

**DATE:** \_\_\_\_\_

Development Authority of Clayton County  
1588 Westwood Way  
Morrow, Georgia 3026030308  
Attention: Chairman

Re: \_\_\_\_\_

In connection with the Development Authority of Clayton County ("DACC") analysis of a proposed economic development project (the "Proposed Transaction"), we have or will submit to the DACC, in written, electronic, verbal or other medium, certain information concerning \_\_\_\_\_ **and/or its affiliates**, officers, employees, advisor, and agents (collectively, the "Company") as well as information regarding the Proposed Transaction which may include, without limitation, financial information (including projections and estimates), business planning information and various specifications, designs, plans, drawings, software, data and other information (collectively, the "Evaluation Material")<sup>1</sup> that we protect, among other things, as "trade secrets," as set forth in O.C.G.A. §10-1-761(4).

The DACC has indicated that the Evaluation Material is necessary for the DACC's evaluation of the Proposed Transaction, and therefore, is being submitted to the DACC for the sole and exclusive purpose of evaluating the Proposed Transaction. By submitting the Evaluation Material, the Company does not grant to the DACC or any third party any license, explicitly or implicitly, under any trademark, patent, copyright, mask work, protection right, trade secret or any other intellectual property right. Further, any submittal of the Evaluation Material does not constitute or imply any commitment, promise, or inducement by either party to enter into any further agreements or to consummate the Proposed Transaction.

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<sup>1</sup> The term "Evaluation Material" does not include any information which: (i) at the time of disclosure or thereafter is generally available to and known by the public (other than as a result of a disclosure directly or indirectly by the DACC or its Representatives, as defined herein); (ii) was available to the DACC on a non-confidential basis on the date of receipt thereof from a source other than the Company; (iii) has been independently acquired or developed by the DACC without violating any of the DACC's obligations under this agreement; or (iv) was received by the DACC from a third party who the DACC reasonably believed in good faith had an independent source of the information and the right and privilege to reveal the information to others without violating the Company's rights in the Evaluation Material.

In consideration of submitting the Evaluation Material to the DACC, the DACC hereby agrees to the following:

1. Except as otherwise required by law, including but not limited to the Georgia Open Records Act, O.C.G.A. § § 50-18-70 *et seq.*, as may be amended from time to time (hereinafter the "Open Records Act"), the Evaluation Material and any information derived directly from the Evaluation Material (which shall become a part of the Evaluation Material), will be used solely for the purpose of evaluating the Proposed Transaction. The DACC shall keep the Evaluation Material confidential and shall not disclose the Evaluation Material to any third persons except as required by law or as permitted pursuant to the terms set forth in this agreement (hereinafter the "Non-Disclosure Agreement");
2. The DACC may disclose the Evaluation Material or portions thereof only to the persons to whom such disclosure is permissible (collectively, the "Representatives") as follows: (a) the DACC's board members, officers, employees, agents, advisors and legal counsel; and (b) other state agencies, local governments or local development authorities and their respective officers, employees, agents and advisors, whose assistance may be requested or required in connection with evaluating the Proposed Transaction. The Representatives will be advised of the confidential nature of the Evaluation Material; and
3. The DACC further agrees that it will not issue any press releases announcing the Proposed Transaction, or make any similar affirmative announcement to any third person not authorized under this Non-Disclosure Agreement or by operation of law to receive information regarding the existence of the Proposed Transaction, notwithstanding the DACC's statutory disclosure obligations outlined in O.C.G.A. § 50-18-72(a)(46).

The Company acknowledges that disclosure of some or all of the Evaluation Material may be requested pursuant to the Open Records Act ("Open Records Request"), and that there may not be an exemption from disclosure under the Open Records Act merely because materials were submitted to the DACC in connection with this Non-Disclosure Agreement. The Company acknowledges further that the DACC is required to respond to Open Records Request no later than three (3) business days after the receipt of the request, and, if the DACC intends to withhold any of the requested records, must state the exemption which permits such records to be withheld.

