

NON-DISCLOSURE AGREEMENT

Project # _____

This Non-Disclosure Agreement (“Agreement”) is entered into to be effective on the date of the last party’s signature hereto by and between [EDC] and Company, as defined below.

I. Parties

1.1 The [EDC], a non-profit corporation organized and governed by Chapters 501 and 504 of the Texas Local Government Code (“EDC”).

1.2 _____, a _____, and all of its wholly-owned subsidiaries (together, “Company”). The enforceability of this Agreement is not affected if the blanks in this Section 1.2 are not filled in and/or a non-affiliated third-party (e.g. a site selector or similar consultant) executes as agent of the Company.

II. Recitals

2.1 In connection with the consideration of Company’s potential investments in the [city], Texas area (the “Potential Investments”), the Company has provided or may provide, or cause to be provided, to the [EDC] material non-public information concerning the Company and/or its affiliates for the purpose of evaluating the Potential Investments (the “Evaluation Material”).

2.2 As a condition to the [EDC]’s being furnished the Evaluation Material, the [EDC] hereby agrees to treat the Evaluation Material in accordance with the provisions of this Agreement.

III. Terms of Agreement

3.1 The [EDC] hereby agrees that the Evaluation Material will be used solely for the purpose of evaluating the availability of incentives and exemptions for proposed projects in the [city], Texas area and that all the Evaluation Material will be kept confidential by the [EDC]; provided that any such information may be disclosed by the [EDC] to its affiliates and its and their respective officers, employees, affiliates, agents, attorneys, advisors or other representatives (collectively, “Representatives”) in connection with evaluating the Potential Investments.

3.2 Evaluation Material does not include information which (i) is or becomes generally available to the public other than as a result of an act or omission by the [EDC] or any of the [EDC]’s Representatives or anyone to whom the [EDC] or any of the [EDC]’s Representatives transmit any Evaluation Material in breach of this Agreement, (ii) is or becomes available to the [EDC] or its Representatives on a non-confidential basis from a source other than the Company, provided that such source is not known by the [EDC] to be prohibited from transmitting the information to the [EDC] or the [EDC]’s Representatives by a contractual, legal, fiduciary or other obligation, (iii) was already known to the [EDC] prior to its disclosure to the [EDC] by the Company, or (iv) is otherwise lawfully and

independently developed by the [EDC] as shown on the [EDC]'s records without use of the Evaluation Material.

3.3 Notwithstanding the foregoing, it is understood that the [EDC] or its Representatives may be required to disclose the Evaluation Material (i) in connection with an audit, examination or inquiry by the [EDC] or its Representatives, (ii) pursuant to subpoena or other court process, (iii) at the express direction of any other authorized government agency, (iv) to its independent attorneys or auditors; and (v) as otherwise required by law or regulation (including, without limitation, the Texas Public Information Act, as amended).

3.4 If the [EDC] or any of its Representatives is requested or required to disclose any Evaluation Material as described in the foregoing paragraph, the [EDC] will provide the Company with notice of such requirement as promptly as practicable (to the extent permitted by law, rule, or regulation), so that the Company, at its expense, may seek a protective order or other appropriate remedy, or, in Company's sole discretion, waive compliance with this Agreement. The [EDC] agrees to cooperate with the Company to obtain a protective order or other appropriate remedy. In the event that no such protective order or other remedy is obtained, or that the Company waives compliance with the terms of this Agreement, the [EDC] shall (i) furnish only that portion of the Evaluation Material which the [EDC] is advised by the written legal opinion of the [EDC]'s counsel as legally required, (ii) exercise its best efforts to obtain reliable assurance, if available, that the Evaluation Material will be accorded confidential treatment, and (iii) give the Company written notice and a copy of the information to be disclosed as far in advance of its disclosure as practicable.

3.5 To the extent permitted by law upon the written request of the Company, the [EDC] shall promptly return to the Company, or destroy or cause the destruction of the Evaluation Material and any copies thereof in the possession of the [EDC] or its Representatives. The delivery or destruction of the Evaluation Material shall not relieve the [EDC] of its obligations under this Agreement.

3.6 The parties agree that unless and until a definitive agreement regarding a transaction has been executed and delivered, neither party shall be under any legal obligation of any kind whatsoever with respect to a transaction by virtue of this Agreement, except for the rights and obligation specifically agreed to herein.

IV. Miscellaneous

4.1 This Agreement contains the entire agreement between the [EDC] and the Company concerning the subject matter hereof. No modifications of this Agreement or waiver of the terms and conditions hereof will be binding upon the [EDC] or the Company, unless approved in writing by each of the [EDC] and the Company.

4.2 Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either of the parties hereto without the prior written consent of the other party and any such assignment without such prior written consent shall be null and void.

4.3 If any provisions of this Agreement shall, for any reason, be adjudicated by any court of competent jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remainder of this Agreement but shall be confined in its operation to the provision of this Agreement directly involved in the controversy in which such judgment shall have been rendered.

4.4 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute the same agreement.

4.5 This Agreement shall terminate with respect to the Potential Investments and the Evaluation Material, on the earlier of (i) the date on which the definitive agreement(s) is entered into by the relevant parties hereto; or (ii) the date that is two (2) years after the date of this Agreement.

4.6 This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas. Each party submits to the exclusive jurisdiction of federal or state courts in Texas for the resolution of all disputes arising out of this Agreement and waives any claim of forum *non conveniens*. **EACH OF THE AMARILLO EDC AND THE COMPANY IRREVOCABLY WAIVES TRIAL BY JURY IN ANY SUIT, ACTION, CLAIM OR OTHER PROCEEDING BROUGHT BY OR ON BEHALF OF SUCH ENTITY RELATED TO OR ARISING OUT OF THIS AGREEMENT.**

4.7 If the Company has provided separate written notice to the Amarillo EDC that it is publicly traded in the United States (whether on a stock market or over the counter), the Amarillo EDC hereby acknowledges that it is aware (and that its Representatives have been or will be advised) that the United States securities laws prohibit persons with material non-public information about a public company obtained directly or indirectly from that company from purchasing or selling securities of such company, or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

[EDC]

COMPANY

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____