



## NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“**Agreement**”) is entered into as of 10/22/2021 (“**Effective Date**”) by and between Project Hanks (the “**Company**”) and Tomball Economic Development Corporation (“**TEDC**”). The parties wish to protect and preserve the confidential and/or proprietary nature of information and materials that may be disclosed or made available to TEDC in connection with certain discussions, negotiations or dealings between the parties relating to the Company requesting and securing available incentives from the TEDC (the “**Purpose**”). In consideration of the foregoing and the rights and obligations set forth herein, both parties hereby agree as follows:

1) **Confidential Information.** As used in this Agreement, “Confidential Information” means all information whether of a technical, business or other nature (including, without limitation, the Company’s name or other identity, trade secrets, know-how and information relating to the technology, customers, business plan, patents, promotional and marketing activities, finances and other business affairs) that is or may be disclosed or imparted by one party to the other. Confidential Information also includes the discussions between the parties hereto with respect to possible business growth, contraction, merger and/or acquisition, facility network strategy, location strategy, economic development incentives and all information concerning such plans for, or existence and progress of, such business growth, contraction, merger and/or acquisition, facility network strategy, location strategy, economic development incentives. Confidential Information may be in any written format, including an email transmission via electronic media and oral information.

2) **Use of Confidential Information:** The parties may use the Confidential Information exclusively for the purpose of business growth, contraction, merger and/or acquisition, facility network strategy, location strategy, economic development incentive projects. Except as expressly provided in this Agreement, the party receiving Confidential Information shall not use the Confidential Information in any manner or disclose the Confidential Information to any third party without prior written consent of the giving party.

3) **Exceptions.** Confidential Information shall not include any information that: (i) is publicly available to the receiving party without breach of this Agreement; (ii) is known by and in the possession of the receiving party as at the date of this Agreement; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortuous act, or in breach of a confidentiality restriction or (iv) is required to be disclosed by applicable law, regulation, stock exchange rule or judicial process.

(b) Notwithstanding the provisions of Sections 2 and 3, a Party shall have the right to disclose Confidential Information of the other Party to the extent such disclosure is required to comply with applicable laws, regulations, court, judicial, or other government order, provided that the Party shall give the other Party reasonable notice prior to such disclosure, and shall comply with any applicable protective order, as well as to comply with any applicable code of attorney ethics. For avoidance of doubt, the Parties hereby expressly acknowledge and agree that nothing herein shall or shall be interpreted as altering, modifying, supplanting, or superseding any rights or obligations a Party may have under the applicable code of attorney ethics or judicial decisions interpreting or applying such code. **Further the Parties hereby acknowledge that this Agreement is Public Information, and that the TEDC is subject to the Texas Public Information Act.**

4) **Receiving Party Personnel.** The party receiving Confidential Information shall expressly restrict the possession, knowledge, development and use of Confidential Information to its partners, employees, consultants, professional advisors, agents, subcontractors and entities controlled by the receiving party or hired or engaged by the receiving party who have a legitimate need to know the Confidential Information. The TEDC represents that all such individuals and entities agree to be bound by the terms of this Confidentiality Agreement.

5) **Ownership of Confidential Information.** All Confidential Information shall remain the exclusive property of the party providing same and the receiving party will have no rights, by license or otherwise, to use or disseminate the Confidential Information except as expressly provided herein. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise conveyed by this Agreement.

6) **Return of Confidential Information.** The receiving party of the Confidential Information shall promptly return or destroy (and verify in writing its destruction), all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information and all electronic media or records containing or derived from Confidential Information) after the termination of the dealings between the parties hereto and upon written request by the providing party to the receiving party. Notwithstanding the foregoing, the receiving party of Confidential Information (the "Recipient") may retain such documents and records as are required to be maintained in order to satisfy any law, rule, regulation or bona fide document retention policy to which the Recipient is subject, and any such Confidential Information retained shall be kept subject to the terms of this Agreement. Notwithstanding the return of any Confidential Information, the Recipient will continue to hold in confidence all Confidential Information during the term of this Agreement.

7) **Term.** The term of this Agreement shall be for a period of one (2) years from the date hereof.

8) **No Representations.** Except as may be specifically provided hereafter in a definitive written agreement, neither Party is deemed to make or have made any representation or warranty, express or implied, as to the accuracy, utility, or completeness of any Confidential Information which is furnished hereunder, and neither Party will have liability to the other Party or its Representatives resulting from the use of any Confidential Information by such other Party or its Representatives.

9) **Limited Relationship.** Each Party acknowledges that the other Party may have considered, be considering, or consider in the future a transaction with a third party. This Agreement does not create, and may not be construed as creating, any sort of exclusive relationship between the Parties in any way whatsoever, whether related to a possible transaction or otherwise.

10) **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties relating to the matters discussed herein and may be amended or modified only with the mutual written consent of the parties.

11) **Nonwaiver.** Any failure by either party to enforce the other party's strict performance of any provision of this Agreement shall not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

12) **General.**

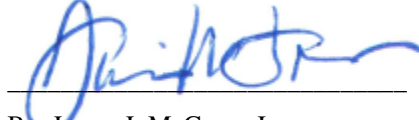
(a) This Agreement is neither intended to create, nor will it be construed as creating, a joint venture, partnership, or other form of business association between the Parties, nor an obligation to buy or sell products using or incorporating the Confidential Information.

(b) Both Parties understand and acknowledge that no license or other right is granted to or conferred upon either Party in this Agreement or by the disclosure of any Confidential Information by one Party to the other Party as contemplated hereunder, either expressly, by implication, inducement, estoppel, or otherwise, and that any license or other right must be express and in writing pursuant to a separate document.

(c) The failure of either Party to enforce any right resulting from breach of any provision of this Agreement by the other Party will not be deemed a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder. **The TEDC hereby retains any and all of its governmental immunities that it now has or may have in the future.**

(d) Neither Party may assign any rights or delegate any obligations under this Agreement (directly, by operation of law, or otherwise) without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any attempted assignment or delegation in violation of this provision will be null and void. Notwithstanding any assignment or delegation of rights or obligations hereunder (including any for which consent may be provided), the Party making the assignment or delegation will thereafter remain bound, along with the transferee, by all of such Party's obligations of confidentiality hereunder. This Agreement is governed by the laws of the State of Texas without reference to conflict of laws principles, if any.

**PROJECT HANKS**



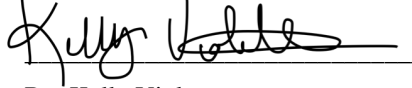
By: James J. McGraw, Jr.

As representative for the Company

President & CEO

KMK Consulting Company, LLC

**TOMBALL ECONOMIC DEVELOPMENT CORPORATION**



By: Kelly Violette

Title: Executive Director