Engineering & Property Management

OFFICE OF THE CITY ENGINEER

Title/Subject: **E&PM RESTRICTED DATA POLICY**

Code Number: OPR -16

Original Effective Date: **February 20, 2012**

Revision Effective Date: April 3, 2012

Approved:

_____

City Engineer

Objective: This policy supplements and is subordinate to the City of Charlotte's policy entitled "Protection of Restricted Data", code number ADM 13, and assists E&PM personnel in recognizing and protecting data in a manner that fulfills the requirements of the City's policy.

Policy: As described below, this policy describes specific procedures to be followed by E&PM personnel to ensure the restricted information they handle on behalf of the City is properly protected.

Q – What data held by E&PM is considered "restricted"?

A- The City's Policy entitled "Protection of Restricted Data", ADM 13, section 2 lists examples of various items for which disclosure <u>must</u> be restricted as required by state or federal law, and E&PM personnel will treat all such items as restricted. Additionally, section 2 list examples of items the City <u>may</u> refrain (but is not prohibited) from disclosing if the City deems it best. These include building plans of City-owned buildings or infrastructure facilities, as well as specific details of public security plans, as provided by N.C. General Statute 132-1.7 (a).

Accordingly, E&PM staff will treat the following information as restricted:

- Building plans of City-owned buildings that provide detailed information relating to security, structural, mechanical, HVAC, power, or fire protection systems.

- **Effective through September 30, 2012**, construction plans or geospatial data for infrastructure located within the "E&PM Restricted Infrastructure Data Area" (see Figure 1 below) is considered by to be restricted when it includes any of the following information:

  - Structural details of buildings or bridges.
  - The horizontal and vertical alignment and size of storm drainage pipes or culverts greater than 30 inches in diameter.

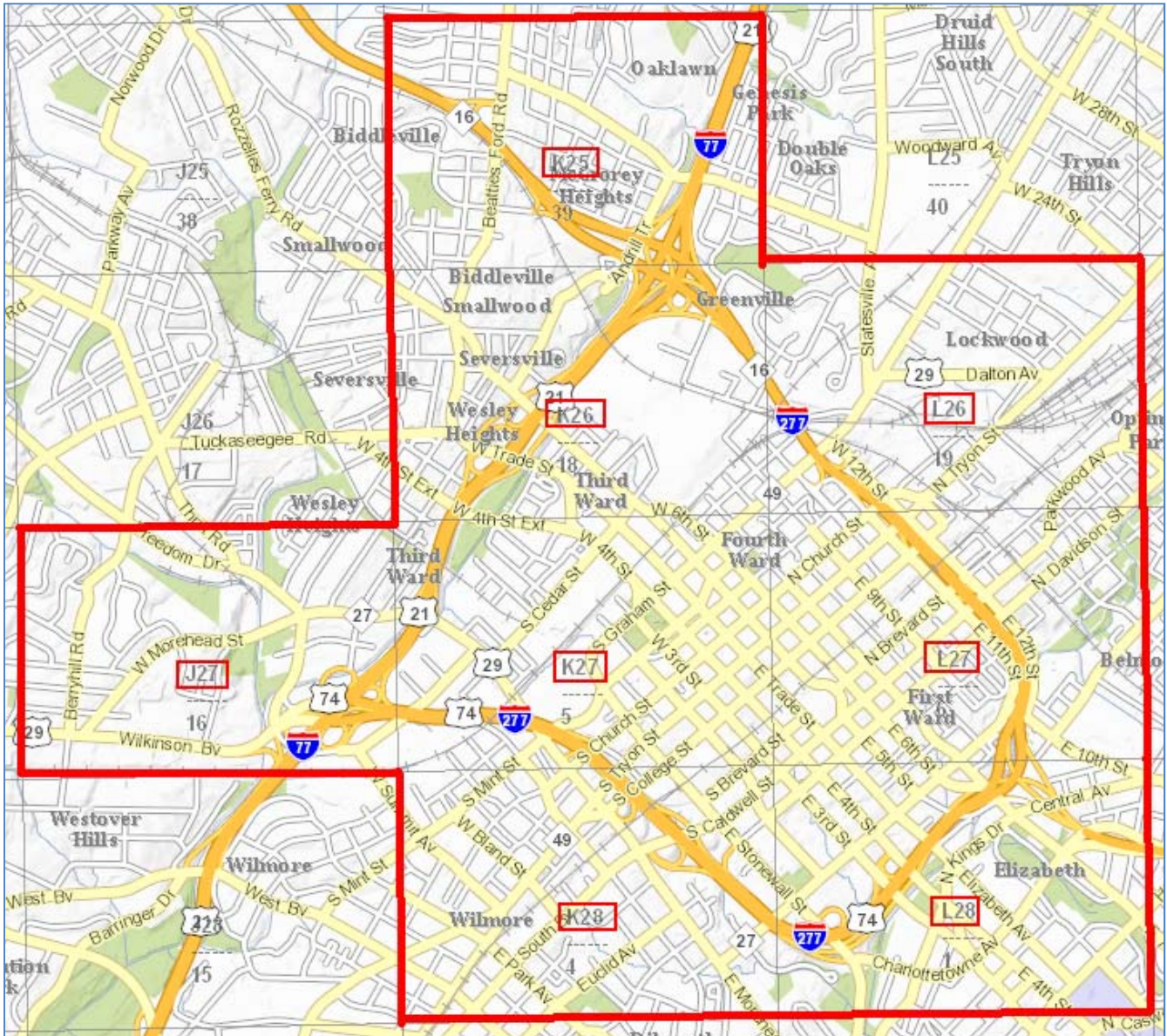▫ The location of underground communications, power, or natural gas distribution facilities.

Figure 1 – E&PM Restricted Infrastructure Data Area: Encompasses Topographic Map Areas J27, K25-28, & L26-28

Q – Who has access to restricted data?

A – Section 3.A of the ADM 13 notes that restricted data shall not be disclosed or transferred to anyone, other than:

    i. a City employee who has a need to know such information for the purpose of performing his or her job;

    ii. a City contractor or volunteer who: (a) has a need to know such information in order to perform work for the City or in connection with the City's business; and (b) has executed a confidentiality agreement in a form approved by the City Attorney's Office; or

iii. Another governmental entity that requires such restricted data to perform its duties and responsibilities, but only if the City Attorney's Office has approved such disclosure or transfer to the other government entity.

In addition to the requirements of ADM 13, and effective through September 30, 2012, E&PM may release restricted data pertaining to roadway, bridge, and storm water infrastructure to any outside party making a specific, written request for such data who: (a) has a reasonable need for such information as determined by E&PM, and (b) has executed a confidentiality agreement in a form approved by the City Attorney's Office.

Q – Does E&PM have specific procedures with respect to releasing restricted data?

A – In general, E&PM's procedures are as detailed in ADM 13. To meet the requirement expressed in section 3.A.ii of ADM 13, E&PM uses the confidentiality agreement illustrated by Attachment 1.

Q – If a party requesting restricted data has executed a confidentiality agreement, who within E&PM can release the data?

A – If a confidentiality agreement has been executed and is on record in E&PM's on-line library, any E&PM employee who has received training on this policy and has signed the City's standard "Confidentiality Agreement for City of Charlotte Employees" (see ADM 13 for this form) may release the restricted data.

Q – What is E&PM's process for executing a confidentiality agreement?

A – Confidentiality agreements can by executed by the following E&PM personnel:

- The City Engineer, Deputy City Engineer, and Deputy Director;
- Division Managers;
- The City Surveyor;
- The Engineering Contracts Manager;
- Other E&PM personnel designated by Division Managers who have received training regarding this policy.

Q – How does E&PM maintain it records regarding release of restricted information?

A – E&PM's Business Services Division maintains an on-line library of executed confidentiality agreements on its intranet (i.e., the "Loop") homepage.

Q – In cases where it is unclear whether E&PM information is restricted, who should E&PM staff contact for a ruling?

A – Questions regarding this policy should be referred the Assistant City Attorney representing E&PM.

Revision to Policy		
Date	Revision	By
4-03-2012	Policy # changed from OPR-15 to OPR-16, since OPR-16 was an unrelated pre-existing policy.	M. Hoy

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is made and entered into as of this _____ day of _____,

20___ (the "Effective Date"), by and between the City of Charlotte, a North Carolina municipal corporation ("City") and

_____ (DATA USER).

WHEREAS, the City and DATA USER are contemplating or have entered into certain business relationships in connection with which DATA USER has obtained or may need to obtain confidential information of the City or its licensors, contractors or suppliers; and

WHEREAS, the City and DATA USER wish to stipulate and agree that any disclosure of confidential information in connection with such relationships has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.

NOW, THEREFORE, in consideration of the pursuit of current discussions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

1. **CONFIDENTIAL INFORMATION**. "Confidential Information" means any information in any medium (whether written, oral or electronic), obtained from the City or any of its suppliers, contractors or licensors which falls within any of the following general categories:

    1.1. *Trade secrets.* For purposes of this Agreement, trade secrets consist of information of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

    1.2. *Information of the City or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."*

    1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by* the City.

    1.4. *Any attorney / client privileged information disclosed by the City.*

1.5. *Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168.* This consists of all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.

1.6. *Personal identifying information about individuals* that the City is prohibited from disclosing by law, including:

  (a) Social security or employer taxpayer identification numbers.

  (b) Drivers license (drivers license numbers are not included if the number appears on law enforcement records), State identification card, or passport numbers.

  (c) Checking account numbers.

  (d) Savings account numbers.
  (e) Credit card numbers.
  (f) Debit card numbers.
  (g) Personal Identification (PIN) Code as defined in G.S. 14-113.8(6).
  (h) Digital signatures.
  (i) Any other numbers or information that can be used to access a person's financial resources.
  (j) Biometric data.
    (k) Fingerprints.
  (l) Passwords.

1.7. *The security features of the City's electronic data processing systems*, *information technology systems, telecommunications networks, and electronic security systems*, including passwords, security standards, security logs, procedures, processes, configurations, software and codes.

1.8. *Local tax records of the City that contain information about a taxpayer's income or receipts.*

1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*

1.10. *Building plans of city-owned buildings or structures, as well as specific details of public security plans.*

1.11. *Plans to prevent or respond to terrorist activity*, including vulnerability and risk assessments, potential targets, specific tactics or specific security or emergency procedures, the disclosure of which would jeopardize the safety of government personnel or the general public or the security of any governmental facility, structure or information storage system(s).

1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services*

1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

The information described in Sections 1.5 through 1.12 is a subcategory of Confidential Information called "Highly Restricted Information." Highly Restricted Information is subject to all requirements applicable to Confidential Information, but is also subject to additional restrictions as set forth in this Agreement.

The parties acknowledge that Confidential Information includes information disclosed prior to execution of this Agreement as well as information disclosed after execution.

2. **RESTRICTIONS AND REQUIREMENTS.** DATA USER shall comply with the following restrictions and requirements regarding Confidential Information:

2.1. DATA USER shall comply with the City's Restricted Data Policy, a copy of which is posted on the City's website, and with any instructions or procedures issued by City key business units from time to time with respect to protecting specific types of Confidential Information.

2.2. DATA USER shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing.

2.3. DATA USER shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor or vendor of the City or DATA USER who: (a) has a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the DATA USER, and (b) has executed a confidentiality agreement incorporating substantially the form of this the Agreement. Notwithstanding the forgoing, DATA USER shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted Information to any third party without the City's prior written consent.

2.4. DATA USER shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Agreement or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.

2.5. DATA USER shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.

2.6. DATA USER shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Agreement.

2.7. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, DATA USER shall assert this Agreement as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.

2.8. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.

2.9. DATA USER shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.

2.10. DATA USER shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Agreement. DATA USER shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Agreement, including compliance with the City's Restricted Data Policy.

2.11. DATA USER shall ensure that each person who obtains access to Confidential Information through DATA USER (including but not limited to DATA USER's employees and subcontractors) has undergone training sufficient to understand his or her responsibilities with respect to this Agreement and the City's Restricted Data Policy.

3. **EXCEPTIONS**. The City agrees that DATA USER shall have no obligation with respect to any Confidential Information that the DATA USER can establish:

   3.1. was already known to DATA USER prior to being disclosed by the City;

   3.2. was or becomes publicly known through no wrongful act of DATA USER;

   3.3. was rightfully obtained by DATA USER from a third party without similar restriction and without breach hereof;

   3.4. was used or disclosed by DATA USER with the prior written authorization of the City;

   3.5. was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, DATA USER shall first give to the other party notice of such requirement or request;

   3.6. was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the DATA USER shall take reasonable steps to obtain an agreement or protective order providing that this Agreement will be applicable to all disclosures under the court order or subpoena.

4. **REMEDIES**. DATA USER acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if DATA USER breaches its obligations hereunder, the City shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

5. **DATA.** DATA USER will treat as Confidential Information all data provided by the City or processed for the City or for citizens under this Agreement (including metadata). Such data shall remain the exclusive property of the City. DATA USER will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this Contract.

6. **NOTICES**. Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

<u>For {Data User}</u>:   <u>For the City</u>:

PHONE: _____   PHONE: _____

FAX: _____   FAX: _____

E-MAIL: _____   E-MAIL: _____@charlottenc.gov

Notice shall be effective upon the date of receipt by the intended recipient; <u>provided</u> <u>that</u> any notice of breach or default which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective. Any notice of a breach or default under this Agreement shall also be sent to:

<u>For DATA USER</u>   <u>For the City</u>

_____   Lina James

_____   Office of the City Attorney

_____   15th Floor, CMCG

_____   600 East Fourth Street

_____   Charlotte, N.C. 28203-2841

_____   PHONE: 704-336-4111

_____   FAX: 704-632-8345

                                                                  lejames@charlottenc.gov

7. **MISCELLANEOUS**

   7.1. *AMENDMENT*.   No amendment or change to this Agreement shall be valid unless in writing and signed by both parties to this Agreement.

   7.2. *GOVERNING LAW AND JURISDICTION*. North Carolina law shall govern the interpretation and enforcement of this Agreement, and all other matters relating to this Agreement (all without regard North Carolina conflicts of laws principles). Any and all legal actions or proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any of the above courts.

7.3. *BINDING NATURE AND ASSIGNMENT.* This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.

7.4. *SEVERABILITY.* The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of the Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

7.5. *WAIVER.* No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.

Nothing in this Agreement shall be deemed to eliminate or lessen any obligation either party may have at law with respect to protecting the confidentiality of Confidential Information.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed on the date first written above.

DATA USER: THE CITY OF CHARLOTTE

BY: _____ (Signature)   BY: _____ (Signature)

BY: _____ (Print)   BY: _____ (Print)

TITLE: _____   TITLE: _____

Revision to Form		
Date	Revision	By
3-16-2012	- Added lines for blanks to be filled in, Section 6 - Added line for printed name in signature section - Added revision block	M. Hoy