

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“Agreement”), entered into and made effective as of the latest date subscribed below, is between New Braunfels Utilities (“NBU”) a municipally owned utility with its principal place of business in New Braunfels, Texas and _____ a partnership/corporation/_____ (“Bidder”) with its principal place of business in _____ (collectively the “Parties”).

THIS Agreement is to facilitate confidential discussions and pertains to data and information that may be provided by the parties to one another in connection with a request for power supply proposals issued on behalf of NBU through its power supply advisor EnerVision, Inc. and all subsequent additional information, clarifications, and options provided by the Parties (such request for proposals together with subsequent related communications are referred to as the “Proposal”).

The Parties desire to assure the confidentiality of information disclosed and exchanged by the Parties during the Proposal and to prevent its disclosure to unrelated third parties except as permitted by this Agreement.

In consideration of the mutual promises contained in this Agreement and with the intent to be legally bound by its terms and conditions, the Parties agree as follows:

1. Disclosure of Confidential Information. The Party disclosing “Confidential Information”, as that term is defined below, (“Disclosing Party”) shall allow access to or may disclose to the other Party (“Receiving Party”), either orally, in writing, or through electronic means certain information which the Disclosing Party believes is Confidential Information. “Confidential Information” as used in this Agreement shall mean the information designated as Confidential by the Disclosing Party which is disclosed or transmitted to the Receiving Party pursuant to this Agreement and shall include, but not be limited to, know-how, inventions, techniques, processes, algorithms, software programs, source code, schematics, designs, contracts, customer lists, financial information, sales and marketing plans, future generation development plans, energy profiles and pricing and business information. Confidential Information does not include and this obligation to maintain confidentiality will not apply to the extent that the Receiving Party can demonstrate that:

- (a) the designated Confidential Information of the Disclosing Party is, at the time of disclosure, part of the public domain;
- (b) the designated Confidential Information of the Disclosing Party became part of the public domain, by publication or otherwise, except by breach of the provisions of this Agreement;
- (c) the designated Confidential Information of the Disclosing Party can be established by written evidence to have been in the possession of the Receiving Party at the time of disclosure;

- (d) the designated Confidential Information of the Disclosing Party is received by the Receiving Party from a third Party without similar restrictions and without breach of this Agreement;
- (e) the designated Confidential Information was independently developed by it or for it without use or reference to Confidential Information and which was not obtained, in whole or in part, from Disclosing Party; or
- (f) the designated Confidential Information of the Disclosing Party is required to be disclosed by a government agency to further the objectives of this Agreement, or by a proper court of competent jurisdiction; provided, however, that the Receiving Party will use commercially reasonable efforts to minimize the disclosure of such information and will consult with and assist the Disclosing Party in obtaining a protective order prior to such disclosure.

2. Disclosure and Use of Confidential Information.

- (a) The Parties agree to keep confidential all Confidential Information and shall not, without the other Party's prior written consent, or as otherwise provided for in this Agreement, disclose to any third party, firm, corporation or entity such Confidential Information. The Parties shall limit the disclosure of the Confidential Information to only those affiliates of the Party and those members, partners, officers, employees, financing parties, representatives, advisors and agents (including attorneys, accountants, bankers and consultants) of the Party or its affiliates reasonably necessary to evaluate and complete the Proposal. Each Party shall use the Confidential Information only for the purpose of the Proposal. Neither Party shall make any other use, in whole or in part, of any such Confidential Information without the prior written consent of the other.
- (b) Receiving Party agrees during the term of this Agreement and thereafter to take all steps reasonably necessary to hold in trust the Confidential Information. Receiving Party agrees to use the Confidential Information solely to perform the Proposal hereunder. Receiving Party's obligations with respect to the Confidential Information also extend to any third Party's proprietary or confidential information disclosed to Receiving Party in the course of providing service to Disclosing Party. This obligation shall survive the termination of this Agreement.

3. Required Disclosure. In the event that any Party or its representatives is requested or required by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand, regulatory proceedings or other applicable rules or regulations, court orders, or similar process to disclose any Confidential Information received pursuant to this Agreement, it is agreed that it will provide to the other Party immediate notice of such request(s) and will use reasonable efforts to resist disclosure, until an appropriate protective order may be sought and/or a waiver of compliance with the provisions of this Agreement granted. If, in the absence of a protective order or the receipt of a waiver hereunder, the Parties or their representatives are nonetheless, in the opinion of their respective counsel, legally required to disclose Confidential Information received pursuant to this Agreement, then, in such event any Party may disclose such information without liability hereunder, provided that the other Party has been given an opportunity to review the text of such disclosure before it is made.

4. Return of Information. Either Party may elect at any time to terminate further access to the Confidential Information. The Parties further agree to return or destroy any and all Confidential Information upon written request from the other Party and to certify in writing to the other Party that all requested information has been returned or destroyed. Confidential Information in drafts, notes, studies and other documents prepared by or for Receiving Party, or its Representatives, shall be retained by the Receiving Party according to the terms of this Agreement or destroyed with written notice to the other Party.
5. Survival of Obligations. The obligations and commitments established by this Agreement shall remain in full force and effect for four (4) years from the date and year the Proposal is completed, or until such time as the Parties have entered into an agreement providing otherwise, whichever is later.
6. General Provisions.
- (a) The Parties each accept the representations of the other Party that the Confidential Information of the other Party is of a special, unique, unusual, extraordinary, and intellectual character. The Parties agree that the breach of the provisions of this Agreement by the Receiving Party will cause the Disclosing Party irreparable damage for which recovery of money damages would be inadequate. The Disclosing Party will, therefore, be entitled to obtain timely injunctive relief to protect the Disclosing Party's rights under this Agreement in addition to all remedies available at law.
 - (b) The remedy stated above may be pursued in addition to any other remedies applicable at law or equity for breach of this Agreement. Should litigation be instituted to enforce any provision hereof, the Party that prevails will be entitled to recover all costs, including reasonable legal fees, cost of investigation, the cost of experts and the cost of settlement.
 - (c) If any provision of this Agreement or the application of it to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of the Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect.
 - (d) The Agreement shall be governed by the laws, rules and regulations of the State of Texas and is enforceable in Comal County, Texas.
 - (e) No term or provision of this Agreement will be considered waived by either Party, and no breach excused by either Party, unless such waiver or consent is in writing signed on behalf of the Party against whom the waiver is asserted. No consent by either Party to, or waiver of, a breach by either Party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different, or subsequent breach by either Party.
7. No Implied Licenses. Nothing in this Agreement will be construed as granting any rights to Receiving Party, by license or otherwise, to any of Disclosing Party's Confidential Information, except as specifically stated in this Agreement or as otherwise agreed in writing.

8. No Obligation or Joint Venture. The Parties understand and agree that unless and until a definitive agreement has been executed and delivered, no contract or agreement providing for a transaction among the Parties shall be deemed to exist among the Parties, and no Party will be under any legal obligation of any kind whatsoever with respect to such transaction by virtue of this or any written or oral expression, except, in the case of this Agreement, for the matters specifically agreed to in it. This Agreement neither obligates a Party to deal exclusively with the other Party nor prevents a Party or any of its affiliates from competing with the other Party or any of its affiliates.

IN WITNESS WHEREOF, the Parties have entered into this Agreement on the latest date specified below.

NEW BRAUNFELS UTILITIES

“BIDDER”

By: _____

By: _____

Name: Paula J. DiFonzo

Name: _____

Title: Chief Executive Officer

Title: _____

Date: _____

Date: _____