

Deed of agreement for data sharing

City of Stirling
City of Bayswater



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Table of Contents

Copyright notice	i
Details	1
Agreed terms	2
1. Defined terms and interpretation	2
1.1 Defined terms	2
1.2 Interpretation	3
1.3 Headings	4
1.4 Schedules etc	4
2. Term of the Agreement	4
3. Sharing of Data	4
4. How disclosed	4
5. Authorised Persons and authorised purposes	5
6. Restrictions on access and use	5
7. Accuracy of Shared Data	6
8. Property in Shared Data	6
9. Assignment	6
10. Amendments and waiver	6
11. Severability	6
12. Entire agreement	6
13. Settlement of disputes	6
14. Termination	7
Schedule 1 – Data Request Form	8
Signing page	10

Details

Parties

City of Stirling

of 25 Cedric Street, Stirling, Western Australia, 6021

City of Bayswater

of 61 Broun Avenue, Morley, Western Australia, 6943

Background

- A Acknowledging that the Minister for Local Government has accepted the Local Government Advisory Board's recommendations relating to the Proposed Transferred Portion, the Parties agree that it is in the public interest for the City of Stirling to share with the City of Bayswater, during the Preparation Period, relevant information relating to the Proposed Transferred Portion.
- B This Agreement sets out the terms and conditions that apply to the sharing of the Data.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Agreement -

Agreement means this document as varied, amended, supplemented, novated or replaced from time to time;

Authorised Person means –

- (a) the CEO of the City of Bayswater;
- (b) any other employee of the City of Bayswater, or a consultant engaged by the City of Bayswater, who is authorised by the CEO of the City of Bayswater to have access to all or part of the Shared Data for the Authorised Purpose; and
- (c) the Council of the City of Bayswater;

Authorised Purpose means a purpose, that is consistent with the Objective and any Specified Purpose, for which an Authorised Person is authorised by the CEO of the City of Bayswater to access or use all or part of the Shared Data;

Business Day means a day that is not a Saturday, Sunday, public holiday in Western Australia or 27, 28, 29, 30 or 31 December;

Commencement Date means the date on which this Agreement is executed by the second of the Parties;

Data means any information, however stored or recorded, that –

- (a) is in the possession or control of the City of Stirling, or during the Preparation Period will be the possession or control of the City of Stirling; and
- (b) is or may reasonably be required by the City of Bayswater to achieve the Objective;

Data Request Form means the form set out in Schedule 1;

Objective means the objective of facilitating the City of Bayswater's capacity to undertake its functions in relation to the Proposed Transferred Portion from the Transfer Date;

Party means a party to this Agreement;

Preparation Period means the period from the Commencement Date to the Transfer Date;

Proposed Governor's Order means the proposed order of the Governor, made under section 2.1 of the *Local Government Act 1995*, under which the Proposed Transferred Portion is to be effected;

Proposed Transferred Portion means the portion of the district of the City of Stirling (comprising parts of the suburbs of Dianella, Inglewood, Mt Lawley, Menora and Yokine east of Alexander Drive) that is proposed to be transferred to the City of Bayswater under the Proposed Governor's Order;

Shared Data means Data that is given by the City of Stirling to the City of Bayswater under this Agreement;

Specified Purpose means the purpose, specified by the City of Stirling, for which all or part of the Shared Data may be accessed or used by the City of Bayswater; and

Transfer Date means –

- (a) 1 July 2015; or
- (b) if the Proposed Transferred Portion is not effected on 1 July 2015 – the date on which the Proposed Transferred Portion is effected (under the Proposed Governor’s Order).

1.2 Interpretation

In this Agreement -

- (a) a word denoting -
 - (i) the singular includes the plural and vice versa; and
 - (ii) a gender or genders includes each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to -
 - (i) a person includes a firm, an unincorporated association, an incorporated association, a corporation and a government or statutory body or authority;
 - (ii) a person includes their legal personal representatives, successors and assigns;
 - (iii) a statute, regulation, local law or any other written law, code or policy includes subsidiary legislation or an instrument made under it, and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation, and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) provisions or terms of this Agreement, or another document, agreement, understanding or arrangement, include a reference to both express and implied provisions and terms;
 - (vii) time is to local time in Perth, Western Australia;
 - (viii) \$ or dollars is a reference to the lawful currency of Australia;
 - (ix) this Agreement or any other document includes this Agreement or other document as amended or replaced and despite any change in the identity of the parties;
 - (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions or other electronic mail or transmissions;

- (xi) any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
 - (xii) a clause, paragraph, Schedule or Annexure is a reference to a clause or paragraph of or Schedule or Annexure to, this Agreement; and
- (d) the meaning of general words or phrases is not limited by specific examples introduced by ‘including’, ‘for example’ or similar expressions.

