

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “Agreement”) is entered into and shall be effective as of this ____th day of _____, by and between TAIPEI ECONOMIC AND CULTURAL OFFICE IN SAN FRANCISCO (“TECOSF” or “Discloser”) and _____, a prospective vendor in accordance with TECOSF’s Request for Qualifications (“RFQ”) for Demolition and Tenant improvement work for office building renovation (“Discloser”). Recipient and Discloser are sometimes individually referred to herein as a “Party” and collectively referred to herein as the “Parties.”

WHEREAS, in connection with submission of a proposal for provision of services as a vendor in accordance with the RFQ/RFP for TECOSF’s renovation of the office building at 345 4th Street, San Francisco CA (“Transaction”), Discloser is prepared to provide certain confidential and proprietary information to Recipient on the terms and conditions set forth in this Agreement; and

WHEREAS, all such information so provided (irrespective of the form of communication and whether such information is so exchanged before, on or after the date hereof), and all analyses, compilations, data, studies, notes, interpretations, memoranda or other documents containing or reflecting any such furnished information, are collectively referred to herein as the “Evaluation Material.”

NOW, THEREFORE, in consideration of these premises and of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

1. Recipient and its partners, directors, officers, employees and advisors (including, without limitation, financial advisors, attorneys, accountants and contractors) (collectively, “Representatives”) shall use the Evaluation Material obtained solely for the purpose of evaluating the Transaction and will keep the Evaluation Material confidential using the same standard of care used by Recipient to avoid publication, disclosure or dissemination of its most sensitive and confidential information; provided, however, that Recipient may disclose the Evaluation Material or portions thereof (a) as required pursuant to law, regulation or legal or judicial process as set forth in paragraph 3 below and (b) to those of its Representatives involved in evaluating such Transaction. Recipient shall be liable for a breach by any of its Representatives of the restrictions contained herein due to any improper use or disclosure of the Evaluation Material.

2. The term “Evaluation Material” does not include any information that (i) was or is in the public domain, is or becomes publicly available other than as a result of a disclosure by Recipient or its Representatives in violation hereof, or is released by Discloser without the benefit of a confidentiality agreement, (ii) is or becomes available to Recipient or its Representatives on a non-confidential basis from a source that, to the Recipient’s knowledge, is not prohibited from disclosing such information by a contractual or legal obligation or, (iii) is independently developed by Recipient or on Recipient’s behalf without any violation of its obligations hereunder.
3. If Recipient or its Representatives are requested or required to disclose Evaluation Material by law, regulation or legal or judicial process (including, without limitation, by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process), Recipient or its Representatives, as the case may be, shall, to the extent permitted and practicable under the circumstances (i) provide Discloser with notice of such requirement prior to such disclosure and as soon as practicable, (ii) consult with Discloser and its legal counsel, at the cost, if any, of Discloser, concerning the information proposed to be disclosed so that Discloser may seek a protective order or other appropriate remedy, and (iii) cooperate with Discloser to obtain any such protective order at the cost, if any, of Discloser. If such protective order or other remedy is not obtained, Recipient or its Representatives may disclose that portion of the Evaluation Material which Recipient or its Representative is required to disclose.
4. Neither Recipient or its Representatives, without the prior written consent of Discloser, nor Discloser or its Representatives, without the prior written consent of Recipient, shall disclose to any person (other than (i) their respective Representatives involved in evaluating the Transaction, or (ii) as required by applicable law, regulation or legal or judicial process, and then as set forth in paragraph 3 above (*mutatis mutandis* as this paragraph applies to Discloser)) either the fact that any investigations, discussions or negotiations are taking place concerning a possible Transaction or that Discloser has or will provide Evaluation Material to Recipient, or any of the terms, conditions or other facts with respect to any such possible Transaction, including the status thereof. The term “person” as used in this Agreement will be interpreted broadly to include the media and any corporation, company, group, partnership or other entity or individual.
5. Upon Discloser’s request, Recipient shall promptly return to Discloser or destroy all Evaluation Material furnished to Recipient or its Representatives and all copies, extracts or other reproductions in whole or in part thereof; *provided, however*, that if Recipient chooses to destroy such Evaluation Material it shall, at Discloser’s request, certify such destruction to

Discloser in writing; *provided, further*, that Recipient may retain a copy of the Evaluation Materials as required to comply with applicable laws or as otherwise retained in any backup computer systems it routinely uses, and any Evaluation Materials so retained shall remain subject to the restrictions on use and disclosure contained herein.

6. No contract or agreement relating to the Transaction shall be deemed to exist as a result of this Agreement beyond the confidentiality and non-disclosure obligations contained herein, and neither Party nor its respective Representatives shall have any legal obligation with respect to the Transaction unless and until, when, as, and if a definitive agreement regarding a Transaction has been executed and delivered.
7. The Parties agree that money damages may not be a sufficient remedy for any breach of this Agreement by the other Party, and such non-breaching Party shall be entitled to seek equitable relief, including injunction and specific performance, in the event of any such breach, in addition to all other remedies available at law or in equity.
8. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to internal principles of conflicts of law, and the parties agree that the courts of the State of California shall be a proper venue for any dispute arising hereunder.
9. Each Party agrees that no failure or delay by the other Party in exercising any right, power or privilege 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 right, power or privilege hereunder.
10. If any provision of this Agreement is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this Agreement, and such invalid provision shall be deemed deleted from this Agreement to the minimum extent necessary to cure such violation.
11. This Agreement shall not be assigned by operation of law or otherwise by either Party without the prior written consent of the other Party. This Agreement may be signed in counterparts executed by a Party's signature transmitted by facsimile or by electronic mail in pdf format, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. The Parties may rely upon faxed or pdf signatures as if such signatures were originals.

12. This Agreement shall terminate and be of no further force and effect three years from the date hereof.

IN WITNESS WHEREOF, the Parties have caused this Confidentiality and Non-Disclosure Agreement to be executed and delivered by their respective officers thereunto duly authorized, all effective as of the date first written above.

“Recipient”

By: _____

Name:

Title:

“Discloser”

TAIPEI ECONOMIC AND CULTURAL OFFICE
IN SAN FRANCISCO

By: _____

Name: _____

Title: _____