

Attachment B

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (“Agreement”) is made and entered into this [____] day of _____ (month), _____ (year) by and between _____ (“VENDOR”), and the City of Burbank, 275 E. Olive Avenue, Burbank, California 91502 (“BURBANK”), under the following terms and conditions. Each party shall be the Recipient or the Discloser as the context dictates.

1. Nature and Purpose. The parties to this Agreement may engage in discussions or other communications regarding certain potential business arrangements and/or contractual relationships which may involve disclosure of each party’s financial, proprietary, competitively sensitive, and/or market sensitive information, and/or contain trade secrets. The purpose of this Agreement is to define the parties’ rights and obligations with respect to such information. This Agreement does not obligate either party to disclose any information to the other or to enter into any other agreement or arrangement, nor shall it be construed as granting any rights by license or otherwise in any such information including, but not limited to, software or inventions of either party. Notwithstanding the disclosure of any such information, each Discloser shall retain title and all intellectual property and proprietary rights in its disclosed information. Either party may by written notice to the other party terminate this Agreement at any time; provided, however, that each Recipient’s obligations shall survive the termination or expiration of this Agreement regardless of the manner of such termination.

2. Confidential Information. Each Discloser may at its option, make available to Recipient confidential and/or proprietary information including, without limitation, financial, proprietary, competitively sensitive, and market sensitive information, as well as trade secrets, know-how, source code, design documents, present and future technology, product development plans, price lists, customer information, “critical infrastructure information” (as such term is defined in 6 United States Code Section 131), marketing and any other information that is deemed and identified by Discloser as confidential and/or proprietary, or which the Recipient knows or should reasonably be expected to know is confidential, trade secret or proprietary information of the Discloser (collectively, “Confidential Information”). Confidential Information shall not include any information which (a) is or becomes publicly known through no wrongful act or failure to act on the part of Recipient; (b) is known or becomes known by Recipient without any proprietary restrictions from a source other than Discloser; (c) is independently developed by Recipient without reference to the other party’s Confidential Information; or (d) is required to be disclosed by Recipient to comply with applicable laws or regulations, or judicial or governmental order, provided that Recipient provides at least seven (7) days’ prior written notice of such disclosure to Discloser to afford Discloser the opportunity to seek a protective order relating to such disclosure. Should Recipient be faced with legal action to disclose Confidential Information, Recipient shall immediately notify Discloser and upon the request of the latter, shall cooperate with Discloser in contesting such a disclosure.

3. Degree of Care. Recipient agrees to receive and maintain Discloser’s Confidential Information in the strictest confidence and to safeguard the Confidential Information with the same degree of care as is used by Recipient to protect its own confidential information, but in no event less than reasonable care. With respect to customer data, VENDOR agrees that it shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose. Recipient agrees further not to use Confidential Information received from Discloser for its own benefit or for a purpose other than as expressly set forth in this Agreement. Except as required by applicable law, Recipient shall not disclose such information to third parties without the written consent of an authorized representative of Discloser.

4. Disclosures to Employees. Recipient further agrees to disclose the Confidential Information only to its directors, officers, employees, legal counsel, consultants, and agents who have a need to have access to

and knowledge of the Confidential Information solely for the purposes authorized hereunder and who have executed a nondisclosure agreement with Recipient that contains terms and conditions that are no less restrictive than those herein.

5. Return or Destruction of Confidential Information. Recipient shall not make any copies of the Confidential Information without Discloser's prior written consent. Recipient agrees that it will immediately cease use of and, within ten (10) days after Discloser's written request, return or, at Discloser's sole discretion destroy, all documents and tangible materials in its possession which contain any Confidential Information. Upon Discloser's request, Recipient shall certify in writing that Recipient has complied with the obligations set forth in this paragraph.

6. Limitations on Use. Recipient shall use Confidential Information only in connection with the evaluation and/or furtherance of a potential business relationship between the parties, and Recipient shall make no other use or disclosure, in whole or in part, of any Confidential Information. Confidential Information of Discloser may not be translated into another format or language, or decompiled or reverse engineered without Discloser's prior written consent. Nothing in this Agreement shall restrict either party from using, disclosing, or disseminating its own Confidential Information in any way.

7. Term. This Agreement shall continue until either party provides thirty (30) days written notice of termination to the other party. The obligations imposed by this Agreement as to any information which may be deemed to be (a) a trade secret under applicable law shall survive for so long as such information constitutes a trade secret thereunder, (b) each customer's "data" under applicable law shall survive unless Vendor has secured such customer's express, written consent to release of such customer's information and (c) any information classified as "critical infrastructure information" or "protected critical infrastructure information" or "protected system" shall survive until BURBANK has advised VENDOR, in writing, that such information may be released. For Confidential Information other than trade secrets, customer data and critical infrastructure information, the parties' respective obligations hereunder shall expire three (3) years from the date of last disclosure under this Agreement.

8. Legal Action. Recipient acknowledges that unauthorized disclosure or use of the other party's Confidential Information shall cause substantial harm and damage to the business of Discloser which may be difficult to ascertain and which may not be adequately compensated in damages at law. Therefore, Recipient agrees that, in addition to all other remedies provided at law or in equity, Discloser shall be entitled to seek injunctive relief hereunder. Notwithstanding any other provision of this Agreement, it is further agreed that in the case of a request received by BURBANK from a third party under applicable state or federal law (including, without limitation the California Public Records Act, Cal. Gov't Code § 6250 et seq.) for Confidential Information subject to this Agreement, BURBANK shall promptly notify VENDOR of such request and shall follow VENDOR's reasonable instructions in responding thereto. In the event access to Confidential Information is denied and the third party requesting the same initiates litigation to compel access under applicable law, BURBANK shall promptly advise VENDOR of such litigation, which VENDOR shall defend at its own cost and expense. BURBANK shall have no duty under this Agreement to defend any such litigation initiated by a third party under applicable law, and VENDOR, at its own cost and expense, shall indemnify, defend and hold BURBANK free and harmless from any claim, suit, cost, expense, judgment or order related to or arising from the denial of access to Confidential Information to said third party.

9. Notices. All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of delivery if personally delivered by hand, (ii) upon the third day after such notice is (a) deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (b) sent by a nationally recognized overnight express courier, or (iii) by facsimile upon written confirmation (other than the automatic confirmation that is received from the recipient's facsimile machine) of receipt of such notice:

If to BURBANK: BURBANK WATER AND POWER
164 W. Magnolia Blvd.
Burbank, California 91503
Attn: General Manager
Telephone No.: (818) 238-3550
Facsimile No.: (818) 238-3560

If to VENDOR: [Insert Name and Address]
Attn:
Telephone No.:
Facsimile No.:

Such addresses and numbers may be changed, from time to time, by means of a notice given in the manner provided in this Section 9.

10. Validity. In the event of the invalidity or unenforceability of any provision of this Agreement under applicable law, the parties agree that such event shall not affect the validity or enforceability of the remaining portions of this Agreement.

11. Assignment. Neither this Agreement nor any right hereunder, shall be assignable by either party without the prior written consent of the other party, and any purported assignment without such consent shall be void.

12. Export Compliance. Recipient shall not export, directly or indirectly, any technical data acquired from Discloser pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

13. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties' successors in interest. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and shall supersede all previous or contemporaneous communications, representations, understandings, and agreements, either oral or written, between the parties or any officials or representatives thereof. This Agreement may not be changed or modified except by a written agreement signed by the parties hereto or by their successors in interest. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of laws or principles thereof. Any action or suit related to this Agreement shall be brought exclusively in the state or federal courts sitting in the County of Los Angeles, California.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

_____	City of Burbank
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____