1.3 Headings

Headings do not affect the interpretation of this Agreement.

1.4 Schedules etc

Each Schedule (and an Annexure or document incorporated by reference, if any) forms part of this Agreement. In the event of any conflict or inconsistency between any part of –

- (a) the terms and conditions contained in the clauses of this Agreement;
- (b) a Schedule;
- (c) an Annexure, if any; and
- (d) a document incorporated by reference, if any,

the material mentioned in any one of paragraph (a)-(d) of this subclause 1.4 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

2. Term of the Agreement

This Agreement begins on the Commencement Date and, unless it is terminated earlier, ends on the Transfer Date.

3. Sharing of Data

- (1) Subject to this Agreement, the City of Stirling agrees to disclose to the City of Bayswater during the Preparation Period –
 - (a) the Data requested by the City of Bayswater in a Data Request Form; and
 - (b) other information that the City of Stirling determines to be Data for the purposes of this Agreement.
- (2) The City of Stirling, acting reasonably, is to determine what information constitutes Data for the purposes of this Agreement.

4. How disclosed

- (1) The City of Stirling, acting reasonably, is to determine –
 - (a) when and how it discloses the Data; and
 - (b) any conditions relating to the transfer, storage, access, use or destruction of the Data or the Shared Data.

- (2) For example, the City of Stirling may determine, as a condition relating to the Shared Data, that all or part of the Shared Data is to be accessed and used only for a Specified Purpose.

5. Authorised Persons and authorised purposes

- (1) The CEO of the City of Bayswater may authorise an employee of, or a consultant engaged by, the City of Bayswater –
- (a) to be an Authorised Person; and
 - (b) to access and use the Shared Data for the Authorised Purpose.
- (2) The CEO of the City of Bayswater is to exercise the powers under subclause (1) only to the extent reasonably necessary to achieve the Objective.
- (3) The CEO of the City of Bayswater may provide to the Council of the City of Bayswater, in confidence and for the purpose of enabling the Council to exercise its statutory functions, any part of the Shared Data that is in the form of aggregated data and does not contain any personal information relating to, or identifying, a private individual or entity.

6. Restrictions on access and use

Unless with the prior written consent of the City of Stirling, the City of Bayswater –

- (a) must comply with any condition determined by the City of Stirling under clause 4(1)(b);
- (b) must ensure that the Shared Data –
 - (i) is used only for the Objective;
 - (ii) is stored and maintained so as to be accessible only to Authorised Persons; and
 - (iii) is accessed and used by an Authorised Person only for an Authorised Purpose.
- (c) must notify the City of Stirling in writing immediately –
 - (i) after becoming aware of any reasonably suspected unauthorised access or use of the Shared Data, or of any reasonably suspected breach of this Agreement by the City of Bayswater; and
 - (ii) after receiving any legal, investigatory or other demand for access to the Shared Data and keep the City of Stirling's connection with demand and the City of Bayswater's response to that demand;
- (d) must ensure that any study, report or other disclosure of or involving the Shared Data is limited to the reporting of aggregated data and does not contain any personal information relating to, or identifying, a private individual or entity; and
- (e) in relation to any information provided by the City of Stirling under, or purportedly under, this Agreement that is not Data –
 - (i) must destroy thoroughly and irretrievably that information; and
 - (ii) must notify the City of Stirling of the destruction.

7. Accuracy of Shared Data

The City of Stirling makes no warranty or representation that the Shared Data is accurate or complete, and is not to be responsible for any consequences resulting from the use of the Shared Data.

8. Property in Shared Data

- (1) During the Preparation Period the property in the Shared Data, including all intellectual property rights, is retained by the City of Stirling.
- (2) From the Transfer Date, the property in the Shared Data is transferred to the City of Bayswater.

9. Assignment

The City of Bayswater must not assign its rights or obligations under this Agreement without the prior written consent of the City of Stirling.

10. Amendments and waiver

- (1) This Agreement may not be amended, or a provision waived, except by a document in writing signed by or on behalf of each of the Parties.
- (2) Any forbearance, delay or indulgence by the City of Stirling in enforcing the provisions of this Agreement is not to prejudice, restrict or limit the rights of the City of Stirling, nor is any waiver of those rights to operate as a waiver of any subsequent breach.

11. Severability

In the event of part of this Agreement being or becoming void or unenforceable, that part is to be severed from this Agreement with the intention that the balance of this Agreement is to remain in full force and effect, unaffected by the severance.

12. Entire agreement

To the extent permitted by law, this Agreement embodies the entire agreement between the Parties and supersedes all prior conduct, arrangements, agreements, understandings, representations, statements or negotiations, express or implied in respect of the subject matter of the Agreement.

13. Settlement of disputes

- (1) In the event of a dispute, either Party may deliver a written notice to the other Party that identifies the dispute.
- (2) The Party that delivers the notice of dispute must also provide enough information about the dispute for the other Party to reasonably understand –
 - (a) the alleged facts on which the claim is based;
 - (b) the legal basis on which the claim is made; and
 - (c) the relief that is claimed.

- (3) Within 10 business days of a notice of dispute being delivered, the receiving Party must deliver a written response to the other Party stating –
 - (a) its position in relation to the dispute; and
 - (b) the basis for its position.
- (4) Within 10 business days of receipt of the response referred to in subclause (3), the Parties must attempt in good faith to resolve the dispute through negotiation.
- (5) If the Parties are unable to resolve the dispute within the 10 business days of attempting in good faith negotiations in accordance with subclause (4), either Party may initiate proceedings in a court of competent jurisdiction.

14. Termination

- (1) If a Party breaches or repudiates this Agreement, nothing in this Agreement prejudices the right of the other Party to recover damages or exercise any other right, whether under this Agreement or otherwise.
- (2) If –
 - (a) the City of Bayswater fails to observe or perform any term or condition of this Agreement to be observed or performed by the City of Bayswater; and
 - (b) that failure continues for a period of 14 days (or such other period as having regard to the circumstances as the City of Stirling may reasonably allow) after service on the City of Bayswater of a written notice requiring it to observe or perform the relevant term or condition,

the City of Stirling may, by notice in writing to the City of Bayswater, immediately terminate this Agreement, but without releasing the City of Bayswater from liability for any previous breach or failure to observe or perform any term or condition of this Agreement.
- (3) If this Agreement is terminated, the City of Bayswater must (at the election of the City of Stirling) –
 - (a) promptly return to the City of Stirling all the Shared Data (and any copies); or
 - (b) provide written confirmation to the City of Stirling that all the Shared Data has been thoroughly and irretrievably destroyed in a manner acceptable to the City of Stirling.
- (4) The termination of this Agreement does not affect –
 - (a) any rights of a Party accrued before the termination date; and
 - (b) a right or obligation of a Party under this Agreement which, expressly by implication from its nature, is intended to continue after the date of termination.

Schedule 1 – Data Request Form

Local Government Reform



Local Government Reform Data Request Form

Request Details

Requestor name _____
Requestor position _____
Requestor e-mail _____ Requestor phone number _____
Local Government _____

Data requested (*list the data needed in detail including format required ie maps, textual*)

Period of time information needs to cover _____

Purpose for the information (*how will the information be used?*)

Date(s) the information is to be provided _____

I understand the provision of data and its use is subject to the Deed of Agreement for Data Sharing.

Name _____

Signed _____ Date / /

Request Approval

City of Stirling Use Only

Request ID Assigned _____

I understand the approval of this request for data is subject to the Deed of Agreement for Data Sharing.

Approved by

Name _____

Signed _____

Date / /

Signing page

EXECUTED [*add day and month*] 2014

Signed for the **City of Stirling**
by its authorised representative:

Chief Executive Officer

Print full name

Witness

Print full name

Signed for the **City of Bayswater**
by its authorised representative:

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Print full name

Witness

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