



MEMORANDUM

Date: August 28, 2025

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: Jan Lesher 
County Administrator

Re: **Additional Information for Board of Supervisors September 2, 2025, Agenda Item #11 on Non-Disclosure Agreement Policy**

At the Board of Supervisors July 1, 2025 Meeting, direction was provided to the County Administrator, in collaboration with the Pima County Attorney's Office, to prepare a policy regarding the use of Non-Disclosure Agreements (NDA) in economic development projects. Attached for the Board's consideration is a draft Board of Supervisors Policy 31.3 *Use of Non-Disclosure Agreements (NDAs) in Economic Development Projects*.

The purpose of the policy is to create a consistent and transparent process for use of an NDA in economic development projects, and to provide sufficient and timely information to the Board of Supervisors and the public for informed decision making while allowing the free exchange of information between Pima County and a project entity.

The proposed draft policy achieves the following objectives:

- Authorizes the Procurement Director to enter into an NDA for 180 days, with an option to extend by 185 days upon Board of Supervisors approval
- Enables a subsequent 1-year extensions subject to Board of Supervisors approval
- Requires a confidential list of all active NDAs to be provided to the Board of Supervisors semiannually
- Requires the NDA to specify the nature of information deemed proprietary, and indicates that information on the type of use, project acreage and square footage, total amount of water and power use shall not be classified as proprietary.
- Provides the Board of Supervisors with a report in Executive Session on the project scope and user, site location and characteristics, resource uses, and results of preliminary discussions prior to extension of an NDA (coincides with proposed *Board of Supervisors Policy 31.4 Enhanced Due Diligence Process for Pima County Economic Development Projects*)
- Creates a template for NDAs, and authorizes the County Administrator to make necessary changes along with the Pima County Attorney's Office to protect the interests of the County

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- Establishes that all County employees, including elected officials, are subject to the requirements of NDAs, unless specifically exempted in the NDA in accordance with applicable laws
- Requires public disclosure of the project details shall occur no less than 90 days prior to any requested approval or vote by a County public body (i.e. Planning and Zoning Commission, Board of Supervisors, etc.)

The proposed approach seeks to balance the need for County staff to conduct thorough due diligence and assess the full scope of potential projects while recognizing and respecting the Board of Supervisors' need for information and public's right to transparency in government operations.

Through the judicious use of NDAs as outlined in the proposed draft, Pima County can ensure the necessary gathering and evaluation of information and the release of relevant details in accordance with Arizona's public records laws and the County's commitment to open governance, while also providing a mechanism that enables the County to compete effectively in a highly competitive economic development landscape.

JKL/anc

Attachment

c: Carmine DeBonis, Jr., Deputy County Administrator
Steve Holmes, Deputy County Administrator
Heath Vescovi-Chiordi, Director, Economic Development Department



PIMA COUNTY, ARIZONA BOARD OF SUPERVISORS POLICY

**Subject: Use of Non-Disclosure Agreements (NDAs) in
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I. Purpose

To establish a consistent, uniform, and transparent process for the use of Non-Disclosure Agreements (NDAs) in economic development projects that provides sufficient and timely information to the Board of Supervisors and the public to enable sound policy making decisions and public input, while also allowing the free exchange of information between Pima County and a project entity during the term of the NDA.

II. Policy

The following sets forth perimeters for Pima County's use of NDAs for economic development projects:

A. Duration

Consistent with Board of Supervisors Policy D 29.4, the Procurement Director is authorized to enter into NDAs for economic development projects subject to these terms:

- a. Initial 180-day duration from the date of signing, with an option to extend the NDA duration by 185 days thereafter subject to Board of Supervisors approval
- b. An additional extension of 1 year subject to Board of Supervisors approval, not exceeding a total duration of 2 years from the initial date
- c. A confidential list of active NDAs for economic development projects will be provided to the Board of Supervisors semiannually

B. Scope

The NDA will allow for a free flow of information between the parties during the duration of the NDA. Each NDA will specify the nature of information deemed proprietary. Information on the type of use, project acreage and square footage, total amount of water and power use shall not be classified as proprietary in the NDA or the project report referenced in Section C of this Policy.

C. Extension and Project Report

Before the expiration of the initial 180-day period or a subsequent extension period, and upon request for an extension of the NDA, the Economic Development Director will prepare, and the County Administrator will provide, a report to the Board of Supervisors about the project scope and user, proposed site location and characteristics, project phasing and plans for full buildout, anticipated resource usage, the nature of proprietary information covered by the NDA, and the result of preliminary discussions, based on the information available at the time of the report.



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This step will only occur if the NDA is requested to be extended and discussions are to continue. Otherwise, no report will be provided, and Pima County will allow the NDA to expire.

The report will be provided in Executive Session pursuant to Section D of this Policy, and Board of Supervisors direction will be sought on whether to extend or amend the NDA. If the NDA is proposed to be amended, the Board of Supervisors would be advised of the nature of any proposed changes. Under each extension timeframe, additional periodic reports about the economic development project may be given to the Board of Supervisors as needed.

D. Executive Session

Prior to expiration of an NDA, and upon request for extension, a report will be given to the Board of Supervisors in Executive Session pursuant to:

- A.R.S. § 38-431.03(A)(4): "Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation"; and
- A.R.S. § 38-431.03(A)(7): "Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property."

E. Public Disclosure Period

Public disclosure of the project details shall occur no less than 90 days prior to any requested approval or vote by a County public body (i.e. Planning and Zoning Commission, Board of Supervisors, etc.).

F. Authorization

The Procurement Director is authorized to sign all NDAs within the parameters of BOS Policy D 29.4, whether related to economic development projects or not. An NDA for an economic development project will also be signed by the Economic Development Director to approve as to content and the Pima County Attorney's Office (PCAO) as approve as to form.

G. Format



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A Pima County NDA for economic development projects will generally adhere to the attached template. If a project entity requests changes to the template or use of a different format, the County Administrator and PCAO may suggest appropriate changes necessary to protect the interests of the County. Pima County will not enter into "Unilateral NDAs".

The Pima County NDA template will undergo periodic review by the County Administrator and PCAO and be updated as necessary to protect the interests of the County while maintaining the ability to conduct business. The County Administrator is authorized to make necessary updates to the NDA template and will inform the Board of Supervisors of any updates made.

H. Coverage

All County employees, including elected officials and their staff, unless specifically exempted in the NDA in accordance with applicable laws.

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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. **Confidential Information.** 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. **Marking Tangible Confidential Information.** 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.
3. **Oral or Visual Disclosure of 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 7 days after such oral or visual disclosure.
4. **Nondisclosure of Confidential Information.** 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 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 after notice and the opportunity to obtain a court order as described in Paragraph 8;

- 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.
5. **Non-Confidential Information.** The obligations of Section 4 do not apply to a Party's use and possession of Confidential Information that:
- a) Relates to the type of use, project acreage and square footage, total amount of water, and power use by [Entity].
 - b) 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.
 - c) Is now, or becomes in the future, public knowledge other than through acts or omissions of the Party.
 - d) Is required to be disclosed by law; or
 - e) Is developed independently by the Party, without use of the Confidential Information.
6. **Combined Confidential Information.** 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.
7. **Return and Destruction of Confidential Information.** Upon a Party's written request:
- a) [Entity] will return all the County's Confidential Information in the [Entity's] possession and destroy all such Confidential Information that the [Entity's] possesses.
 - b) County will return all the [Entity's] Confidential Information in the County's possession and destroy all such Confidential Information in the County's possesses upon expiration of the applicable records retention time period.
 - c) Party will certify in a written, signed, document that it has done the above.
8. **Public Records Exception.** 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. If [Entity] believes there is Confidential Information that should not be disclosed in a public records request, [Entity] may obtain an order from the Pima County Superior Court enjoining the County from disclosing the Confidential Information. Otherwise, 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, within 10 days after the date of County's written notification, or if [Entity] requests documents for review, within 10 days after receipt of the documents proposed to be disclosed, whichever is later. Section 12 below does not apply to any such action.
9. **Notice.** County shall provide [Entity] notice under this Agreement as required under Section 8, by electronic mail, mail or certified mail to the following:

NAME
EMAIL ADDRESS
MAILING ADDRESS

10. **Not On Behalf of Other Party.** 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.
11. **No Joint Venture.** 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.
12. **Breach.** 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.
13. **Amendment.** No change in this Agreement will be effective unless the change is mutually agreed upon, in writing, by all Parties.
14. **Entire Agreement.** 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.
15. **Assignment.** 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.
16. **Counterparts.** 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.
17. **Governing Law.** 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.
18. **Term.** This Agreement will be effective as of the Effective Date and will remain in force until the earlier 180 days after the Effective Date or the completion of the Project. The Agreement may be extended for an additional 185 days by the parties signed written amendment. This Agreement may be extended for an additional 1 year, upon written amendment by the parties but in no event shall the term of this Agreement exceed a total of 2 years.
19. **Cancellation.** This Agreement is subject to cancellation under A.R.S. § 38-511.
20. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Pima County, a body politic and corporate

[Entity Name]

Procurement Director

Authorized Officer Signature

Date

Printed Name and Title

Date

APPROVED AS TO CONTENT

Economic Development Director

Date

CONCURRENCE

County Administrator

Date

APPROVED AS TO FORM

Deputy County Attorney

Print DCA Name

Date