

MEMORANDUM

PIMA COUNTY ATTORNEY'S OFFICE | CIVIL DIVISION

32 N. Stone Ave., Suite 2100

Tucson, AZ 85701

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To: Hon. Rex Scott, Chair, Hon. Jennifer Allen, Vice-Chair, Hon. Steve Christy, Hon. Matt Heinz, and Hon. Andres Cano.

From: Sam Brown, Chief Civil Deputy County Attorney
Janis Gallego, Deputy County Attorney

Date: June 16, 2025

Subject: Non-Disclosure Agreements

1. Non-Disclosure Agreements.

A Non-Disclosure Agreement ("NDA" or "Confidentiality Agreement") is a legally binding contract that establishes a confidential relationship between the signing parties. NDAs ensure that information is kept confidential between the parties for a specific period of time. For example, in the case of [REDACTED] the NDA is for the earlier of 18 months following the "Effective Date" of the NDA or at the conclusion of the "Project." Another example is the recent purchase of the downtown Wells Fargo property, that NDA ended on the earlier of the 20th day from the effective date of the NDA or the effective date of the purchase and sale agreement. Both of those events have now happened so the NDA has expired and no longer in effect. In Pima County, NDAs are rare outside of the economic development context. Within this context, NDAs are used to insulate the details of the project and to facilitate negotiations by allowing developers to secure investors and financing without their business model or other financial information being disclosed publicly.

2. Pros and Cons of NDAs in the Context of Government Contracting.

In the context of government contracting, NDAs are generally disfavored due to the transparent nature of traditional government business. But, in the context of economic development, the use of NDAs is a generally accepted and routine business practice. On the one hand, NDAs facilitate

a free flow of information between parties while mitigating concerns about ideas being stolen or appropriated. NDAs also allow for more effective and robust negotiations and can protect the location of a project servicing protected individuals. On the other hand, NDAs restrict what information can be shared and with whom that information can be shared. This can cause concern and pause for those not familiar or aware of the operations or project at issue. For example, [REDACTED]

[REDACTED] The public may perceive that something nefarious is occurring, when in fact it is just the nature of the business itself. Some examples of instances where NDAs are helpful, and routine include but not limited to mergers and acquisitions; sale of technology; project financing; location of a program servicing minor children; and the location of a domestic violence shelter.

3. County Policy on NDAs

Board of Supervisor Policy D 29.4, Contracts, at Section V defines an NDA as a contract:

“The use of the term “contract” includes both procurement and non-procurement related agreements. Contracts may include, but are not limited to the following categories:

- *Non-Disclosure Agreement (NDA): A binding agreement by which one or more parties agree not to disclose to others confidential information that they have shared with each other as a necessary part of doing business together. NDAs cannot exceed 5 years.”*

Section VII, subsection “E” specifically mandates that NDAs “shall be routed to County Attorney’s Office for approval as to form.” Thus, the Pima County Attorney’s Office (PCAO) has not content-based input: our role is simply to approve as to form. This means that at least one PCAO attorney has read the NDA, agrees that it embodies the agreement between the parties, and that there is no legal obstacle to signing the agreement. It is the exclusive discretion of the Procurement Director (in conjunction with County Administration), to determine how and when to use NDAs. *A copy of the Pima County NDA Template is attached as Attachment 1.*

4. Limitations on Board Supervisors.

In most cases the party to the NDA is “Pima County, Arizona, a political subdivision of the State of Arizona” which includes all elected officials, employees and agents of Pima County as it is the county as a whole, not an individual office, department or person that is a party to the NDA. At

times, a major company will have all of its subsidiaries and affiliates be bound by an NDA. There are many ways that an NDA might limit what Board Supervisors can discuss related to a particular project. In most cases, the following can be discussed publicly, but each NDA includes specific terms:

- Information that is already in the party's possession at the time the party disclosed it or was lawfully obtained afterwards.
- Information that at the time, or in the future, becomes public by means other than the party to the NDA.
- Information that is independently developed by the party without use of the confidential information.
- Information required to be disclosed by law (e.g. the disclosure of public records).

