BAY AREA AIR QUALITY MANAGEMENT DISTRICT

MUTUAL NONDISCLOSURE AGREEMENT

CONTRACT NO. [year]-[number of contract]

1. <u>Parties</u> – The parties to this Agreement are the Bay Area Air Quality Management District ("DISTRICT") whose address is 939 Ellis Street, San Francisco, CA 94109, and **[name of company or individual]** ("CONTRACTOR") whose address is [address, city, state, zip].

2. <u>Purpose</u> – The parties wish to explore a business opportunity of mutual interest and, in connection with this opportunity, each party may disclose to the other certain confidential technical and business information which the disclosing party desires the receiving party to treat as confidential.

3. <u>"Confidential Information"</u> – As used in this Agreement shall mean any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, computer hardware, algorithms, software programs, software, source documents, and formulae related to the current, future and proposed products, services, and methods of operation of each of the parties, and includes, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, and purchasing information. "Confidential Information" also includes proprietary or confidential information of any third party who may disclose such information to either party in the course of the other party's business. Such information disclosed by the disclosing party ("Discloser") will be considered Confidential Information by the receiving party ("Recipient"), only if such information is either (a) clearly a trade secret, of a nature not generally known to third parties or proprietary to the Discloser, or (b) conspicuously designated as "Confidential", or (c) if provided orally, identified as confidential at the time of disclosure and confirmed in writing within thirty (30) days of disclosure.

4. <u>Non-use and Non-disclosure</u> – Each party agrees not to use any Confidential Information of the other party for any purpose except to evaluate and engage in discussions concerning a potential business relationship between the parties. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees, except to those employees or independent contractors of the receiving party who are required to have the information in order to evaluate or engage in discussions concerning the contemplated business relationship. Neither party shall reverse engineer, disassemble or de-compile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder.

5. <u>Maintenance of Confidentiality</u> – Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information and shall ensure that its employees or independent contractors who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Neither party shall make any copies of the Confidential Information of the other party unless previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

6. <u>Ownership of Confidential Information and Other Materials</u> – All Confidential Information, and any Derivatives thereof whether created by Discloser or Recipient, remain the property of Discloser and no

license or other rights to Confidential Information is granted or implied hereby. For purposes of this Agreement, "Derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (ii) for patentable or patented material, any improvement thereon; and (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret. All materials (including without limitation, documents, drawings, models, apparatus, sketches, designs and lists) furnished to one party by the other, and which are either designated in writing to be the property of such party or are otherwise clearly the property of such party, shall remain the property of such party and shall be returned to it promptly at its request, together with any objects thereof.

7. <u>No Obligation</u> – Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserve the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.

8. <u>No Warranty</u> – All confidential information is provided "as is." Each party makes no warranties, express, implied or otherwise, regarding its accuracy, completeness or performance.

9. <u>Term</u> – The term of this Agreement shall be one (1) year from the Effective Date. The obligations of each receiving party hereunder shall survive for a period of five (5) years following the termination of this Agreement or until such time as all Confidential Information of the other party disclosed hereunder becomes publicly known and made generally available through no action or inaction of the receiving party, whichever is earlier.

10. <u>Notices</u> – Any Notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally; (ii) by overnight courier upon written verification of receipt; (iii) by telecopy of facsimile transmission upon acknowledgement of receipt of electric transmission; or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the address set forth above or such other address as either party may specify in writing. Notices to the Licensee shall be directed to the attention of the Contracts Manager.

11. <u>Remedies</u> – Each party agrees that any violation or threatened violation of this Agreement will cause irreparable injury to the other party, entitling the other party to seek injunctive relief in addition to all legal remedies.

12. <u>Miscellaneous</u> – This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. This Agreement shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California, without reference to conflict of laws principles. Venue for resolution of any disputes under this Agreement shall be San Francisco, California. This document contains the entire agreement between the parties with respect to the subject matter hereof, and neither party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other party except as set forth herein. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY   [company name]
MANAGEMENT DISTRICT

By: _____   By: _____
      Jack P. Broadbent   [name]
      Executive Officer/APCO   [title]

Date: _____   Date: _____

Approved as to form:
District Counsel

By: _____
      Brian C. Bunger
      District Counsel