



Home of the Tualatin River National Wildlife Refuge

RESOLUTION 2011-070

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A WATER SYSTEM DATA USE AND CONFIDENTIALITY AGREEMENT WITH THE REGIONAL WATER PROVIDERS CONSORTIUM

WHEREAS, the City of Sherwood is a member of the Regional Water Providers Consortium; and

WHEREAS, the Consortium serves as a collaborative and coordinating organization to improve the planning and management of municipal water supplies in the Portland Metropolitan Area region; and

WHEREAS, each member of the consortium presently provides water service to its customers and may have system interconnections which are authorized by other various intergovernmental and mutual aid agreements; and

WHEREAS, it is a benefit to the City of Sherwood to enter into this agreement not only for emergency purposes and preparedness but also as a major connection point to the Willamette River.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager is authorized to enter into a Water System Data Use and Confidentiality Agreement, attached as Exhibit A, with the Regional Water Providers Consortium.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 16th day of August 2011.


Keith S. Mays, Mayor

Attest:


Sylvia Murphy, CMC, City Recorder



WATER SYSTEM DATA USE AND CONFIDENTIALITY AGREEMENT

This Water System Data Use and Confidentiality Agreement (“Agreement”) is made and entered into by and between the members of the Regional Water Providers Consortium (“Consortium”) who are signatories hereto who may also be referenced to as a Requesting Party or Disclosing Party as set forth below.

RECITALS

A. Each signatory hereto is a City, People’s Utility District, Domestic Water District or Water Authority all defined as units of local government under ORS 174.116. As units of local government in the State of Oregon and, pursuant to ORS Chapter 190, the Parties are authorized to enter into intergovernmental agreements, such as the Regional Water Providers Consortium.

B. The Consortium serves as a collaborative and coordinating organization to improve the planning and management of municipal water supplies in the Portland Metropolitan area region.

C. Each member of the Consortium presently provides water service to its customers and may have system interconnections which are authorized by other various intergovernmental and mutual aid agreements.

D. The Consortium has completed a Regional Water System Interconnections and Evaluation Project (“Project”), which contains water system information, vulnerabilities, records and mapping information (“Confidential Information”) for all of the Consortium Members.

E. The central location of this combined Confidential Information greatly enhances the ability and efficiency of the Consortium and its members to identify water resource availability in the event of an emergency, build a more resilient regional water system and identify priorities for infrastructure improvements.

F. This Confidential Information collected by the Consortium will be useful to each Party, and the objective of the Consortium as a whole, but reveals the vulnerabilities of individual Consortium member systems, and of interconnected system elements, that would permit unlawful disruption to or interference with the Parties’ water supply systems. Such Confidential Information is conditionally exempt from disclosure under ORS 192.501(22).

G. It is anticipated that the Confidential Information will be used by the Consortium members to better prepare for a water system emergency and plan for a more resilient water system.

H. By intergovernmental agreement with the Consortium, the City of Portland (“City”) is to provide a “wide range of staff support services to the Consortium” in order for the Consortium to achieve its objectives.

I. The data described above has been collected in the form of a geodatabase which the City has the technological capability to store and recall for distribution as the staffing agent for the Consortium. As a consequence, the Consortium has determined that the City, as part of its staffing duties, will store and, as provided in this Agreement, distribute some or all of the Consortium’s geodatabase information for use by the Consortium as a whole and by individual members. In doing so, the City shall act as the agent of the members of the Consortium.

J. By assigning this function to the City, there is no intention by the Consortium as a whole, or any individual member, to transfer ownership of any such information, except that regarding the City’s own water system, to the City for any purpose whatsoever. It is the intention of the Consortium that ownership of all such data shall remain with the Consortium member who supplied its system information for the geodatabase.