NDAs may not protect all information due to the Arizona Public Records law even if it may otherwise protect communications in other contexts. However NDAs are written, they may be legally ineffective insofar as they would require us to "take actions contradictory to Arizona's public records law." *Johnson Utilities L.L.C. v. Town of Queen Creek*, 2019 WL 949188, at *2 (App. 2019). Essentially, under the law, if we would disclose a public record without the NDA, we may be required to disclose it *despite* the existence of the NDA. One or more of the parties to the NDA may have to demonstrate to a Court, specifically, the ways by which the disclosure of the record(s) would harm one or more parties. In so doing, a party may obtain a court order protecting the information at issue. In the County's standard NDA template, developed by our office, we cover this issue directly in paragraphs 4(a) and 7.

Section 4(a): *The obligations of Paragraph 3 do not apply to a Party's use and possession of Confidential Information that: (a) Was already in the Party's possession at the time the other Party disclosed it, or was thereafter lawfully obtained from other sources, free from obligation to any third party.*

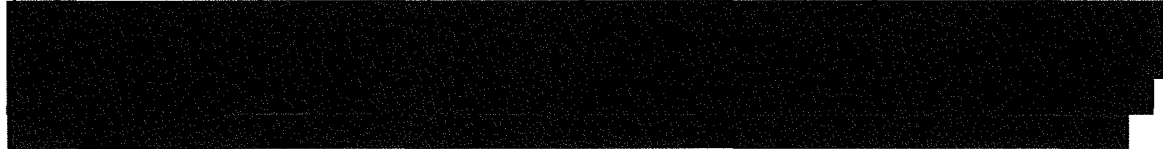
Section 7: *The parties acknowledge that the County is subject to the Arizona Public Records Law, A.R.S. §§ 39-121 through 39-128, and that the County may receive one or more public records requests to which all or part of the Confidential Information in the County's possession may be responsive. If the County receives such a public records request, the County will notify [Entity] of the request in writing. The County will be free to disclose to the requestor any responsive or arguably responsive Confidential Information, without liability to any Party under this Agreement or otherwise, unless [Entity], within ten (10) days after the date of County's written notification, obtains an order from the Pima County Superior Court enjoining the County from disclosing the Confidential Information. Section 10 below does not apply to any such action.*

Through this language, the County as a party is simply agreeing not to disclose information that may otherwise be covered under the NDA *unless* we are compelled to do so under law, and that we will notify the other party if there is a public records request, so they have an opportunity to attempt to get a court order to prevent the disclosure.

5. Pending or Active NDAs That May Lead to Public Records Requests


The following NDAs relate to development deals and, we believe, may lead to public records requests in the future. Due to the high-profile/public nature of these potential deals, and based on consultation with County Administration, we are including copies of the NDAs here to ensure Board members are informed and armed with advice regarding their import.


[2a] Downtown Properties NDA (Pima County and Wells Fargo), fully executed July 2, 2024.



Copies of these NDAs are attached as Attachments 2a – 2e.

If there are additional questions or concerns related to this memo, it's guidance, or related subjected, please reach out to me or my staff in the Civil Division.

¹ The County has a previous/active NDA with 



ATTACHMENT 1

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (this “**Agreement**”), dated _____ (the “**Effective Date**”), is made and entered into by and between the following parties (each, a “**Party**” or together, the “**Parties**”): (i) _____, a _____, (“**Entity**”), and (ii) Pima County, Arizona, a body politic and corporate (“**County**”).

1. This Agreement governs the Parties’ management of confidential and proprietary information related to _____ (“**Project**”). As used in this Agreement, the term “**Confidential Information**” means the following, disclosed before or after the date of this Agreement whether in electronic or hard copy format:
 - a) All confidential processes, plans, formulae, data (including cost, real estate, and performance data), inventions, machinery, drawings, papers, writings, specifications, manufacturing or design procedures and techniques, methods, technology, know-how, programs, databases, source codes, devices and materials related to the business, products (either existing or under development), services or activities of any Party or any affiliate, customer or client of a Party, regardless of whether or not any or all of the foregoing are, may or can be patented or copyrighted;
 - b) Any other information related to any of the trade, business, finances, products or activities of a Party or any affiliate, customer, or client of a Party, that is confidential, secret or of a proprietary nature;
 - c) Any customer or supplier usages or requirements and any of the lists of clients, prospects, customers, suppliers, or business contacts of a Party;
 - d) All communications related to the Project, whether furnished orally or by means of electronic transmission, mail, fax, or other method; and
 - e) Information relating to the **Entity**’s capabilities to support the exploration of a business toward potentially expanding or locating such business in Arizona including any materials furnished by one Party to the other which relate in any manner to such expansion or location and any information relating to negotiations regarding either Party’s assistance with such location or expansion.
2. In order to be subject to this Agreement, Confidential Information that is disclosed in tangible form must be marked by the disclosing Party as confidential or with a legend of similar import. The information must be identified with sufficient specificity to allow the other Party to unequivocally understand the information that the disclosing Party asserts to be Confidential Information. Confidential Information that is disclosed orally or visually must be identified as confidential at the time of the disclosure and disclosed in tangible form not later than seven (7) days after such oral or visual disclosure.
3. Except when authorized in writing by the other Party, or as otherwise expressly provided in this Agreement, each Party agrees that it will:
 - a) Not affirmatively disclose, publish, or disseminate the Confidential and Proprietary Information of the other Party to anyone other than those of its employees with a need to know;
 - b) Take reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination, of Confidential Information of another Party;
 - c) Not use Confidential and Information of another Party for its own or any third party’s benefit; and

- d) Not directly or indirectly use any Confidential Information of another Party for any purpose, except in connection with the Project.
4. The obligations of Paragraph 3 do not apply to a Party's use and possession of Confidential Information that:
- a) Was already in the Party's possession at the time the other Party disclosed it, or was thereafter lawfully obtained from other sources, free from obligation to any third party.
 - b) Is now, or becomes in the future, public knowledge other than through acts or omissions of the Party.
 - c) Is required to be disclosed by law; or
 - d) Is developed independently by the Party, without use of the Confidential Information.
5. A combination of individual items of Confidential Information remains confidential unless the combination itself falls within one of the above exceptions, even if the individual items that make up the combination are subject to one or more of the above-listed exceptions.
6. Upon a Party's written request, each of the other Parties will:
- a) Return all the requesting Party's Confidential Information in such Party's possession and destroy all such Confidential Information that it possesses in electronic form.
 - b) Certify in a written, signed, document that it has done the above.
7. The parties acknowledge that the County is subject to the Arizona Public Records Law, A.R.S. §§ 39-121 through 39-128, and that the County may receive one or more public records requests to which all or part of the Confidential Information in the County's possession may be responsive. If the County receives such a public records request, the County will notify [Entity] of the request in writing. The County will be free to disclose to the requestor any responsive or arguably responsive Confidential Information, without liability to any Party under this Agreement or otherwise, unless [Entity], within ten (10) days after the date of County's written notification, obtains an order from the Pima County Superior Court enjoining the County from disclosing the Confidential Information. Section 10 below does not apply to any such action.
8. Each Party will perform under this Agreement without charge to any other Party. Nothing in this Agreement gives any Party—by implication, estoppel or otherwise—any right for any Party to make any commitment for or on behalf of any other Party.
9. Nothing in this Agreement creates any partnership, joint venture, or agency relationship among the Parties. Each Party has and retains sole and exclusive ownership of its Confidential Information, including ownership of all patents, copyrights and trade secrets, and nothing in this Agreement gives any Party a license or other rights in or to the Confidential Information of another Party.
10. Any breach of this Agreement may result in irreparable injury and monetary damages alone may not be an adequate remedy for that injury. The injured Party may, if it so elects, institute and prosecute proceedings against a breaching Party, to obtain damages for breach of this Agreement, enforce the specific performance of this Agreement, or restrain or enjoin the Party from violating this Agreement. The prevailing Party in any such action is entitled to recover from the other Party all costs and expenses including, without limitation, reasonable attorney's fees.
11. No change in this Agreement will be effective unless the change is mutually agreed upon, in writing, by all Parties.

12. This Agreement expresses the sole and entire agreement among the Parties as it pertains to Confidential Information and supersedes all prior discussions, representations, and understandings regarding that subject matter.
13. No Party may assign its obligations under this Agreement to anyone else. This Agreement benefits and is binding upon each Party and its successors, heirs, and legal representatives.
14. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
15. This Agreement will be interpreted in accordance with the laws of the State of Arizona. Any action brought to interpret or enforce this Agreement shall be commenced and maintained solely and exclusively in a court of competent jurisdiction in Pima County, Arizona.
16. This Agreement will be effective as of the Effective Date and will remain in force until the earlier of five (5) years after the Effective Date or the completion of the Project.
17. This Agreement is subject to cancellation under A.R.S. § 38-511.