As such, upon receipt of an Open Records Request or of legal compulsion by deposition, interrogatory, and request for documents, subpoena, civil investigative demand, or similar process ("Legal Compulsion") to disclose any of the Evaluation Material, the DACC shall use good faith efforts to immediately provide the Company with prompt written notice of the receipt of an Open Records Request or Legal Compulsion. The DACC will also seek to independently assess any applicable exemptions, including if the Proposed



Transaction is an economic development project<sup>2</sup> which its related Evaluation Material shall be exempt from disclosure until a binding commitment for the project is secured or the project is terminated as set forth in O.C.G.A. § 50-18-72(a)(46)<sup>3</sup> and - (47)<sup>4</sup>, or whether all, or any portion of the Evaluation Material would be deemed to constitute “[a]ny trade secrets obtained from a person or business entity that are required by law, regulation, bid, or request for proposal to be submitted to an agency,” within the meaning of O.C.G.A. § 50-18-72(a)(34), thereby exempting it from the disclosure requirements.

To assist the DACC in this assessment, the Company, as part of its submittal of the Evaluation Material, will mark any of the Evaluation Material it contends is a trade secret as “trade secret,” and provide an affidavit to the DACC affirmatively declaring that the marked Evaluation Material, or any part thereof, constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated. Upon request, the DACC shall provide the Company with a trade secrets affidavit which has been approved by the DACC. **The Company hereby acknowledges that the DACC cannot guarantee the non-disclosure of Evaluation Material, even if it is designated as “trade secret” by the Company and/or by the DACC in this Non-Disclosure Agreement.** However, a failure to have marked any of the Evaluation Material shall not limit the Company from so designating unmarked Evaluation Material as trade secret within the required response period provided by the Open Records Act or Legal Compulsion.

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<sup>2</sup> “[T]he term ‘economic development project’ means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business.” O.C.G.A. § 50-18-72(a)(46).

<sup>3</sup> “Documents maintained by any agency, as such term is defined in subparagraph (a)(1)(A) of Code Section 50-14-1, which pertain to an economic development project [are not required to be publicly disclosed] until the economic development project is secured by binding commitment, provided that any such documents shall be disclosed upon proper request after a binding commitment has been secured or the project has been terminated. No later than five business days after the Development Authority of Clayton County secures a binding commitment and the [D]ACC has committed the use of state funds from the OneGeorgia Authority or funds from Regional Economic Business Assistance for the project pursuant to Code Section 50-8-8, or other provisions of law, the DACC shall give notice that a binding commitment has been reached by posting on its website notice of the project in conjunction with a copy of the Development Authority of Clayton County’s records documenting the bidding commitment made in connection with the project and the negotiation relating thereto and by publishing notice of the project and participating parties in the legal organ of each county in which the economic development project is to be located.” O.C.G.A. § 50-18-72(a)(46).

<sup>4</sup> Additionally, “[r]ecords related to a training program operated under the authority of Article 3 of Chapter 4 of Title 20 [which disclose] an economic development project prior to a binding commitment having been secured, relating to job applicants, or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity [are not required to be publicly disclosed].” O.C.G.A. § 50-18-72(a)(47).

Further, the Company acknowledges that even if the DACC withholds the requested records as a trade secret, the requestor, pursuant to O.C.G.A. § 50-18-72(a)(34), may file a legal action to obtain an order that the Evaluation Material or any part thereof is not trade secret and is, therefore subject to disclosure. Likewise, pursuant to O.C.G.A. § 50-18-72(a)(34), if the DACC has received the Company's above mentioned trade secret affidavit, but determines that the specifically identified Evaluation Material does not constitute a trade secret, the DACC will notify \_\_\_\_\_ of the DACC's determination and intent to disclose the Evaluation Material within ten (10) days of such notice, and the Company may file a legal action to obtain an order protecting the requested Evaluation Material as trade secret and therefore exempt from disclosure. The Company shall serve the requestor of the Evaluation Material with a copy of its court filing. In the event the Company does not obtain a protective order or other remedy, and the Company does not waive compliance with this Non-Disclosure Agreement, the DACC or such Representative will furnish only that portion of the Evaluation Material which is legally required to be disclosed.

No failure or delay by the Company or DACC to exercise any right, power or privilege hereunder will operate as a waiver, nor will any single or partial exercise preclude any other or further exercise. This Non-Disclosure Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Non-Disclosure Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without reference to its conflict of law provisions.

This Non-Disclosure Agreement may be executed in counterparts.

<p>INSERT COMPANY NAME "COMPANY"</p>  <p>By: _____</p> <p>Name: _____</p>  <p>Its: _____</p> <p>_____ DATE</p>	<p>DEVELOPMENT AUTHORITY OF CLAYTON COUNTY "DACC"</p>  <p>By: _____</p> <p>Name: Larry Vincent _____</p> <p>Its: Executive Director _____</p> <p>_____ DATE</p>
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