

FOR BOARD ACTION

Agenda Item # 7

Meeting Date:

2/24/04

SUBJECT: CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT
AWWA Research Foundation

PREPARED BY: Doug Rovang, Senior Civil Engineer *SCR*

ITEM DESCRIPTION:

The AWWA Research Foundation has a security report ready for distribution, titled, Results From the Water Utility Vulnerability Assessment Lessons Learned Study. Because the report contains proprietary and confidential information, as well as sensitive security information, the AWWA Research Foundation (AwwaRF) is taking steps to protect this information. The report is provided on a "loan" basis and is viewed as trade secrets in an effort to protect them from state freedom of information laws. The report is also protected information under the Federal Freedom of Information Act and may be subject to the International Traffic in Arms Regulation (ITAR) 22CFR 120-130. In order to receive the report, RPU must first sign a nondisclosure agreement.

UTILITY BOARD ACTION REQUESTED:

Staff is requesting that the Utility Board approve the attached Confidentiality and NonDisclosure Agreement with AwwaRF as modified by the City Attorney, and authorize the Mayor and City Clerk to execute the Agreement.

Reviewed 2-19-04 WMS

Larry Koshin

General Manager

2-19-04

Date

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality Agreement (the "Agreement") is effective on _____ and is between AwwaRF, whose principal place of business is located at 6666 W. Quincy Avenue, Denver, CO 80235 (hereafter "Principal"), and _____ whose Principal place of business is located at _____ (hereafter ("Contracting Party")).

In consideration of the mutual promises contained herein, the parties agree as follows:

1. **Ownership.** Principal is the owner, or has permission to possess from the owner, all materials, knowledge, facts, and documentation relating to the AwwaRF research projects on Vulnerability Assessments, Security Events, and all other research done by the Foundation in this topic area and identified as proprietary and confidential (hereafter "INFORMATION"). Principal claims all copyright ownership and other ownership rights for the INFORMATION. Further, the INFORMATION includes trade secret information as defined by the Colorado Revised Statutes, Section 7-74-101 et seq. (2001) that is being shared solely pursuant to this Agreement. Both parties agree that the terms of this Agreement are sufficient efforts of the Principal to maintain the secrecy of the INFORMATION.
2. **Confidentiality.** The parties understand that the INFORMATION contained in this report is confidential and a trade secret. Such INFORMATION is proprietary information owned by Principal or for which Principal has received permission to possess and analyze from such INFORMATION's owner, and is of great value. Contracting Party agrees that he/she has not done, and will not do, in the future, or after the termination of any relationship between the parties, without the written consent of Principal any of the following:
 - a. He/She will not disclose any information regarding the INFORMATION directly or indirectly to any third party;
 - b. He/She will not copy, digest, summarize, or use information or materials relating to the INFORMATION or any part thereof, or any knowledge learned from the INFORMATION for any purposes except for the purposes contemplated by this Agreement which purpose is to assist water utilities in the protection of facilities and alert them to some potential vulnerabilities.
3. **Employee, Agent Confidentiality.** No employee, officer, agent, or independent consultant of Contracting Party will have access in any manner to either the general outline of, or details relating to, the INFORMATION without the prior written authorization by Principal and without agreeing to be bound by the terms of this Agreement.
4. **Return of all drafts.** Upon request of the Principal at any time and for any reason, the Contracting Party shall return all documentation in whatever form or media, as well as all copies, relating to the INFORMATION, including, but not limited to, any notes concerning the INFORMATION. Contracting Party shall not retain any drawings, prototypes, copies, extracts, reproductions, or other documentation relating in any manner to the INFORMATION. Any exceptions regarding materials to be returned shall be delineated, in writing, and signed by the parties.
5. **Breach.** Contracting Party acknowledges that a breach by him/her of the provisions of this Agreement will cause Principal irreparable damage for which Principal cannot be reasonably or adequately compensated in damages. Principal shall therefore be entitled, in addition to all other remedies available to it including, but not limited to attorneys fees and costs, to injunctive and/or other equitable relief to prevent a breach of this Agreement, or any part of it, and to secure its enforcement.
6. **Policy.** The Foundation's policy on Security Information Protection Procedure as approved by the Board of Trustees further details the Foundation's procedures for proprietary and confidential information.
7. **General.** This Agreement is nonassignable and constitutes the entire understanding between the parties. All prior agreements, representations, or understandings are merged into this Agreement. No modifications to this Agreement shall be made unless in writing, executed by both parties. Nothing in the Agreement shall be construed to constitute a license to Contracting Party to make, use, sell, or promote any information relating to the INFORMATION in whole or in part. This Agreement shall be interpreted and enforced according to the laws of Colorado, except where federal law applies. Venue shall be proper only in Denver County, Colorado. Waiver by the Principal of one or more terms above shall not constitute a continuing waiver as to any particular term or terms of this Agreement. If any provision of this Agreement is declared void, or is otherwise unenforceable, that provision shall be deemed to have been severed from this Agreement, which shall otherwise remain in full force and effect. The Principal disclaims any and all liability for claims, actions, demands, or litigation, including, but not limited to attorneys fees and costs, concerning the completeness or accuracy of the workshop, and the program materials. The signatory warrants that he/she has authority to execute this Agreement on behalf of his/her employer.*

Signature: _____
By/title: James F. Manwaring, Executive Director
For: AwwaRF Dated: _____

Signature: _____
By/title: Ardell F. Brede, Mayor
For: City of Rochester, MN Dated: _____

*Not withstanding anything in this Agreement to the contrary, this Agreement does not require Rochester Public Utilities to take any action or make any decision that would violate the provisions of the Minnesota Government Data Practices Act.



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to request the Mayor and the City Clerk execute the

Confidentiality and NonDisclosure Agreement with the AWWA Research Foundation for Materials Related to Vulnerability Assessments, Security Events, and all other Research done by the Foundation in this Topic Area and Identified as Proprietary and Confidential

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 24th day of February, 2004.

President

Secretary