

FOR BOARD ACTION

Agenda Item # 6

Meeting Date:

1/27/09

SUBJECT: CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT
Water Research Foundation

PREPARED BY: Doug Rovang, Senior Civil Engineer

ITEM DESCRIPTION:

The Water Research Foundation (formerly the AWWA Research Foundation) has a security report ready for distribution, titled, Guidance for Decontamination of Water System Infrastructure. Because the report contains proprietary and confidential information, as well as sensitive security information, the Foundation 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 it 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 the Water Research Foundation as modified by the City Attorney, and authorize the Mayor and City Clerk to execute the Agreement.


General Manager

1/22/09
Date

ROCHESTER PUBLIC UTILITIES

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (NON-FEDERAL)

This Confidentiality Agreement (the "Agreement") is effective _____ and is between Water Research Foundation, whose principal place of business is located at 6666 W. Quincy Avenue, Denver, CO 80235 (hereafter "Principal"), and City of Rochester, a Minnesota municipal corporation, acting by and through its Public Utility Board whose place of business is located at 4000 East River Rd NE, Rochester, Minnesota 55906 (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 Foundation project entitled "Guidance for Decontamination of Water System Infrastructure." Utilities and all other research done by the Foundation in this Security 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 (as revised from time to time) 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 the 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 at any time in the future, even after the termination of any relationship between the parties, without the written consent of Principal or as required by the Minnesota Government Data Practices Act any of the following:
 - a. He/She has not disclosed and will not disclose any information regarding the INFORMATION directly or indirectly to any third party;
 - b. He/She has not copied, digested, summarized, or used and 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 purpose 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 materials.** Upon request of the Principal at any time and for any reason, the Contracting Party shall immediately 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, authorized 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 jointly.
- 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. Further, the Principal shall be entitled to ten thousand dollars (\$10,000.00) as liquidated damages, and not as penalty, for the breach of this Agreement.

- 6) The Agreement shall not restrict disclosure of facts that are (a) known to the Contracting Party prior to receipt of the INFORMATION (if such prior knowledge can be established); (b) obtained without restriction as to further disclosure from a lawful source other than the Principal; (c) in the public domain at the time received from Principal or thereafter enter the public domain through no fault of the Contracting Party; ~~or~~ (d) disclosed to the U.S. government through Court order or appropriate demand as long as efforts are made to protect the INFORMATION from further disclosure; or (e) required to be disclosed by the Minnesota Government Data Practices Act.
- 7) **General. Miscellaneous. Law/Venue.** Unless prohibited by State statute or U.S. Federal law, any legal action may only be brought in Denver County, Colorado or the United States District Court, Colorado; and this Agreement is to be interpreted and enforced according to Colorado law except where U.S. Federal law applies. **Notices.** All notices required under this Agreement must be in writing. Notice will be deemed given when delivered personally or five (5) days after having been sent by first class mail, postage pre-paid, to the addresses stated above, or to such other address as may be requested by the parties from time to time; or when sent by email upon receipt when receipt is confirmed by separate email. **Rights Reserved.** All rights not expressly granted are reserved. Further, this Agreement is not to be construed to constitute a license to Contracting Party to make, use, sell, or promote the INFORMATION in whole or in part. **Independent Contractors.** The parties are independent of each other. Nothing in this Agreement shall be construed to create an employment or joint relationship between the parties. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of subsidiaries, affiliates, successors, and assigns of the parties. **No Modification or Assignment.** No modifications to this Agreement shall be valid unless made in writing and executed by both parties. This Agreement is nonassignable by the Contracting Party. **Severability.** The provisions of this Agreement shall be deemed severable, and the invalidity, illegality, or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions. In the event any provision of this Agreement is found to be invalid, illegal, or unenforceable, the parties shall endeavor to modify that clause in a manner that gives effect to the intent of the parties in entering into the Agreement. **Entire Agreement.** This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements, representations, and understandings whether written or oral. **Waiver.** Any waiver of a particular breach of this Agreement by a party shall not operate as a waiver to any other breach of this Agreement by that party. **Captions for Convenience.** All captions used in this Agreement are for convenience only and shall have no meaning in the interpretation or effect of this Agreement. **Construction.** This Agreement is not to be construed against the drafter. **Disclaimer.** The Principal disclaims any and all liability for claims, actions, demands, or litigation, including, but not limited to, special or consequential damages, and attorneys' fees and costs, concerning the completeness or accuracy of the INFORMATION, any workshop, and the program materials. **Authority.** The individuals executing this Agreement on behalf of their respective parties hereby represent and warrant that they have the right, power, legal capacity, and appropriate corporate authority to enter into this Agreement on behalf of the corporation for which they sign below.

Water Research Foundation (Principal)

By: Robert C. Renner. P.E.
Title: Executive Director
6666 W. Quincy Avenue,
Denver, Colorado 80235
Tel: (303) 347-6100

Log # of Reports provided:

CITY OF ROCHESTER, MINNESOTA

[Name of Contracting Party]

Ardell F. Brede

Signature: _____

Title: Mayor

Date: _____

201 4TH STREET SE ROOM 281
ROCHESTER, MN 55904
507-328-2700

ABREDE@ROCHESTERMN.GOV

[address/telephone/email]



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 Water Research Foundation for Materials Related to the Foundation project entitled "Guidance for Decontamination of Water System Infrastructure" with the understanding that the proprietary information contained in this report is confidential and a trade secret.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of January, 2009.

President

Secretary