Pima County, a body politic and corporate

[Entity Name]

Procurement Director

Authorized Officer Signature

Date

Printed Name and Title

Date

APPROVED AS TO FORM

APPROVED AS TO CONTENT

Deputy County Attorney

Department Head

Print DCA Name

Date

Date

ATTACHMENT 2a

NON-DISCLOSURE AGREEMENT

Tucson, AZ (150 N. Stone Ave./35 E. Alameda St. – BE192797 and BE198359)

THIS NON-DISCLOSURE AGREEMENT (this “**Agreement**”) is entered into by and between WELLS FARGO BANK, N.A., a national banking association (“**Seller**”), and PIMA COUNTY, ARIZONA, a political subdivision of the State of Arizona (“**Buyer**”), as of the date this Agreement is executed by the last to sign of Seller and Buyer (the “**Effective Date**”).

Recitals:

A. Seller and Buyer are currently negotiating for the sale by Seller to Buyer of certain real property located 150 N. Stone Avenue and 35 E. Alameda Street, Tucson, Arizona, hereinafter referred to as the “**Property**”.

B. Buyer has requested access to certain documents and information relative to the Property prior to the execution of a formal purchase and sale agreement to expedite its inspection of the Property, and Seller has agreed to allow such access subject to the terms and conditions herein contained.

Agreement:

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties agree as follows:

1) Due Diligence Items. Seller shall deliver or cause to be delivered to Buyer through an online due diligence website established with respect to the Property the due diligence items listed in Exhibit A attached hereto (the “**Due Diligence Items**”) for the purpose of conducting any due diligence reasonably related to the purchase of the Property beginning on the Effective Date and ending on the earlier to occur of (i) the effective date of a formal purchase and sale agreement between Seller and Buyer pertaining to the Property (“**Purchase Agreement**”), after which time Buyer’s access to the Due Diligence Items will be governed solely by such Purchase Agreement (it being acknowledged and agreed that neither party hereto shall have any obligation to enter into a Purchase Agreement), and (ii) that date which is the twentieth (20th) day after the Effective Date (hereinafter referred to as the “**Due Diligence Period**”). Buyer expressly agrees that Seller is furnishing copies of the Due Diligence Items for informational purposes only and without representation or warranty as to the accuracy or completeness of the contents of such materials.

2) Confidentiality. Buyer hereby acknowledges and agrees that all non-public information furnished by Seller to Buyer (including without limitation, the Due Diligence Items) or obtained by Buyer in the course of Buyer’s investigation of the Property, or in any way relating to Seller or the transactions contemplated by the parties (including without limitation, the existence and terms of this Agreement, the fact that negotiations or discussions are taking place between the parties regarding the Property, and the terms of any letter of intent or term sheet negotiated by the parties regarding the Property), or in any way arising from or relating to any and all reports or studies, or in any way relating to Seller and the transactions contemplated by the parties shall be treated as confidential by Buyer and Buyer’s agents, employees or contractors (collectively, “**Buyer’s Representatives**”). Buyer understands, acknowledges and agrees to not disclose, without the prior express written consent of Seller, except to the extent such information is generally available to the public through no violation of this Agreement by Buyer or Buyer’s Representatives or as may be required by valid court order or authorized agency of government or by the Arizona public records laws (provided if not prohibited by law or regulatory authority, Buyer shall provide reasonable notice to Seller before any such disclosure to permit Seller to seek to prevent or limit such disclosure), any of the contents or information contained in any information provided by Seller (including without limitation, the Due Diligence Items), to any party other than Seller, Seller’s

agents or representatives, or Buyer's Representatives (inclusive for purposes of this paragraph of Buyer's members, directors, officers, employees, representatives, attorneys, consultants, partners or potential equity investors or lenders) who need to know such information for the purpose of evaluating Buyer's potential acquisition of the Property; provided, however, that Buyer shall inform such Buyer's Representatives of the confidential nature of the information and obtain their agreement to keep such information confidential. The obligations of this paragraph shall survive the termination or expiration of this Agreement.

3) Return of Confidential Information.

a. Upon the earlier of the termination of this Agreement or the expiration of the Due Diligence Period, Buyer will promptly return or destroy the Due Diligence Documents and all other non-public information furnished by Seller to Buyer, if any.

b. For destruction efforts, Buyer will dispose of the Due Diligence Documents and all other non-public information furnished by Seller to Buyer, if any, in a secure manner, in accordance with applicable laws and regulations, and Seller's instructions, if any.

4) Remedies. Seller will have the right to seek any and all remedies at law or in equity with respect to an actual or reasonably suspected breach of this Agreement including without limitation appropriate injunctive relief or specific performance. The protections afforded to the information disclosed by Seller to Buyer pursuant to the terms of this Agreement (including, without limitation, the Due Diligence Documents) are in addition to, and not in lieu of, the protections afforded under any applicable trade secrets or other laws.

5) Notices. Any notice required or permitted to be given under this Agreement shall be in writing and (i) personally delivered, (ii) sent by United States certified mail, postage prepaid, return receipt requested, (iii) sent by Federal Express or similar nationally recognized overnight courier service, or (iv) transmitted by electronic mail, with a hard copy sent within one (1) business day by any of the foregoing means (unless such requirement for a hard copy is waived in a return email from the party receiving the notice transmitted by electronic mail). Such notice shall be deemed to have been given upon the date of actual receipt or delivery (or refusal to accept delivery), as evidenced by the notifying party's receipt of written or electronic confirmation of such delivery or refusal, if received by the party to be notified between the hours of 8:00 A.M. and 5:00 P.M. Pacific time on any business day, with delivery made after such hours to be deemed received the following business day. For purposes of notice, the addresses of the parties shall be as follows (or such other address as either party may from time to time specify in writing delivered to the other in accordance with this paragraph):

If to Seller:

Wells Fargo Bank, N.A.
Corporate Properties Group

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

with a copy to:

[REDACTED]
Wells Fargo Bank, N.A.

[REDACTED]

If to Buyer: Pima County, Arizona
Attention: Jeff Teplitsky
Director, Real Property Services
201 North Stone Avenue, 6th Floor
Tucson, Arizona 85701
Email: Jeffrey.teplitsky@pima.gov

6) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

7) Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

8) Attorneys' Fees. In any judicial action or proceeding between or among the parties to enforce any of the provisions of this Agreement regardless of whether such action or proceeding is prosecuted to judgment and in addition to any other remedy, the non-prevailing party shall pay to the prevailing party all out-of-pocket costs and expenses (including reasonable attorneys' fees, which shall include the reasonable value of the services of any "in-house" staff attorney employed by the successful party) incurred therein by the prevailing party. For the purposes of this paragraph, the term "**prevailing party**" shall mean the party which obtains substantially the relief it sought to obtain.


9) Counterparts; Electronic Signatures. The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all parties need not appear on the same counterpart. This Agreement is valid, binding, and enforceable against a party only when executed by an authorized individual on behalf of a party by means of (i) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (ii) an original manual signature; or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature has for all purposes the same validity, legal effect, and admissibility in evidence as an original manual signature. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

10) Cancellation. This Agreement is subject to cancellation under A.R.S. § 38-511.

[signatures appear on following page]

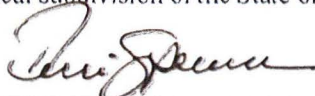
The parties hereto have executed this Agreement on the dates set forth below, effective as of the Effective Date.

SELLER: WELLS FARGO BANK, N.A.,
a national banking association

By: 
Name: _____
Title: David W. Frederickson,
Designated Signer
Date: 2024.07.02 13:57:23
-07'00'

By: _____
Name: _____
Title: _____
Date: _____

BUYER: PIMA COUNTY, ARIZONA,
a political subdivision of the State of Arizona

By: 
Name: Terri Spencer
Title: Procurement Director
Date: 7/9/2024

The parties hereto have executed this Agreement on the dates set forth below, effective as of the Effective Date.

SELLER: WELLS FARGO BANK, N.A.,
a national banking association

By: _____
Name: _____
Title: _____

Date: _____

By: Vanessa Digitally signed by
Name: Corcuchia, Vanessa Corcuchia,
Title: Assistant Vice President
Date: 2024.07.07
President 14:02:47 -07'00'

BUYER: PIMA COUNTY, ARIZONA,
a political subdivision of the State of Arizona

By: _____
Name: _____
Title: _____

Date: _____

APPROVED AS TO FORM:

By: 
Name: Bobby Yu
Deputy County Attorney

Date: 7/9/2024

EXHIBIT A

DUE DILIGENCE ITEMS

1. ALTA Survey dated March 18, 2024 prepared by Partner Engineering.
 2. BOMA Study dated March 19, 2024 prepared by Contoured, Inc.
 3. Property Condition Report dated March 1, 2024 prepared by Green Environmental Management.
 4. Preliminary Title Report dated January 21, 2024 prepared by First American Title Insurance Company.
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