

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, _____, by and between the City of XXX, Ohio (formerly known as the Village of XXX and referred to herein as the “City”), a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio and its Charter, with its main offices located at XXX in the City, and LEGAL ENTITY NAME, a ENTITY TYPE AND STATE OF INCORPORATION (together with any successors, assigns or transferees, is hereinafter referred to as the “Company”).

WHEREAS, the City and the Company desire to enter into discussions and share information for an economic development project to be located in the City (the “Project”); and

WHEREAS, in connection with the Project, the Company may disclose to the City certain proprietary and confidential information (the “Sensitive Company Information”); and

WHEREAS, the Company desires to protect Sensitive Company Information relating to the Project and to prevent other persons and entities from acquiring, appropriating or discovering that Sensitive Company Information, all to the maximum extent permitted by Ohio law, and the City desires to cooperate with the Company’s efforts in that regard to the extent permitted by Ohio law;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Applicability of Public Records Act and Exemptions. The parties recognize and acknowledge that the City is an Ohio municipal corporation and subject to and governed by Ohio Revised Code Section 149.43 (commonly known as the “State Public Records Act” and herein referred to as the “Act”). The Act generally requires the City, upon proper request, to prepare and make available “public records” (as defined in the Act) within a reasonable period of time, unless the subject of the requested materials fall within one of the exemptions from the Act’s disclosure requirements. The parties recognize and acknowledge that the certain types of records, materials and information are exempted from the Act’s disclosure requirements including, without limitation, the following: trade secrets and economic development project information (Ohio Revised Code Sections 122.36 and 1333.61 et seq.); tax returns and related information (Ohio Revised Code Sections 718.13, 5703.21, 5711.101); records confidential under other state or federal law (Ohio Revised Code Section 149.43(A)(1)(v)); internet access to social security numbers (Ohio Revised Code Section 149.45); certain financial information (Ohio Revised Code Section 122.75); certain materials and data relating to “energy resource development facilities” as defined in Ohio Revised Code Section 1551.01(B) (Ohio Revised Code Section 1551.11(B); and certain records received by JobsOhio (Ohio Revised Code Section 187.04(C)(2)).

2. Notification to Company of Public Records Request. In the event that a request for information is made to the City pursuant to the Act for documents, materials or information related to the Project or the Company, the City shall, as soon as practicable but in any event within two

(2) business days, provide a copy of that request to a representative designated in writing by the Company.

3. Sensitive Company Information; Trade Secrets; Public Records. The City and Company recognize and agree that certain information provided to the City by or on behalf of the Company may be Sensitive Company Information, economic development information or contain trade secrets, or otherwise be exempt from the disclosure requirements of the Act. The Company hereby agrees to clearly designate in writing any information provided to the City that the Company considers to be exempt from disclosure requirements of the Act (collectively, "Exempted Materials"). Subject to the disclosure requirements of the Act, any Exempted Materials related to the Project or the Company and clearly marked as such by the Company, including such Exempted Materials subsequently incorporated in materials produced by the City for its own purposes, shall be treated by the City as exempt from disclosure under the Act, and not as public records, and the City will not release such Exempted Materials (including any component information contained therein) to any third party without the prior written consent of the Company or unless mandated by a court of competent jurisdiction.

The Company and the City acknowledge and agree that certain documents and information relating to the Project are public records subject to disclosure under the Act. The City will nevertheless provide the Company, under to Section 2 of this Agreement, a copy of any public records request relating to any such documents or information.

4. Duty to Respond. Upon receipt from the City of a copy of a request for information that contains Exempted Materials, the Company shall have a maximum of four (4) business days beginning with the date it receives such notice from the City to respond to the public records request by either responding to the requestor or pursuing legal remedies to stop the City's release of requested information. The City's notification of the public records request to the Company shall relieve the City of any further obligation under any claim of the Company, or any of its agents or affiliates, in any jurisdiction in connection with the disclosure of such records. The City and the Company acknowledge and agree to cooperate together, if necessary, to ensure that a response is provided to the public records request in a prompt and timely manner.

5. Legal Proceedings; Company Indemnification of City. The Company, and its agents and affiliates, at their sole expense, shall have the right to pursue legal and/or equitable remedies to stop or limit disclosure. The Company shall be solely responsible for, and shall bear the burden of, taking all necessary legal action to make such determination and to either negotiate an acceptable agreement with the requesting party or take such legal action as is necessary to prevent the City from disclosing the Exempted Materials. The Company will defend the City against any third party claim related to the Company's designation of certain records as exempt from public disclosure ("Claim"), and hereby agrees to indemnify and hold harmless the City from and against any and all claims, proceedings, actions, costs, suits, demands, judgments, liability, losses, and damages suffered, paid, incurred by or asserted against the City in connection with such Claim, including paying the City's reasonable legal fees. The City will promptly notify the Company of the Claim, and will allow the Company to control the defense and settlement thereof; provided however, that the City is permitted to have legal representation present in any legal proceedings or settlement discussions in connection with a Claim. In the absence of a protective

order or other appropriate relief or receipt of such a waiver, the City shall be permitted to disclose that portion of the information that the City is legally compelled to disclose.

6. Effective Date and Applicability. This Agreement will be deemed to be effective as of the date first written above, and all obligations herein shall survive termination of the Agreement for any reason.

7. Modification; Amendment; Waiver of Notice. This Agreement, any amendment to this Agreement, waiver of rights or any notice or consent hereunder signed in the name of the City of the Company will not be operative for purposes of this Agreement unless it is in writing.

8. No Waiver. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right.

9. Counterparts. This Agreement may be signed in multiple counterparts, each of which will be deemed an original for all purposes and all of which will constitute a single instrument.

10. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered either via electronic mail, in person, or sent by United States first class mail, postage prepaid.

11. Interpretation. The headings in this Agreement are for convenience or reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof. As used in this Agreement, the singular includes the plural, and masculine, feminine, and neuter pronouns are fully interchangeable, where the context so requires.

12. Governing Law; Binding Effect. This Agreement shall be governed by the laws of the State of Ohio, without regard to its choice of law provisions, and will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

[This Space Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF XXX, OHIO

By: _____

Title: City Manager

LEGAL ENTITY NAME

By: _____

Title: _____

Approved as to form:
