

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

BART CONTRACT NO. 09DJ-150A

TBT CATHODIC PROTECTION REFERENCE CELL REPLACEMENT

**THIRD PARTY NON-DISCLOSURE AGREEMENT
FOR RELEASE OF SECURITY SENSITIVE INFORMATION
FOR BIDDING PURPOSES**

This Third Party Non-Disclosure Agreement for Release of Security Sensitive Information for Bidding Purposes ("Agreement") is made as of this _____ day of _____, _____, between the San Francisco Bay Area Rapid Transit District ("District") and _____ ("Recipient").

WHEREAS, Recipient has requested that the District make available certain Security Sensitive Information ("SSI") as defined below, to Recipient to be used in conjunction with the preparation of a sub-bid as a Third Party to the District's Contract No. 09DJ-150A TBT CATHODIC PROTECTION REFERENCE CELL REPLACEMENT (the "Contract").

WHEREAS, the disclosure of SSI to unauthorized parties may cause irreparable damage to the District and the public.

WHEREAS, SSI will be made available to Recipient, or the Recipient will be allowed access to Restricted Areas, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. Definition of "Security Sensitive Information". "Security Sensitive Information" or "SSI" means the Contract Documents for the Contract, Record Drawings, Reports and Studies together with all documents and copies related to the Contract, including specifications, drawings, photographs, plans, designs, and data (including electronic data) concerning the District's facilities that are stamped or otherwise denoted by the District as SSI. SSI also includes information derived from access that the District provides to Recipient to view, observe, and inspect the District facilities that are not open to and not accessible to the public and that have been designated as security sensitive ("Restricted Areas"), and any and all sketches, notes, and narratives taken or prepared by Recipient of Restricted Areas. The Recipient is prohibited from taking photographs of any Restricted Areas.
2. Execution of Agreement, Exhibit A, and Photo IDs or Passports. Prior to the disclosure of SSI to Recipient for the purpose stated in this Agreement, Recipient must meet the deadlines in the Invitation to Bid for the Contract and satisfy all of the following conditions:
 - (a) Execute this Agreement.

- (b) Submit to the District Secretary at the address contained herein, a sealed envelope labeled "Personal Information for Contract No.09DJ-150A", containing the ID's, Exhibit A to the Agreement, and the executed Agreement. The District Secretary's address is as follows: Office of the District Secretary, San Francisco Bay Area Rapid Transit District (BART), 300 Lakeside Drive, 23rd Floor, Oakland, CA 94612. Submit to the District Secretary a completed Exhibit A that identifies the names of all individuals within Recipient's firm, including identifying its Security Sensitive Information Handler ("SSIH") described in Section 5 of this Agreement (hereafter collectively referenced as "Employees"), anticipated to be granted access to SSI and Restricted Areas, and copies of a government issued photo identification (Photo ID), preferably a driver's license or passport for each such Employee. This information will be used for Security Screening purposes only.

Recipient shall require any third party that is expected to have access to SSI or Restricted Areas (herein referred to as "Third Party" or collectively as "Third Parties"), including Subcontractors and suppliers, to enter into a Third Party Non-Disclosure Agreement for Release of Security Sensitive Information for Bidding Purposes ("Third Party NDA") which requires, among other things, the submission of their respective Exhibit A directly to the District Secretary as described in the Third Party NDA and in Section 6 below.

- (c) Receive written notification from the District that the names of the Employees submitted by Recipient have passed a Security Clearance. The District's written notification will be sent with a copy of Exhibit A submitted by Recipient, with dates of Security Clearance provided by the District.

3. Security Screening. All Employees proposed by Recipient to have access to SSI will be subject to a Security Screening, whereby copies of Photo IDs or Passports will be used for a law enforcement check to compare the names against the Federal Bureau of Investigation ("FBI") Terrorist Watch List. Recipient agrees to provide other personal information as may be required by law enforcement agencies in the event an Employee's name appears on the FBI Terrorist Watch List.

It is anticipated that fourteen (14) calendar days will be required for the District to obtain results of the Security Screening after receipt of the executed Agreement, including Exhibit A and copies of Photo IDs or Passports. The District reserves the right to deny access to personnel who do not pass the Security Clearance.

If, during the bidding period for the Contract, Recipient wishes additional Employees to have access to SSI or Restricted Areas, Recipient shall submit an additional Exhibit A along with a copy of a Photo ID or Passport for each additional Employee to the District Secretary in a sealed envelope labeled "Personal Information for Contract No. 09DJ-150A".

Recipient shall not release SSI to Employees unless such Employees have passed the Security Clearance.

4. Disclosure Purposes. Recipient agrees to hold SSI in trust and confidence. Recipient agrees that SSI shall be used only as necessary during the bidding period for the Contract ("Disclosure Purposes"), and SSI shall not be used for any other purpose without the District's prior written consent. By accepting and using SSI, Recipient expressly agrees to comply fully with all terms of this Agreement. Recipient will not use SSI in any way, directly or indirectly, that is damaging or harmful to the District or District facilities. This obligation survives termination of this Agreement.
5. Safeguards Against Unauthorized Disclosure. Recipient shall implement safeguards and procedures to prevent the unauthorized disclosure of SSI, and shall designate a responsible managing employee

or responsible managing officer as its Security Sensitive Information Handler ("SSIH") who shall ensure that all safeguards are maintained. The SSIH shall keep the originals of Exhibits B, C and D listed below and shall make them available for the District's review upon request. The SSIH shall be responsible for the following:

- (a) Marking SSI as "SECURITY SENSITIVE INFORMATION."
 - (b) Maintaining a current set of all copies of Exhibit A for Recipient and lower-tier third parties sent to the Recipient by the District, with dates of Security Clearance provided by the District.
 - (c) Providing authorized Employees adequate instructions with regard to the use and disclosure of SSI, including obtaining the Employees' signed Non-Disclosure Consent Forms attached as Exhibit B to this Agreement.
 - (d) Restricting disclosure of SSI to Employees who have passed the Security Clearance and within that group, disclose only on a "need to know" basis as necessary for the Disclosure Purposes.
 - (e) Restricting disclosure of SSI only to the principals or employees of any lower-tier third party who may participate with Recipient during the bidding period, on a "need to know" basis, as necessary for Disclosure Purposes, who have complied with the requirements of Section 6.
 - (f) Maintaining, in the form attached as Exhibit C, a current log of all lower-tier third parties with access to SSI, including the name of the SSIH for each lower-tier third party that obtained SSI from Recipient and a description of SSI provided to them.
 - (g) Maintaining, in the form attached as Exhibit D, a log of copies of SSI released to Employees and lower-tier third parties as described in Section 7.
 - (h) Treating and handling SSI with, at a minimum, the same degree of care that Recipient uses for its own confidential or proprietary information.
 - (i) If Third Party is not included in the winning Bid, certifying following Contract award that all SSI has been returned to the District or destroyed as described in Section 10.
6. Disclosure to Lower-Tier Third Party. Recipient shall not disclose SSI to any lower-tier third party unless such lower-tier third party has first executed a Third Party NDA with the District and passed the Security Clearance. In the form attached as Exhibit C, Recipient shall maintain a log of lower-tier third parties, including prospective lower-tier Subcontractors, Suppliers, and Consultants that are submitting to the District a Third Party NDA. Among other things, the log should include the date the lower-tier third party completed their Security Clearance. Recipient shall obtain a written confirmation from the Office of the District Secretary that these requirements have been satisfied. Recipient shall not disclose SSI to any other third party. As part of its SSI protection responsibilities, the Recipient shall retrieve and securely retain all SSI as well as logs maintained by lower-tier third parties who were given access to SSI because they were being solicited to undertake work under the Contract, but who were in fact not engaged.
7. Copies. Recipient shall implement safeguards to restrict copies and reproductions of SSI in any form, including but not limited to, paper copies and electronically formatted copies. Recipient's SSIH shall authorize copies of portions of SSI only as necessary for Disclosure Purposes, and shall retrieve all such copies upon completion of the task for which they were required. Copies and reproductions of SSI shall not be made for or retained for distribution to any lower-tier third party unless the lower-tier third party has complied with the requirements of Section 6 and only on a "need to know" basis as

necessary for Disclosure Purposes. Recipient's SSIH shall identify each copy of SSI released by copy number and maintain a record of all copies of SSI released to Employees and lower-tier third parties on the Log of Copies of SSI provided as Exhibit D. Electronic versions of the documents or data, if any, shall not be permitted.

