

## SAMPLE CONFIDENTIALITY AGREEMENT

[Agent], was recently engaged by \_\_\_\_\_ (the "**Client**"), in connection with Project \_\_\_\_\_ (the "**Project**"), which involves the competitive evaluation of alternative communities in \_\_\_\_\_ for a facility, and at least one location in [city], Texas, is among the communities presently under consideration.

Consequently, and in order to permit [Agent] and the Client to share certain details of the Project with [City/EDC], its affiliates and personnel (collectively the "EDC"), this Confidentiality Letter Agreement (this "**Agreement**") has been prepared in connection with the Project. In this Agreement, the [Agent], the Client, and [EDC] are referred to collectively as the "**Parties**" and individually, without differentiation, each as a "**Party**."

With respect to the Project, the Parties anticipate that [Agent] and the Client will provide the [EDC] with certain financial and other non-public information concerning the Project and the Client. This information, together with all notes, analyses, compilations, studies and other documents generated from, based upon, containing, or otherwise reflecting such information, whether prepared by the Client, [Agent], the [EDC], or their respective Representatives (as hereinafter defined) is referred to in this Agreement as the "**Evaluation Material**."

In consideration of the Client's evaluation of [city], Texas, in connection with the Project, and the disclosure of Evaluation Material by the Client and [Agent], the Parties hereby agree that:

1. The [EC will use the Evaluation Material solely for the purpose of evaluating the Project and not for any other purpose, and, except to the extent permitted by Paragraphs 3, 4, and 8 of this Agreement, will keep the Evaluation Material strictly confidential; *provided, however*, that Evaluation Material may be disclosed to the [EDC]'s directors, officers, employees, subsidiaries, auditors and advisors (collectively, the "**Representatives**") to the extent (and only to the extent) that such Representatives may need to know such information for the purpose of assisting the Parties in evaluating and negotiating the terms of the Project. The [EDC] will advise its Representatives that such information is confidential and that by receiving such information the Representatives are agreeing to be bound by this Agreement and not to use such information for any purpose other than as described herein. The [EDC] shall be responsible for any breach of this Agreement by its Representatives.
2. Except to the extent permitted by Paragraphs 3, 4, and 8 of this Agreement, beginning on the date hereof, and for a period of twelve (12) months following the conclusion of any discussions or negotiations relating to the Project, the [EDC] and its Representatives shall not disclose to any person (other than its respective Representatives) the fact that the Evaluation Material has been made available, that discussions or negotiations are taking place or have recently taken place with regard to the Project, or any of the terms, conditions or other facts with respect to any possible Project, including the status thereof or the existence of this Agreement. Notwithstanding the foregoing, however, if a final agreement for public incentives related to the Project is entered into and signed by the Parties (in any such

case, an "Incentive Agreement"), then the prohibitions of this Section 2 shall no longer apply to the extent that the consummation of an Incentive Agreement may trigger disclosure obligations pursuant to the Texas Laws (as defined in Section 8, below).

