

NON-DISCLOSURE & CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (the “*Agreement*”), dated effective as of _____, 20__ (the “*Effective Date*”), is by and between _____, an _____ organized under the laws of the State of _____ (“*Subcontractor*”), and Clayco, Inc., a corporation organized under the laws of Missouri (“*Clayco*”) and collectively with Subcontractor (the “*Parties*” and each individually a “*Party*”).

WHEREAS, Subcontractor and Clayco are in discussions or Subcontractor is interested in submitting a bid related to the following Project: _____ (the “**Project**”), and, in connection therewith, Clayco will or may disclose proprietary information about it, the Owner of a Project and the Project to the Subcontractor, and the Parties hereby agree that any and all such information shall be treated as confidential by the Subcontractor in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements, representations, promises, warranties and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Interpretation.** For the purposes of this Agreement, “***Confidential Information***” shall mean and refer to any and all information including, but not limited to, that which is related to Clayco, the Project, the owner(s) or potential owner(s) of the Project, any tenant(s) and/or any lender(s), whether written or oral, including, but not limited to, financial information, pro forma cash flow projections, customer and Project information, data, and any materials plans, technologies, trade secrets, know-how, ideas, concepts, designs, drawings, sketches, flow charts, blue prints, diagrams, manufacturing and test data, inventions, computer programs, reports, methods, research, marketing, sales pricing, proprietary information and any other personal or intellectual property or information of any kind relating to the Project furnished to Subcontractor by Clayco.

2. **Non-Disclosure of Confidential Information.** Subcontractor acknowledges, agrees and recognizes that it will have access to and become acquainted with Confidential Information. Subcontractor agrees that (a) it may only use such Confidential Information for purposes of evaluating the Project and consummating any transaction with Clayco related thereto and (b) except as permitted by this Agreement, shall not disclose any such Confidential Information to any third party that is not Subcontractor’s Representative for a period beginning on the Effective Date and ending on the second anniversary of the termination of this Agreement. “***Representative***” shall mean a third party that has agreed in a written confidentiality or non-disclosure agreement to be, or that is by law, bound by restrictions on the use and disclosure of such Confidential Information on the same terms set forth in this Agreement and that is (a) an advisor, agent, or representative of such Subcontractor and (b) in the case of Subcontractor, (i) whether directly or indirectly, a lender or potential lender to, investor or potential investor in, or purchaser or potential purchaser of ownership interests or assets of, Subcontractor or an affiliate of Subcontractor, or (ii) an advisor or representative of a party described in item (i).

3. To the extent, the Letter Agreement, Prime Agreement, Project Contract Documents or a Non-Disclosure Agreement required by Owner for the Project, contains more stringent confidentiality obligations, Subcontractor agrees to be bound and comply with the most stringent confidentiality and non-disclosure provisions contained therein. Subcontractor additionally agrees to be responsible for any breach of such restrictions by any of its Representatives. The obligations of this Section 3 shall survive the termination of this Agreement.

4. **Exceptions.** The terms of this Agreement shall not apply to any Confidential Information which:

(a) was already in Subcontractor’s possession and subject to legal disclosure as of the Effective Date or prior to the disclosure of the information by Clayco;

(b) is hereafter disclosed to Subcontractor without the obligation of confidence by a third party who did not disclose such information in violation of a confidentiality agreement between such person or entity and Clayco; and/or

- (c) is or becomes generally available to the public generally through no act or default on the part of Subcontractor or that of its agents, employees or advisors.

Notwithstanding anything to the contrary in this Agreement, if any Confidential Information that remains subject to the restrictions on use and disclosure in this Agreement is required to be disclosed by law or order of any court, Subcontractor may disclose such Confidential Information to the extent so required; provided, that Subcontractor shall provide prior written notice to Clayco at least ten (10) business days in advance of any such disclosure unless disclosure is required earlier (other than as a result of Subcontractor having failed to timely give the required notice) in which case Subcontractor shall provide the Clayco such advance notice as is reasonably practicable and shall request confidential treatment of such information under such laws, orders or regulations.

5. Termination. The provisions of this Agreement shall terminate on the earlier to occur of: (a) the one (1) year anniversary of the Effective Date and (b) the date on which the Parties execute a definitive agreement(s) relating to the Project containing provisions addressing non-disclosure, and restrictions on use of the Confidential Information, unless a longer period is required under paragraph 3 hereof. The Subcontractor will promptly return to Clayco or destroy, at Clayco's direction, upon termination of this Agreement and at any earlier time Clayco may request, all written or electronic records (and all copies thereof) that contain any Confidential Information of Clayco. At Clayco's request, the Subcontractor will certify in writing compliance with the foregoing, provided however, the Subcontractor may retain copies of any review material or work product to the extent permitted under the Prime Agreement or governing Project Contract Documents.

6. Ownership of Confidential Information. Each Party acknowledges, agrees and recognizes that any Confidential Information is and shall remain the property of Clayco, which shall be the sole owner thereof, and the Subcontractor further acknowledges and agrees that no right, title, license and interest in and to such Confidential Information is hereby granted to the Subcontractor, its Representatives or any other party.

7. No Warranty. Each Party acknowledges, agrees and recognizes that Clayco nor any of its affiliates, nor any of Clayco's or such affiliates' respective members, partners, officers, directors, employees, advisors, agents or controlling persons (if any), have made or will be making any express or implied representation or warranty as to the accuracy or completeness of the Confidential Information (other than representations and warranties, if any, that might be expressly set forth in a definitive agreement executed and delivered between the Parties with respect to the Project), and the Subcontractor agrees that neither the Clayco nor any of its affiliates, nor any of Clayco's or such affiliates' respective members, partners, officers, directors, employees, advisors, agents or controlling person (if any) will have any liability to Subcontractor or any of its Representatives resulting from the use of any Confidential Information.

8. Covenant Not to Compete. For a period beginning on the Effective Date through the completion of the contemplated Project, Subcontractor shall not directly or indirectly enter into agreements with any competing design professionals, consultants, contractors or developers of Clayco with regards to providing services for related to the Project, without prior written agreement of Clayco.

9. Applicable Law. THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED PURSUANT TO THE LAWS AND PROCEDURES OF THE STATE WHERE THE PROJECT IS LOCATED (THE "PROJECT JURISDICTION"), AND IF NO SUCH PROJECT IS IDENTIFIED ABOVE, THEN UNDER THE LAWS OF THE STATE OF MISSOURI, WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS AND ANY DISPUTE OR CLAIM REGARDING THIS AGREEMENT SHALL BE HEARD EXCLUSIVELY IN A STATE OR FEDERAL COURT LOCATED IN THE PROJECT JURISDICTION, IF APPLICABLE, OR IN THE ALTERNATIVE IN ST. LOUIS, MISSOURI.

10. Sole and Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and there are no other agreements, warranties or representations, written or oral, other than those contained herein or specifically incorporated herein by reference. This Agreement supersedes any and all prior agreements or understandings between the Parties with regard to the subject matter contained herein, and may only be amended, modified or extended by a writing signed by each of the Parties.

11. Successors and Assigns. The provisions of this Agreement bind the Parties and each and all of their respective heirs, legal representatives, successors and assigns. This Agreement may not be assigned by any Party without the prior written consent of the other Party.

12. Specific Performance. Subcontractor hereby agrees that money damages would not be a sufficient remedy for any breach of this Agreement, that in addition to all other remedies Clayco shall be entitled to specific performance and injunctive or other equitable relief without proof of actual damages as a remedy for any such breach, and Subcontractor further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines that Subcontractor has breached this Agreement, Subcontractor shall be liable and pay to Clayco reasonable legal fees incurred by Clayco in connection with such litigation, including any appeal relating to such litigation. Subcontractor shall notify Clayco immediately upon discovery of, or suspicion of, a breach of this Agreement; and Subcontractor shall coordinate with Clayco to investigate the breach and immediately remedy any breach and prevent any further disclosure at Subcontractor's expense in accordance with applicable privacy rights, laws, regulations and standards.

13. Notices. Each notice, request, demand, statement or routine communication allowed or permitted by this Agreement, or any notice or communication which either Party may desire to give to the other, shall be in writing and shall be considered as delivered when received by the other Party by certified United States mail, reputable overnight courier, by email or facsimile with confirmation of receipt or at such other address as either Party may designate for itself in a written notice to the other Party. Either Party may additionally designate in writing a successor representative, to the person listed below, at any time during the course of this Agreement.

If to Clayco:

If to Subcontractor:

Clayco, Inc.
35 E. Wacker Drive
Chicago IL 60601

Attention: Russ Burns

14. Definitive Agreement. Subcontractor agrees that unless and until a definitive agreement concerning the Project is reached with Clayco, neither Party will be under any legal obligation of any kind whatsoever with respect to the Project by virtue of this Agreement (other than the obligations contained herein related to non-disclosure, and limitations on use, of Confidential Information), or any written or oral expression with respect to the Project by any member, partner, officer, director, employee, advisor, agent or controlling person (if any) of either Party, or by any other person, except, in the case of this Agreement, for the matters specifically agreed to herein. The agreement set forth in this section may be modified or waived only by a separate writing by both Parties expressly so modifying or waiving such agreement.

15. Counterparts. This Agreement may be signed in one or more counterparts, each of which when taken together shall constitute one and the same instrument. Facsimile or PDF transmission of any signed original documents, and retransmission of any facsimile or PDF transmission, will be the same as delivery of any original document. At the request of a Party, the other Party will confirm facsimile or PDF signatures by delivering a signed original document.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

Clayco, Inc.

Subcontractor:

Name

Name

Title

Title