

NON-DISCLOSURE AGREEMENT—JOHN ZINK COMPANY, LLC

This Non-Disclosure and License Agreement—John Zink Company, LLC (“Agreement”) is entered effective October 7, 2021 (the “Effective Date”) between County Sanitation District No. 2 of Los Angeles County, a California county sanitation district (the “District”) and John Zink Company, LLC, a Delaware limited liability company (“Zink”). The District and Zink are collectively the “Parties”, and each individually is a “Party.”

The District has issued a request for proposals for vendors to furnish flare equipment (the “System”) for the District’s Scholl Canyon Landfill Flare Station Improvement Project (the “Project”). Zink seeks to submit a final proposal in response to the District’s request. The District has requested that Zink, as a part of the supply of the System, provide the District with access to Zink’s programmable logic controller (“Program”) in addition to the license for the District to use the Program which is part of the proposal. Zink contends that this program is proprietary. The Parties seek to provide the District with access to the Program while protecting the Program from disclosure as permitted by law.

The Parties therefore agree as follows:

1. **Ownership of the Program.**

Zink asserts that the Program is the property of Zink and is confidential and proprietary. Zink retains all intellectual property rights, whether registered or un-registered, with regard to the Program.

2. **Use of the Program.**

a. Zink grants the District the right to use the Program only for the purpose of setting up remote operation and monitoring (but excluding remote restart) of the System as purchased from Zink pursuant to the District’s request for proposals and for integration of the System into the District’s Supervisory Control and Data Acquisition system. (“Purpose”). The grant is a grant of a non-exclusive, non-assignable royalty-free license to the Program. This grant is personal to the District and may not be disclosed, assigned or transferred, in any manner, to any other party except as otherwise provided below.

b. Except as otherwise provided in this Agreement, the District may not: (i) provide access to any third party; (ii) use the access for any purpose other than the Purpose; or (iii) permit any person access who is not qualified to work on the System and who does not possess the knowledge, skill and judgment to work on the Program.

c. Zink is providing access to the Program at the District’s risk, and Zink will not be liable for any results from the District’s use of the Program for any purpose other than the Purpose. The District’s use of the Program for any purpose other than the Purpose will void the District’s warranty granted by Zink for the System. The District acknowledges that, by accessing

or changing any configuration or code in the Program, it may alter or negate important safety controls, which may have significant consequences such as potential fire or explosion. The District's access to the Program granted in this Agreement is "as-is" without warranty by Zink.

d. The District shall treat the Program as proprietary property of Zink and maintain the Program in confidence, taking measures at least as protective as those taken to protect its own confidential information of a similar nature (but in no event less than reasonable measures).

e. *Neither Party will be liable for any indirect, special, incidental, punitive, consequential or direct damages arising out of this Agreement, whether based on contract, tort or other cause of action.*

3. **Requests for Disclosure of the Program.**

a. The District is subject to the provisions of the California Public Records Act, Government Code section 6250, et seq. (the "PRA"). In the event that the District is compelled, by deposition, interrogatory, subpoena, request under the PRA, civil investigative demand, or other governmental or regulatory requirement, to disclose the Program or information contained within it, the District shall furnish Zink with prompt written notice of any such request or proceeding so that Zink may attempt to establish that the Program is exempt from public disclosure under the applicable law, seek an appropriate protective order or other remedy or waive its claims of confidentiality. If Zink does not promptly move to establish an exemption from disclosure, obtain a protective order or other remedy, the District may disclose only that portion of the Program that the District determines is legally subject to disclosure.

b. In the event of any demand made or claim or proceeding filed by a third party to seek disclosure or release from the District of the Program or information contained within it, the District shall (i) notify Zink promptly upon receipt of such demand, claim, or proceeding and (b) allow Zink, at Zink's sole cost and expense, to control the defense or resolution of that claim or proceeding. If Zink elects to defend such a proceeding in accordance with this paragraph, the District will refrain, to the extent permitted by the applicable law, from disclosing the Program until the entry of a final, non-appealable judgment requiring that disclosure or other final resolution of that proceeding. Zink shall pay any attorneys fees, costs, or sanctions awarded to the third party, and shall hold the District, its directors, officers, agents, and all of them, harmless from same. The District provides no representations or warranties regarding the ability of Zink to prevent the disclosure of the Program under the PRA or as otherwise required by the applicable law.

4. **Remedies in the Event of Breach.**

In the event of a breach by a Party of the obligations under this Agreement, the other Party may pursue its remedies available at law and equity, including injunctive relief and damages.

5. **Governing Law and Venue for Legal Proceedings.**

This Agreement will be construed in accordance with the laws of the State of California without application of its conflict of laws provisions. Jurisdiction for any action arising from this Agreement will be solely in the Superior Court of Los Angeles County, California.

6. **Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and there are no understandings or representations of any kind with respect to such subject matter except as expressly set forth herein. This Agreement may not be altered, changed, supplemented or amended except by written instrument or instruments signed by the Parties.

JOHN ZINK COMPANY, LLC.



By: Terry McElroy

Its: Senior Director, KES Equipment Group
Systems Solutions

**COUNTY SANITATION DISTRICT NO. 2
OF LOS ANGELES COUNTY**

By: _____
Chairperson, Board of Directors

ATTEST:

By: _____
Secretary to the Board

APPROVED AS TO FORM:
LEWIS, BRISBOIS, BISGAARD & SMITH, LLP

By: _____
District Counsel