3. With respect to information provided by a Party (the "Provider") or based upon, containing, or otherwise reflecting such information, the term "Evaluation Material" shall be deemed not to include information which: (i) is or becomes generally available to the public or the real estate industry other than (a) as a result of a disclosure by the Provider to the [EDC] or its Representatives (the "Recipient") or any other person who directly or indirectly receives such information from the Recipient, in each case in violation of this Letter Agreement, or (b) in violation of a confidentiality obligation to the Provider known to the Recipient; (ii) is or becomes available to the Recipient on a non-confidential basis from a source which, to the knowledge of the Recipient, is entitled to disclose it; (iii) was known to the Recipient prior to its disclosure by the Provider; or (iv) is verifiably developed by the Recipient without the benefit of the information provided by the Provider.
4. In the event that the [EDC] or its Representatives are required by interrogatories, requests for information or documents, subpoenas, civil investigative demand, or similar process to disclose the Evaluation Material or any other information, the disclosure of which is otherwise restricted by the terms of this Agreement, the Party required to make such disclosure shall provide the Client and [Agent] with prompt prior written notice of such requirement so that such other Parties may seek an appropriate legal action to prevent such disclosure. If, in the absence of such legal action, the [EDC] or its Representatives are nonetheless compelled to disclose Evaluation Material or other information concerning the Project pursuant to the good faith written opinion of its counsel (the "Counsel Opinion"), then such disclosure may be made only with respect to that limited portion of the Evaluation Material (or such other information) which the Party seeking to disclose is required by the Counsel Opinion so to do. The disclosing Party will exercise its reasonable efforts to obtain assurance that confidential treatment will be accorded such Evaluation Material.
5. All Evaluation Material disclosed to the [EDC] by either the Client or [Agent] shall be, and shall remain, the property of the Provider. Within five (5) days after being requested so to do, the [EDC] and its Representatives shall return all Evaluation Materials to the Provider. Except to the extent the [EDC] may be advised in good faith by a Counsel Opinion that such action is prohibited by law, the [EDC] and its Representatives shall also destroy all written material, memoranda, notes and other writings or recordings prepared by the [EDC] or its Representatives based upon, containing, or otherwise reflecting any Evaluation Material. Any Evaluation Material that is not returned or destroyed, including, without limitation, any oral Evaluation Material, shall remain subject to the confidentiality obligations set forth in this Agreement.
6. The Parties acknowledge that, although the Client and [Agent] have endeavored to include in the Evaluation Material information that they believe to be relevant for the purpose of considering the Project,

neither [Agent] nor the Client makes any representation or warranty as to the accuracy or completeness of the Evaluation Material or any component thereof. The Parties understand that the estimates or projections with respect to future performance included in the Evaluation Material should not be relied upon as accurate representations or assurances of future results. Neither [Agent] nor the Client, nor any of their Representatives, shall have any liability to the [EDC] or its Representatives based upon the use of the Evaluation Material by the [EDC] or its Representatives.

7. By disclosing the Evaluation Material and executing this Agreement, neither [Agent] nor the Client grant any license to the [EDC] or its Representatives, explicitly or implicitly, under any trademark, patent, copyright, protection right, trade secret, or any other intellectual property right. Execution of this Agreement and the disclosure of the Evaluation Material in accordance with its terms does not constitute or imply any commitment, promise, or inducement by the Client or [Agent] to enter into any further agreements or to consummate the Project.
8. Notwithstanding the foregoing covenants of the [EDC] and its Representatives, the Parties hereby acknowledge that the scope of the [EDC]'s confidentiality obligations pursuant to this Agreement may be limited by Texas law, including without limitation the provisions of the Texas Public Information Act, Texas Government Code, Chapter 552, including without limitation Section 552.131 thereof (collectively, the "**Texas Laws**"), and may require the [EDC] to make disclosures of certain portions of the Evaluation Material that would not otherwise be permitted hereunder. The Parties therefore agree that, to the extent of any conflict between this Agreement and the Texas Laws, the [EDC] shall be entitled to make such disclosures as the Texas Laws require, but only to that extent; and, if the [EDC] is required to disclose any Evaluation Material consequent to the Texas Laws, the [EDC] shall promptly inform [Agent] and the Client of that fact, and the remainder of this Agreement shall nevertheless remain in full force and effect.
9. The Parties agree that this Agreement in no way obligates the [EDC] to enter into any subsequent agreement with or give any consideration to [Agent] and/or the Client, whether related to the Project or otherwise.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without reference to its conflict of law provisions.

If you agree with the foregoing terms and conditions of this Agreement, please sign and return two (2) originals of this letter, which will constitute our agreement with respect to the subject matter of this letter.

Agent

By: \_\_\_\_\_  
Name:  
Title:

Agreed to and Accepted this  
\_\_ day of

[EDC]

By: \_\_\_\_\_  
Name:  
Title: