

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement ("Agreement") is made between the Doña Ana County and its divisions, officers, agencies, and employees ("County") and STACK INFRASTRUCTURE, INC. ("STACK"), with its principal place of business at 1700 Broadway, Suite 1750, Denver, CO 80290. County and STACK hereinafter collectively referred to as the "Parties"), effective upon date of final execution by all parties (the "Effective Date").

A. The Parties have disclosed or will disclose information, whether written, graphic, oral, electronic, or in any other form which is confidential and should not be disclosed to outside parties or entities due to the sensitive or proprietary nature of the information. This "Confidential Information" includes any and all non-public, confidential or proprietary information furnished by the County to STACK, or to the County by or on behalf of STACK and its Affiliates (as defined herein) that is (i) designated to be confidential or proprietary at the time of disclosure or (ii) should reasonably be understood to be confidential at the time of disclosure given the nature of the information and the circumstances surrounding its disclosure, whether disclosed orally or disclosed in or stored in written, electronic or other form of media, including but not limited to: (a) the terms and conditions of this Agreement and the existence of discussions between the parties, (b) all project specific information, analyses notes, reports, studies, data, statistics, summaries, interpretations or other documents prepared by or for the County which contain or otherwise reflect, derive from or are generated from such information, and (c) any graphic, electronic or machine-readable information, including but not limited to that which relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, research, development or know-how, markets, software (including source and object code), hardware configuration, computer programs, algorithms, business or marketing plans, business proposals, costs, prices, purchase or sales volume, agreements with third parties, services, actual or potential customers and suppliers, and the marketing or finances of STACK. Confidential Information does not include information that is not specific to the other Party, is publicly available when received by the receiving Party, is lawfully obtained by the receiving Party from a source other than the other Party or is independently developed by the receiving Party without the use of Confidential Information. If STACK seeks funds appropriated pursuant to the Local Economic Development Act, NMSA 1978 §§ 5-10-1, *et seq.*, or certain other programs administered by the County, information about STACK and its operations, including Confidential Information, will necessarily become public, provided that the Parties will reasonably cooperate with one another to approve such Confidential Information that will be made public. For the purpose of this Agreement, an "Affiliate" of a Party shall mean any entity that controls, is controlled by, or is under common control with such Party, but shall exclude a direct competitor of the other Party, and "control" shall

mean more than fifty percent (50%) ownership of assets or equity. Each Party accepts responsibility for the actions of its Affiliates to whom it discloses Confidential Information.

B. The Parties will hold Confidential Information in strict confidence, will take all reasonable precautions to protect Confidential Information, including ensuring all employees, agents, and consultants comply with confidentiality obligations. The Parties will not disclose Confidential Information to any outside persons except for advisors retained solely for evaluation purposes who are bound by similar confidentiality terms. The Parties will not make use of Confidential Information except for the sole limited purpose of evaluating Confidential Information to determine whether to enter into a relationship with one another and to perform according to that relationship, if it is entered into. The Parties will promptly notify one another of any unauthorized disclosure or use of Confidential Information and to take all reasonable steps to remedy it.

C. The New Mexico Inspection of Public Records Act, NMSA 1978 § 14-2-1, et seq. ("IPRA") establishes policy that favors broad disclosure of information provided to or by public agencies, which may be lawfully subject to inspection notwithstanding the existence of this Agreement. The Parties understand that the County must comply with IPRA to the fullest extent but will take every possible step to ensure all Confidential Information is kept confidential and not disclosed.

D. Confidential Information is and remains the property of the originating Party. Upon a decision by the County or STACK not to enter into a business relationship, or by request of either Party, the use of Confidential Information will cease and will be returned to the original owner. If such Confidential Information has been transmitted electronically, such information will be immediately deleted or destroyed. Nothing herein requires the County or STACK to enter into any business relationship or to refrain from entering into any relationship with any third parties, even if such relationship relates to subject matter similar or identical to that contemplated by this Agreement.

E. STACK's disclosure of Confidential Information to the County does not constitute publication of the Confidential Information for patent or copyright purposes or a release of the Confidential Information into the public domain. The County will not use the STACK's disclosure of Confidential Information to the County to impede or challenge the STACK's application for patent, copyright, or other legal protection. Nothing in this Agreement shall grant any right or license to any intellectual property or make any representation or warranty, express or implied.

F. The Parties acknowledge that the unauthorized disclosure or misuse of Confidential Information may cause irreparable harm to the party whose information was disclosed. While the Parties will make reasonable efforts to comply the obligations under this Agreement, any remedies for breach shall be subject to and limited by the protections and limitations of the New Mexico Tort Claims Act, NMSA 1978 §§ 41-41, et seq. The Parties


understand that a breach of this Agreement occurs, the party experiencing harm will seek all remedies available under the law.

G. This Agreement shall be governed by the laws of the State of New Mexico without regard to the conflicts of laws or choice of law provisions thereof. In the event of a breach of this Agreement, the Parties will attempt dispute resolution through mediation prior to litigation. A New Mexico mediator will be chosen from the National Academy of Distinguished Neutrals. In the event that mediation is unsuccessful, the Parties agree that proper jurisdiction and venue is in the State of New Mexico's Third Judicial District Court, Dona Ana County.

H. This Agreement constitutes the entire agreement between the County and STACK regarding its subject matter and supersedes all prior or contemporaneous discussions, writings, and agreements. No waiver or modification of this Agreement is valid and binding unless made in writing and signed by the Parties. This Agreement shall continue in effect for a period of two (2) years from the Effective Date. The Parties obligations with respect to Confidential Information under this Agreement will survive termination or expiration of the Agreement for an additional period of two (2) years. In the event that any provision of this Agreement is declared by a Court of competent jurisdiction to be illegal, invalid, or unenforceable, that provision shall be severed, limited or eliminated to the minimum extent necessary to give full force and effect to the remainder of this Agreement, which shall remain legal, valid, and enforceable. This Agreement shall be binding on the STACK's successors and assigns. The waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of any right or any succeeding breach of any provision. The delay or omission of either party to avail itself of any right or privilege under this Agreement shall not operate as a waiver of any right or privilege by either party. This Agreement may be executed in counterparts, each of which shall be deemed an original and altogether constitute one and the same Agreement. Electronically communicated signatures shall be considered original signatures.

ACKNOWLEDGED AND AGREED:

**Dona Ana County**

By: 

Its: County manager

Date: 7-31-25

**STACK INFRASTRUCTURE, INC.**

By: 

DocuSigned by:

Timothy Kuester

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Its: Chief Legal & Administrative Officer

Date: 7/30/2025

Initial

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