

NON-DISCLOSURE AND USER AGREEMENT
UTILITY FACILITIES - TERMS AND CONDITIONS

I, User, understand and agree this Non-Disclosure and User Agreement (Agreement) shall govern the use of Confidential Information (which may include Critical Energy Infrastructure Information) provided to the California Department of Transportation (Caltrans) by Utility Owners.

WHEREAS, the Federal Energy Regulatory Commission (FERC) has issued Orders 630, 630-A, 649, 662, and 683 (Orders) setting forth restrictions on the release of Critical Energy Infrastructure Information (CEII) as necessitated by the terrorist acts committed on September 11, 2001 and the ongoing terrorism threat.

WHEREAS, under the authority of the Critical Infrastructure Information Act of 2002 (CII Act), the United States Department of Homeland Security established the Protected Critical Infrastructure Information Program on February 18, 2004, which offers safeguards for critical infrastructure information such as CEII submitted to the Federal government.

WHEREAS, Utility Owners are required to provide such information to Caltrans under suitable contractual limits and protection concerning the disclosure and use of the CEII consistent with the FERC's Orders.

WHEREAS, User's review and any bid proposals that are based on Caltrans plans and specifications may include CONFIDENTIAL INFORMATION.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, I, User, understand and agree as follows:

1. The purpose of this Agreement is to permit User to view and receive CONFIDENTIAL INFORMATION, as defined in Paragraph 2(a), for the purpose of the preparation and submittal of a bid on a transportation project.

2. Definitions.

(a). The term CONFIDENTIAL INFORMATION includes Critical Energy Infrastructure Information (CEII) as defined by the FERC in 18 C.F.R. § 388.113(c) (1). CEII shall include: (i) Materials, including aboveground and/or underground facility inventory maps, provided by Caltrans in accordance with this Agreement; (ii) Any information contained in or obtained from such designated materials; (iii) Notes of CEII; and (iv) Copies of CEII and (V) confidential and proprietary information of Utility Owners. Caltrans may physically mark the pages containing CEII with "PROTECTED MATERIALS – Contains Critical Energy Infrastructure Information" or with words of similar import as long as the term "CEII" is included in that designation to indicate that they are CEII.

(b). The term CONFIDENTIAL INFORMATION does not include information which:

- 1.) Becomes lawfully known or available to User from a source other than Caltrans, including the Government, and without breach of this agreement by the recipient.
- 2.) Is developed independently by User.
- 3.) Becomes available to User by field inspection or analysis.
- 4.) Is within, or later falls within, the public domain without breach of this Agreement by the recipient.

(c). The term "User Agreement" shall mean the online user agreement by which those who have been granted access to CEII agree that such access to CONFIDENTIAL INFORMATION is provided pursuant to the terms and restrictions of this Agreement, and that they have read the Agreement and agree to be bound by it.

(d). The term "Reviewing Representative" shall mean a person who has signed a User Agreement and who is: (1) an employee or other representative of User who needs access to the CONFIDENTIAL INFORMATION to carry out the purpose set forth in Paragraph 1; or (2) a consultant or an employee of a consultant retained by User and needs access to the CONFIDENTIAL INFORMATION for the purpose identified in Paragraph 1.

(e). CONFIDENTIAL INFORMATION shall be made available under the terms of this Agreement only to User and only through its Reviewing Representatives as provided in Paragraph 2(d) and only for the purpose set forth in Paragraph 1.

(f). The term "Notes of CEII" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in Paragraph 2(a) created by you. Notes of CEII are subject to the same restrictions as for CEII except as specifically provided in this Agreement.

(g). "Utility Owners" are providers of utility services in the State of California, and Utility Owners are third party beneficiaries under this agreement.

3. If requested to do so in writing, User shall, within 60 days of such request, return the CONFIDENTIAL INFORMATION to Caltrans, or shall destroy the materials, except that Notes of CEII may be retained, if they are maintained in accordance with Paragraph 5 below. Within such time, User, if requested to do so, shall also submit to Caltrans an affidavit stating that, to the best of its knowledge, all CONFIDENTIAL INFORMATION and all Notes of CEII have been returned, have been destroyed, or will be maintained in accordance with Paragraph 5. To the extent CONFIDENTIAL INFORMATION is not returned or destroyed, it shall remain subject to this Agreement.

4. All CONFIDENTIAL INFORMATION shall be maintained by User in a secure place. Access to those materials shall be limited to User's employees.

5. CONFIDENTIAL INFORMATION shall be treated as confidential and shall not be used except as necessary for the purpose set forth in Paragraph 1, nor shall it be disclosed in any manner to any person except a User's employee who needs to know the information in order to carry out that person's responsibilities. CONFIDENTIAL INFORMATION shall remain the property of Utility Owner or Caltrans, including any and all copies. User may make copies of CONFIDENTIAL INFORMATION, but such copies become CONFIDENTIAL INFORMATION. User may make notes of CEII, which shall be treated as Notes of CEII if they disclose the contents of CEII.

6. In the event that User wishes to designate a person not a User's employee or is a third party that seeks CONFIDENTIAL INFORMATION, User shall have said person execute a nondisclosure agreement provided by Caltrans. These persons may review and use the CONFIDENTIAL INFORMATION after they execute said non-disclosure agreement.

7. User shall take reasonable precautions necessary to assure that CEII is not distributed to unauthorized persons. Immediately upon becoming aware of any effort by a third party to improperly obtain some or all CONFIDENTIAL INFORMATION and unless prohibited by law, User will immediately notify Caltrans.

8. User and Caltrans agree that the CONFIDENTIAL INFORMATION provided to User pursuant to this Agreement is Utility Owner or Caltrans property and was determined by the Utility Owner to be exempt from production under the California Public Records Act, set forth in California Government Code Sections 6250, *et seq.*, under either the exemption provided in Section 6254(e) or 6255(a).

9. Neither User nor Caltrans waive the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of CONFIDENTIAL INFORMATION. It is agreed that, in addition to whatever other remedies may be available to a party under applicable law, a party shall be entitled to obtain injunctive relief with respect to any actual or threatened violation of this Agreement by any other party. To the extent permitted by applicable law, each party agrees that it shall bear all costs and expenses, including reasonable attorneys' fees, which may be incurred by the other party in successfully enforcing the provisions of this Paragraph.

10. This Agreement is made in the State of California and shall be governed by and interpreted in accordance with its laws unless those laws conflict with Federal law, in which case the Federal law shall apply.

11. This Agreement shall be binding upon the parties, and their successors and assignees. No party shall assign this Agreement without the other party's prior written consent.

12. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of the Agreement shall remain in full force and effect.