

THE STATE OF TEXAS §

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COUNTY OF FORT BEND §

STANDARD NON-DISCLOSURE AGREEMENT

THIS AGREEMENT (the "**Agreement**") is entered into on this _____ day of _____ by and between _____, located at _____ (the "Private Party"), and Fort Bend County by, through and on behalf of the undersigned County Official or Employee.

Whereas, the Parties seek to participate in informal discussions related to economic development and the possible location of the Private Party's facilities within Fort Bend County;

Whereas, the Parties anticipate exchanging certain commercial, financial and other non-public written information concerning Private Party's business matters and operations (hereinafter referred to as "Confidential Information");

Whereas, the Parties agree that it is in the best interest of each Party to have a full and free exchange of information, thoughts, ideas, and opinions among the Parties regarding the Confidential Information;

Whereas, the Parties agree that such exchange can only be assured if each party to the informal discussions makes a promise of confidentiality to each other party, to the extent allowed by law;

Whereas, the Fort Bend County Commissioners Court has approved the use of this NDA form and authorizes the undersigned County Official or Employee to execute this Agreement on their own behalf;

Whereas, the Parties acknowledge and agree that the undersigned County Official or Employee is authorized to execute this Agreement with regard to their own actions, that the undersigned County Official or Employee does not have the authority to bind any other party to the terms of this Agreement;

Whereas, changes to this form NDA are not authorized without approval by the Fort Bend County Commissioners Court.

AGREEMENT

In consideration of the mutual promises and agreements to be performed as set forth below, and other good and valuable considerations, the sufficiency of which the Parties acknowledge, the Parties agree as follows:

- I. Each party shall use the Confidential Information solely for the purpose of evaluating a possible transaction and not for any other purpose, and shall keep such Confidential Information strictly confidential to the extent allowed by state and federal law, including the Texas Public Information Act and the Texas Open Meetings Act; provided, however, that Confidential Information may be disclosed to such of Private Party's or the COUNTY's directors, officers, employees, subsidiaries, auditors and advisors (collectively, the "Representatives") as need to know such information for the purpose of assisting Private Party or the COUNTY in evaluating and negotiating the terms of any transaction. Private Party and the COUNTY shall each advise its Representatives of the confidential nature of the Confidential Information and the obligations set forth in this Agreement and not to use the Confidential Information for any purpose other than as described in this Agreement.
- II. With respect to information provided by a party (the "Discloser") the term "Confidential Information" does not include any information that:
 - A. Is or becomes generally available to the public or the industries in which Private Party and the COUNTY are involved other than:
 1. As a result of a disclosure by the other party or its Representatives (the "Recipient") or any other person who directly or indirectly receives such information from the Recipient or
 2. In violation of a confidentiality obligation to the Discloser known to the Recipient
 - B. Is or becomes available to the Recipient on a non-confidential basis from a source other than the Discloser or any of the Discloser's Representatives, provided that the Recipient does not have knowledge that the source is not entitled to disclose it;
 - C. Was known to the Recipient prior to disclosure of such information to it by the Discloser; or
 - D. Is verifiably developed by the Recipient without the benefit of Confidential Information with respect to the Discloser.
- III. In the event that the COUNTY is required by law or by interrogatories, subpoenas, or Public Information Act request to disclose the Confidential Information or any other information the disclosure of which is restricted by the terms of this Agreement, the COUNTY will provide Private Party a letter informing Private Party of the disclosure request. The letter informing Private Party of the disclosure request shall be in writing and sent within a reasonable time but not later than the tenth (10th) business day after the date the COUNTY receives the disclosure request consistent with Section

552.305 of the Texas Government Code, as amended. The letter provided to Private Party will include a copy of the disclosure request and will inform Private Party that it is entitled to submit in writing to the Texas Attorney General within a reasonable time but not later than the tenth (10th) business day after the date Private Party receives the notice reasons why the information should be withheld under the Texas Public Information Act. If in the absence of a favorable decision by the Texas Attorney General prohibiting disclosure or protective order from a court of proper jurisdiction the COUNTY is nonetheless, in the opinion of its counsel, required by law or compelled to disclose Confidential Information or other information concerning a transaction, disclosure may be made only as to the portion of the Confidential Information or such other information that the COUNTY is advised by counsel is legally required or compelled to be disclosed.

- IV. In the event that a Private Party or Private Party's Representatives are required by law or by interrogatories, requests for information or documents, subpoenas, or similar process to disclose Confidential Information or any other information the disclosure of which is restricted by the terms of this Agreement, Private Party shall provide the COUNTY with prompt prior written notice of such requirement so that the COUNTY may seek an appropriate protective order. If in the absence of a protective order, Private Party or any of Private Party's Representatives is nonetheless, in the opinion of its counsel, required by law or compelled to disclose Confidential Information or other information concerning a transaction, disclosure may be made only as to the portion of the Confidential Information or such other information that Private Party is advised by counsel is legally required or compelled to be disclosed. Private Party shall exercise its best efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.
- V. It is further understood and agreed that monetary damages would not be a sufficient remedy for any breach of this Agreement and that each party is entitled to specific performance, including, without limitation, injunctive relief, as a remedy for any such breach by the other party. Such remedy is not the exclusive remedy for breach of this Agreement but is in addition to all other remedies available at law or equity. Each party shall reimburse the other for costs and expenses (including, without limitation, attorneys' fees) incurred by the other in connection with the enforcement of this Agreement against a party judicially determined to be in breach of this Agreement. The Fort Bend County Commissioners Court shall bear such costs for County under this Agreement.
- VI. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the Parties.

- VII. It is expressly understood and agreed that, in the execution of this Agreement, no party waives, nor shall be deemed hereby to have waived any immunity, including governmental immunity, or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.
- VIII. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas. The venue for any action arising under this Agreement shall lie in Fort Bend County, Texas.
- IX. A copy of the Executed Non-Disclosure Agreement shall be kept on file with the County's Risk Management Department.

FORT BEND COUNTY

County Official or Employee

PRIVATE PARTY

Printed Name & Title

Signature

Date

Company Name

Signature

Printed Name& Title

Date

Form Approved in Commissioners Court on: