

- **Projection Information:**
 - *Horizontal DATUM: NAD83*
 - *Projection Coordinate System: StatePlane*
 - *Coordinate System Zone: Colorado Central 0502*
 - *Ellipsoid Identification: Geodetic Reference System 80 (GRS80)*
 - *Projection Units: Feet*
 - *Map Projection Name: Lambert Conformal Conic*
 - **Projection Positional Accuracy:** The original El Paso County parcel data outside of the CSU service territory has a minimum accuracy of +/- 50 feet. The parcels are further generalized by removing small fluctuations or extraneous bends from boundaries while preserving essential shapes. Accuracy tolerances should be carefully considered for all overlay and analysis uses.
-

Attributes

- **Projection Information:** The parcel dataset depicts land of any size with a code number that serves as an abbreviation of, or replacement for, a parcel's legal description. This number is utilized to facilitate the storage and use of land data in an information system for taxation purposes.

- **Attributes:**

FIELD NAME	DATA TYPE	LENGTH	DESCRIPTION
PARCEL	Text	10	tax schedule number
PLOC	Text	254	place location address
LEGAL	Text	55	legal description information
ACREAGE	Double	10	total acres
HYPERLINK	Text	254	hyperlink text
SHAPE_LENG	Double	19	length of perimeter in feet
SHAPE_AREA	Double	19	area in square feet

3. GENERALIZED PARCELS – DISCLAIMER

- **Disclaimer:** Parcel data shall be used for general guidance and not as a final decision tool for floodplain administration or survey replacement. End user assumes all risk associated with the use of the generalized parcel dataset.