8. Inappropriate Access to or Loss of SSI. Recipient agrees that if at any time Recipient misplaces or loses control over SSI or inadvertently provides access to employees who have not passed the Security Clearance or third parties that have not complied with Section 6, Recipient shall notify the District immediately (i.e. no later than 24 hours) upon determining that an unauthorized disclosure or loss of control of SSI has occurred. Such notice shall be given orally and in writing, and shall provide all details that are available regarding the event. The oral notices shall be given by telephone to Lt. Kevin Franklin, Manager of Security Programs at (510) 464-7772. The written notices shall be mailed to the San Francisco Bay Area Rapid Transit District, 300 Lakeside Drive, LKS 18th Floor, Oakland, CA 94612, ATTN: Lt. Kevin Franklin, Manager of Security Programs.

The District will investigate the facts underlying Recipient's unauthorized disclosure or loss of control over SSI. In the event that the District determines that such unauthorized disclosure or loss of control constituted an unauthorized disclosure or improper use of SSI by Recipient, the District may pursue remedies as set forth in Section 11.

9. Ownership of SSI. Recipient agrees that all SSI provided to the Recipient and all copies of SSI made by Recipient and lower-tier third parties who participate with Recipient during bidding period will at all times remain the property of the District and are owned by the District.
10. Return of SSI. Within seven (7) calendar days after the District executes the Contract with the successful Bidder, the District will notify all Recipients about this action.

If Recipient is part of a successful Bidder's Bid and the District Awards the Contract to such a Bidder, Recipient shall execute a Third Party Non-Disclosure Agreement for Release of Security Sensitive Information for Construction ("Third Party NDA for Construction"). SSI provided by the District and any copies made by Recipient, and all logs prepared for bidding purposes under the terms of this Agreement, will become part of SSI to be safeguarded and protected by Recipient under the terms of the Third Party NDA for Construction.

Recipient agrees that within twenty-one (21) calendar days after written demand by the District, the Recipient shall either destroy or return all SSI provided by the District, including all copies made by Recipient and by third parties who participated with Recipient during the bidding period, to the District.

If Recipient is not part of a successful Bidder's Bid, the District retains ownership of all SSI. Recipient shall either destroy or return all SSI provided to the Recipient and any copies made by Recipient and by lower-tier third parties who participated with Recipient during the bidding period within thirty (30) calendar days after being notified that the District has executed the Contract with another firm.

If Recipient's SSIH fails to certify that all SSI provided to Recipient and any copies made by Recipient and Third Parties have been either destroyed or returned to the District, the District may pursue remedies as set forth in Section 11.

Notwithstanding the above, Recipient shall keep in perpetuity in trust and confidence all SSI remaining in Recipient's possession. This perpetual obligation of Recipient shall include full compliance with Sections 4, 5 and 8 of this Agreement.

11. District Remedies. Recipient acknowledges that the unauthorized disclosure or improper use of SSI

by Recipient may cause irreparable harm to the District and the public. The District retains all of its legal rights and remedies to enforce this Agreement. Furthermore, Recipient acknowledges that the District is entitled to seek equitable remedies, including temporary and permanent injunctive relief, without the necessity of posting a bond or other security, to enforce this Agreement. No remedy or election under this Agreement shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

12. Attorneys' Fees. In the event that a suit is necessary to enforce any of the provisions herein contained, the prevailing party shall be entitled to reasonable attorneys' fees in addition to costs.
13. Disqualification from Bidding. Recipient acknowledges that breach of this Agreement is grounds for the District to disqualify Recipient from participation in District contracts.
14. Assignment. Recipient shall not assign any rights or transfer any obligation under this Agreement without the express written consent of the District.
15. Invalidity of Agreement. If any provision of this Agreement is judged to be invalid or unenforceable, the validity of any other provision shall not be affected, and the invalid or unenforceable provision will be deemed severable and the remainder of the Agreement will remain in full force and effect.
16. Notices. All notices and communications regarding this Agreement shall be given in writing and given by personal delivery to a representative of the parties or by mailing the same, postage prepaid, addressed as follows:

District: San Francisco Bay Area Rapid Transit District
P.O. Box 12688
Oakland, CA 94604-2688

Attention: Gary Leong, Contract Administrator

Recipient: _____

Any notice given by mail shall be deemed given on the day after that on which it is deposited in the U.S. Mail.

17. Key Contact Person. Recipient's authorized contact person for all communications relating to the bidding process for the Contract is:

Name: _____

Position: _____

Telephone No: _____

Email: _____

18. Applicable Law. This Agreement and its interpretation shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as of the day and year first above written.

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT

Recipient Firm Name

By: _____
General Manager or Designee

By: _____
Signature

Name: _____

Title: _____

EXHIBIT A
to
Third Party Non-Disclosure Agreement
for
Release of Security Sensitive Information for Bidding Purposes
CONTRACT NO. 09DJ-150A
TBT CATHODIC PROTECTION REFERENCE CELL REPLACEMENT
SECURITY SCREENING LOG
FOR RELEASE OF SECURITY SENSITIVE INFORMATION

Recipient (Firm Name): _____

Address: _____

Telephone Number: _____

Email: _____

Fax: _____

Recipient's SSIH: _____

Employee's Full Name * (Including other names used) (Indicate full name of designated SSIH)	Valid Driver's License Number* (or other valid government identification, e.g., California identification card or passport number)	Date of Security Clearance (to be completed by the District)

* Information will be used for Security Screening purposes only.

EXHIBIT B
To
Third Party Non-Disclosure Agreement
for
Release of Security Sensitive Information for Bidding Purposes
CONTRACT NO. 09DJ-150A
TBT CATHODIC PROTECTION REFERENCE CELL REPLACEMENT
NON-DISCLOSURE CONSENT FORM
TO BE EXECUTED BY EMPLOYEE

Recipient (Firm Name): _____

Employee Name: _____

Employee Address:

I agree that any information designated as Security Sensitive Information ("SSI") pertaining to the San Francisco Bay Area Rapid Transit District ("District" or "BART") Contract No.09DJ-150A, TBT CATHODIC PROTECTION REFERENCE CELL REPLACEMENT (the "Contract") will be subject to the following obligations:

1. I confirm that I have been provided a copy of the Third Party Non-Disclosure Agreement for Release of SSI for Bidding Purposes between the District and the Recipient. I confirm that I will comply at all times with the Recipient's obligations in relation to the SSI as set out in the Non-Disclosure Agreement for Release of SSI for Bidding Purposes and will not do anything which would or could lead to any of the Recipient's obligations in relation to the SSI, or the security of the SSI, being breached or compromised.
2. I will not disclose or permit disclosure of the SSI, or permit anyone to use the SSI, without the prior written approval of the Recipient's Security Sensitive Information Handler ("SSIH").
3. The above obligations of confidentiality and non-use will apply to my work related to preparing a Bid for the Contract, and will continue to apply without limitation of time after the date of termination of my work.
4. "Security Sensitive Information" or "SSI" means the Contract Documents for the Contract, Record Drawings, reports and studies together with all documents and copies related to the Contract, including Contract Specifications, drawings, photographs, plans, designs, and data concerning the District's facilities that are stamped or otherwise denoted by the District as SSI. Security Sensitive Information also includes information derived from access that the District provides to Recipient to view, observe, and inspect the District facilities that are not open to and not accessible to the public ("Restricted Areas"), and any and all sketches, notes, and narratives taken or prepared by Recipient of Restricted Areas. The Recipient is prohibited from taking photographs of any Restricted Areas.

Executed by:

Employee Signature

Security Sensitive Information Handler (SSIH)

Date: _____

Date: _____

**EXHIBIT C
To**

**Third Party Non-Disclosure Agreement
for
Release of Security Sensitive Information for Bidding Purposes**

**CONTRACT NO. 09DJ-150A
TBT CATHODIC PROTECTION REFERENCE CELL REPLACEMENT
LOG OF THIRD PARTIES, INCLUDING PROSPECTIVE SUBCONTRACTORS, SUPPLIERS AND
CONSULTANTS
WITH ACCESS TO SSI**

Recipient (Firm Name): _____

Recipient's SSIH Address: _____

Recipient's SSIH Telephone Number: _____

Third Party Firm Name and Address	Name of Third Party SSIH	Date Third Party Completed Security Clearance	Description of SSI Provided

