

REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
3	04/11/11	Open	Action	04/01/11

Subject: Delegating Authority to the General Manager/CEO to Sign a Nondisclosure Agreement with SKF USA Inc. (SKF) in Order to Obtain the Specifications Required for Regional Transit to Rebuild Journal Bearings for Light Rail Vehicles

ISSUE

Whether or not to delegate authority to the General Manager/CEO to sign the Nondisclosure Agreement with SKF in order to obtain the specifications required for Regional Transit to rebuild journal bearings for light rail vehicles.

RECOMMENDED ACTION

Adopt Resolution No. 11-04-____, Delegating Authority to the General Manager/CEO to Sign a Nondisclosure Agreement with SKF USA Inc. (SKF) in Order to Obtain the Specifications Required for Regional Transit to Rebuild Journal Bearings for Light Rail Vehicles.

FISCAL IMPACT

This action does not involve the expenditure of funds.

DISCUSSION

Regional Transit purchased special tools required to rebuild axle journal bearings on the light rail vehicles. Unfortunately it took a significant period of time for the tools to arrive. While waiting for the tools to arrive, Regional Transit requested a quote from SKF to rebuild a few car sets of bearings (12 bearings/car set). SKF would only bid if they were allowed to rebuild all forty sets of bearings in the fleet. Not wanting to incur the cost of rebuilding bearing sets when tools that would allow the work to be done in-house were on order, Regional Transit then requested a quote from another vendor to rebuild a few car sets. SKF would not provide the necessary bearing set specifications to another vendor due to concerns over disclosure of proprietary information. The tools have since arrived and Regional Transit is ready to rebuild the bearings in-house. Regional Transit has also requested a quote from SKF to provide training on rebuilding the bearing sets. SKF will not release the specifications required or provide training for rebuilding of journal bearings for the Light Rail Vehicles until Regional Transit accepts a Nondisclosure Agreement.

There is currently no General Manager/CEO delegated authority to sign the proposed Nondisclosure Agreement with SKF (Attachment 1).

The proposed Nondisclosure Agreement will be reviewed and approved by Regional Transit's Legal department.

Approved:

Presented:

Final 4/5/11

General Manager/CEO

Chief Operating Officer

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Nondisclosure Agreement

This Agreement is effective as of the _____ day of _____, 2011 (the "Commencement Date") and contains the terms and conditions under which SKF USA Inc. (hereinafter referred to as "SKF") having a place of business located at 890 Forty Foot Road, P.O. Box 352, Lansdale, Pennsylvania 19446 and _____ (hereinafter referred to as Company), having a business address at _____ agree to exchange certain information.

Company desires that SKF provide it with certain products and/or services. For SKF to supply the necessary products and/or services to Company, Company may find it necessary to provide SKF with information related to its business which Company considers as being confidential and proprietary, and SKF may find it necessary to provide Company with information related to its products and/or services which SKF considers as being confidential or proprietary.

In consideration of the foregoing premises, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. "Proprietary Information" means all information which:
 - (a) is disclosed during the term of this Agreement (i) by Company to SKF and received by SKF which relates to Company's business, existing or proposed products or components thereof, or tools for or processes of making same, or (ii) by SKF to Company and received by Company which relates to SKF's existing or proposed products, services, designs, formulas, test data, engineering projects and plans, processes, materials, or services and other confidential information or those of its affiliates within the SKF Group of companies; and
 - (b) is disclosed or embodied either (i) in a writing (including that which is provided in machine readable format or is sent via electronic transmission), or in a product sample, model, prototype, or other tangible thing, any of which is given to the other party and bears a label or legend identifying the information as secret, confidential, or proprietary, or (ii) orally or by visual inspection of the disclosing party's facilities, with a designation of such information as secret, confidential or proprietary and a subsequent reduction of such information to writing, the writing being labeled as set out in the foregoing clause (i) of this subsection (b) and sent to the other party within thirty (30) days of the oral disclosure.
2. With respect to each item of Proprietary Information disclosed by one party (the "disclosing party") to the other (the "receiving party") hereunder, the receiving party hereby agrees:
 - (a) Not to disclose to any third party any Proprietary Information disclosed and/or samples provided to and received by it from the disclosing party to any third party other than to those of its employees and officers who have a reasonable need to know such information for the purposes of this Agreement;
 - (b) Not to disclose to any third party the fact that any Proprietary Information was disclosed to it by the disclosing party or that the information originated with the disclosing party; and
 - (c) Not to put to commercial use any Proprietary Information disclosed to it by the disclosing party except for the purposes of this Agreement.

Company further agrees that it shall not disclose any pricing or delivery information supplied by SKF to Company.

3. Nothing contained in this Agreement is intended to limit, and shall not be construed as limiting, the receiving party's right to use or disclose any information which: (a) is first disclosed by the disclosing party after the expiration or earlier termination of this Agreement; (b) is publicly known at the time disclosure is made to the receiving party; (c) becomes public knowledge without breach of this Agreement by the receiving party; (d) is known to the receiving party or any of its affiliates at the time of the disclosure and is not subject to a prior secrecy agreement; (e) becomes known or available to the receiving party or to any of its affiliates, without breach of this Agreement, from any source other than the disclosing party without any similar obligation of confidentiality being owed to such source with regards thereto; or (f) is independently developed by employees of the receiving party or any of its affiliates who have not had access to the disclosed Proprietary Information.
4. Nothing contained in this Agreement shall be construed either expressly or by implication, estoppel or otherwise, as: (i) requiring either party to make any disclosure to the other; (ii) giving either party the right to make any claim whatsoever against the other party for costs expended or for damages alleged to result from its use of the information received from the other party; (iii) a grant, transfer or other conveyance of any right, license or other interest of any kind or nature in any patent, trade secret, copyright or other property interest owned by either party to the other; (iv) creating the relationship between the parties as partners, joint venturers, or that of principal or agent, it being understood that each party hereunder is acting as an independent contractor; or (v) requiring either party to enter into any further agreement or to participate with the other party in any cooperative development program or project of any kind or nature or to continue such program or project. It is further agreed that neither party shall use the name of the other in any form of publicity without the prior express written permission of the other party.
5. Company acknowledges that, in order to satisfy the needs and requirements of Company, SKF may rely upon resources and technology available from various affiliates of SKF within the SKF Group of companies. SKF may disclose Proprietary Information to such affiliates, provided that the disclosure of such information to these affiliates by SKF is for the purposes described in this Agreement; and provided that such affiliates comply with the terms and conditions of this Agreement.
6. The term of this Agreement will begin on the Commencement Date and will expire on fifth anniversary thereof, unless extended by a writing signed by the authorized representative of each party or unless terminated earlier by either party by giving not less than thirty- (30-) days prior written notice thereof to the other party. Notwithstanding such termination or expiration, the obligations of confidentiality imposed under this Agreement shall continue.
7. Company agrees that with respect to the information disclosed by SKF that only those representations or warranties that are made by SKF when, as, and if made in connection with the sale of SKF products or provision of services to Company, and subject to such limitations and restrictions as may be specified by the parties' agreement or by law with respect to such sale of SKF products or provision of SKF services, will have any legal effect.
8. All devices, drawings, information, and data submitted to a party under this Agreement will remain the property of the disclosing party and may be recalled by the disclosing party at any time. Upon receipt of a written request from the disclosing party for return of such devices, drawings, information, and data, the receiving party will immediately deliver to the disclosing party all of such devices, drawings, information and data, including all copies, reproductions, and facsimiles; or, in the appropriate case, provide its certificate as to their permanent destruction or erasure. However, the receiving party may retain one copy of each in its law department files for dispute resolution purposes only.

9. No failure or delay by the disclosing party in exercising any right, power, or privilege hereunder shall constitute a waiver of such right, power, or privilege, nor constitute a waiver of any other provision hereof. None of the provisions of this Agreement nor the rights and obligations hereunder shall be deemed waived, deleted or otherwise modified except to the extent expressly provided in a written agreement, which specifically references this Agreement, that is signed by the President or a vice president of SKF USA Inc. or by its attorney (each of the foregoing constituting SKF's authorized representative for such purposes) and by the authorized representative of Company.

10. Each party agrees that violation of this Agreement by the receiving party may cause immediate and irreparable injury to the disclosing party and that the disclosing party shall be entitled, upon proper proof of threatened or actual harm, to seek specific performance, as well as immediate injunctive or other equivalent relief in addition to any other remedies it may have at law or in equity.

11. This Agreement is the entire agreement between the parties and supersedes all other agreements and understandings, whether written or oral, relating to its subject matter. This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the laws of the Commonwealth of Pennsylvania without reference to the conflicts of laws principles thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized representative.

ACCEPTED:

SKF USA Inc.

BY: _____

NAME: _____
(Type or Print)

DATE: _____

ACCEPTED:

Company

BY: _____

NAME: _____
(Type or Print)

DATE: _____

RESOLUTION NO. 11-04-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

April 11, 2011

**DELEGATING AUTHORITY TO THE GENERAL MANAGER/CEO TO SIGN A
NONDISCLOSURE AGREEMENT WITH SKF USA INC. IN ORDER TO OBTAIN THE
SPECIFICATIONS REQUIRED FOR REGIONAL TRANSIT TO REBUILD JOURNAL
BEARINGS FOR LIGHT RAIL VEHICLES**

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE
SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the General Manager/CEO is hereby authorized to execute a Nondisclosure
Agreement between the Sacramento Regional Transit District and SKF.

DON NOTTOLI, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary