

# **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_ 2013, between the  
(hereinafter “Disclosing Party”), and \_\_\_\_\_  
(hereinafter “Receiving Party”).

## **BACKGROUND**

The Disclosing Party and Receiving Party wish to discuss and exchange certain items and information related to economic development activities (the Project) which the parties hereto consider highly confidential and proprietary.

NOW THEREFORE, the parties hereto, intending to be legally bound in consideration of the mutual covenants and agreements set forth herein, hereby agree as follows:

## **CONFIDENTIAL INFORMATION**

**Confidential Information** shall mean all information provided by Disclosing Party with respect to the Project regardless of whether it is written, oral, audio tapes, video tapes, computer discs, human or machine readable documents. Confidential Information shall also include all information related to the Project provided by Disclosing Party to Receiving Party prior to the signing of this agreement.

**Confidential Information** shall not include any of the following:

- (a) such information in the public domain at the time of the disclosure, or subsequently comes within the public domain without fault of the Receiving Party;
- (b) such information which was in the possession of Receiving Party at the time of disclosure that may be demonstrated by business records of Receiving Party and was not acquired, directly or indirectly, from Disclosing Party; or

1.1. “Disclosing Party” shall mean the party disclosing information to the other relating to the Project.

1.2. “Receiving Party” shall mean the party receiving information from the other relating to the Project.

## **USE OF CONFIDENTIAL INFORMATION**

The Receiving Party agrees to:

- (a) receive and maintain the Confidential Information in confidence; not reproduce the Confidential Information or any part thereof without the express written consent of Disclosing Party;
- (b) not, directly or indirectly, make known, divulge, publish or communicate the Confidential Information to any person, firm or corporation without the express written consent of Disclosing Party;

- (c) limit the internal dissemination of the Confidential Information and the internal disclosure of the Confidential Information received from the Disclosing Party to those officers and employees, if any, of the Receiving Party who have a need to know and an obligation to protect it;
- (d) not use or utilize the Confidential Information without the express written consent of Disclosing Party;
- (e) utilize the best efforts possible to protect and safeguard the Confidential Information from dissemination, or the like.

## **GOVERNING LAW**

This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the State of Texas (State), notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary, and without the aid of any canon, custom or rule of law requiring construction against the draftsman.

## **BINDING NATURE OF AGREEMENT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

## **ENTIRE AGREEMENT**

This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings between the parties and there are no covenants, promises, agreements or conditions, either oral or written, between them other than herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party unless reduced in writing and signed by them.

## **ARBITRATION**

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by arbitration conducted by the American Arbitration Association and in accordance with the rules thereof, conducted in Victoria, Texas, or in any other convenient forum agreed to in writing by the parties. Any arbitration award shall be final and binding, and judgment upon the award rendered pursuant to such arbitration may be entered in any court of proper jurisdiction. Notwithstanding the foregoing, either party may seek and obtain temporary injunctive relief from any court of competent jurisdiction against any improper disclosure of the Confidential Information.

## **EFFECTIVE DATE OF AGREEMENT**

This Agreement shall enter into force on the Effective Date and shall remain in force until such time as both Parties agree in writing to terminate it, or for a period of three (3) years from the Effective Date, whichever comes first. The Parties' obligation to maintain the confidentiality of the Confidential Information as set forth in this Agreement shall continue for three (3) years after the termination of this Agreement.

**IN WITNESS OF THEIR AGREEMENT**, the parties have set their hands to it below effective the day and year first written above.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_