K. The Signatory Parties enter into this Agreement to enable them to share their Confidential Information in order to protect and enhance their water systems which supports the Consortium’s goals.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL TERMS, COVENANTS AND CONDITIONS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Records to be Shared.

a. The Parties. For purposes of this Agreement, the “Providing Party” is the entity that owns confidential records and provides them to the “Receiving Party.” The Receiving Party is the entity that receives records from the Providing Party. Confidential Information is that information that meets the exemptions specified under the Oregon Public Records Law, including but not limited to information which the Providing Party and Receiving Party reasonably believe should be considered confidential under that law and which they agree to keep confidential under this Agreement.

b. Agreements to Share. Confidential Information shall be shared, upon request, with any Party that has signed this Agreement. Each Party agrees to transmit to the other, either directly or through the City acting as agent for the Parties, the water system information or the Project information (“Records”) requested and to hold any Confidential Information received according to the terms of this Agreement. The Receiving Party may only use Confidential Information or intellectual property obtained under this Agreement for the Receiving Party's municipal planning or operations purposes, including emergency planning and response, and to assist in planning conducted by or on behalf of the Consortium. The Receiving Party shall not otherwise publish or disclose the Confidential Information or intellectual property without the Providing Party's prior written consent or as provided for under this Agreement.

2. Breach of Confidentiality.

a. Confidential Information. In addition to any other written or verbal agreements or understandings at the time of disclosure, this Agreement serves as an agreement by the Receiving Party to maintain confidentiality of that Providing Party's Confidential Information to the extent permitted and subject to the Oregon Public Records Law, and as provided in paragraph 2(c) below. Each Party shall:

(1) limit disclosure of the Confidential Information to those elected officials, directors, officers, employees and agents of the Receiving Party who need to know the Confidential Information;

(2) exercise reasonable care with respect to the Confidential Information at least to the same degree of care as that Receiving Party employs with respect to protecting its own proprietary and Confidential Information to perform their duties; and

(3) return immediately to the Providing Party, upon its request, all Records containing Confidential Information in whatever form that are in the Receiving Party's possession, custody or under its control.

b. Nondisclosure. The information provided under this Agreement includes information as to each Party's water supply that is protected from disclosure under ORS 192.501(22), relating to public records that if disclosed would allow a person to identify or disclose structural or operational vulnerability that would permit unlawful disruption to or interference with the water supply. Each Party agrees not to share or disclose the information

and maps provided to it by the other under this Agreement and agrees for itself as an entity and for its officers, employees and agents to protect as confidential such information and not release such information to any person except pursuant to the terms of this Agreement.

c. Maintaining Confidentiality. The Receiving Party will maintain the confidentiality of the Providing Party's Confidential Information and not disclose it, except pursuant to the terms of this Agreement, to any person not authorized to receive it unless (1) disclosure is required by the Oregon Public Records Law; or (2) disclosure is authorized by the Providing Party in writing; or (3) disclosure is ordered by a court of competent jurisdiction.

d. Requests to Disclose Confidential Information. If the Receiving Party receives a request for disclosure or a subpoena related to Confidential Information, the Receiving Party will provide notice to the Providing Party as expeditiously as practical, but in any case before a response to the request for disclosure or subpoena is due or within five (5) days, whichever period is the shorter. Notice shall be provided to a Party's designated representative in writing (which shall include e-mail). It shall be the Providing Party's responsibility to respond and establish that such information is exempt from disclosure. Upon receipt of the notice, the Providing Party, acting by and through the persons charged with responding to requests for public records, may request to act on behalf of the Receiving Party in responding to the Public Records request. Should the Receiving Party, acting by and through the persons charged with responding to requests for public records, agree to the request, then henceforth the Providing Party shall assume responsibility for all legal obligations of the Receiving Party in responding to the request or subpoena. In any case, both before a transfer of responsibility or if a transfer of responsibility is either not requested or not approved, the Receiving Party will make its best efforts to consult with the Providing Party in developing its response to the Public Records Request and shall undertake such reasonable and prudent steps as it deems necessary to protect the Confidential Information from disclosure to prevent prejudice of rights to the Disclosing Party or Receiving Party. In the event the Providing Party fails to respond after receiving notification from the Receiving Party as described above or fails to respond to a Receiving Party's request to act on behalf of the Receiving Party, the Providing Party shall defend, indemnify, and hold Receiving Party harmless from any claim or administrative appeal, including costs and expenses related to the request to disclose, subject to applicable legal limitations.

e. Receiving Party's Response. If the Receiving Party has been advised by the Providing Party that it will respond on the Receiving Party's behalf, the Receiving Party shall, within the time required by law, respond to any requestor for the Confidential Information, that: 1) the Confidential Information belongs to the Providing Party; 2) the request has been delivered to the Providing Party; and 3) the Providing Party shall formally respond to the request; and 4) the Providing Party should be contacted for all future inquiries regarding release of the Confidential Information. If the Providing Party does not assume responsibility to respond to a request, the Receiving Party shall provide a response as required by law, subject to its obligations under this Agreement.

3. Ownership of Confidential Information. The Providing Party shall at all times remain the owner of their Confidential Information.

4. Hold Harmless and Indemnification for Agent of the Parties. The parties acknowledge that the Regional Water Consortium has designated the City of Portland as its agent to store, maintain, and, at the request of the Parties, provide access to or distribute the Confidential Information. The parties to this Agreement shall hold harmless and shall defend the City from any and all actions arising out of any release or use of the Confidential Information provided by the City to the Requesting Party and shall bring no action against the City relating to the form or correctness of the data provided. No action shall be brought against the City by the Providing Party arising from the City's provision of information to the Requesting Party, relating to the Requesting Party's use of the information, or any other issue related to the collection, storage or provision of such information by the City.

5. Remedy.

Parties acknowledge that unauthorized disclosure of Confidential Information will result in irreparable harm to the Providing Party. In the event of breach or threatened breach of this Agreement, the Providing Party may obtain equitable relief prohibiting the breach in addition to any other appropriate legal or equitable relief.

6. Term.

The Term of this Agreement shall not be restricted as to time. Any party signatory to this Agreement may withdraw from the Agreement upon 30 days written notice to the others, provided that no party may withdraw from the Agreement if it still has within its possession Confidential Information of another party signatory to this Agreement. The Providing Party may require return of any Confidential Information from a Receiving Party by giving written notice to the Receiving Party. The Receiving Party shall return all copies of the Records in whatever form within seven (7) days of receipt of the written notice.

7. Applicable Law and Venue.

This Agreement shall be interpreted under and pursuant to the laws of the State of Oregon. The parties agree that any venue for any action or claim arising out of or connected with this Agreement shall be in the Circuit Court of the County where a public record request or subpoena is served or, if such has not occurred, in the County in which resides one of the litigating parties. If the City of Portland is a party, any action shall be prosecuted in the Circuit Court for Multnomah County.

8. Severability.

If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term or provision of this Agreement shall be valid and enforced as written to the full extent permitted by law.

9. Entire Agreement.

This Agreement contains the entire agreement of the parties hereto with respect to the matters covered hereby and no other agreement, statement or promise made by any Party hereto which is not contained herein shall be binding or valid.

10. Designated Representatives.

Each Party's representative shall be the person who is the signatory below and notices shall be sufficient if delivered to that person at the address set forth below. The designated

person or address for notice may be amended by written notice to the Consortium. The Consortium will notify all signatories to this Agreement.

11. Authority.

Persons whose signatures appear at the bottom of this Agreement represent that they are authorized to do so and represent and warrant that this Agreement is a legal, valid and binding obligation enforceable against each Party to this Agreement.

12. Counterparts. The parties agree this Agreement may be executed in counterparts. The Consortium shall keep all original signature pages and provide signatory Consortium members with copies of all executed pages as well as updated names and addresses of designated representatives.

SIGNATORY PARTY

CONSORTIUM ACKNOWLEDGEMENT

CITY OF SHERWOOD

By: _____

By: _____

Title: City Manager

Title: _____

Print Name: James A. Patterson

Date: _____

Contact Person: Craig Sheldon

Print Name: _____

Dated: _____

Address: 22560 SW Pine Street

Sherwood, OR 97140