



Travis County Commissioners Court Agenda Request

Meeting Date: 01/24/2012, 9:00 AM, Voting Session

Prepared By/Phone Number: Katie Petersen Gipson, Planning and Budget Office, 854-9346

Elected/Appointed Official/Dept. Head: Leroy Nellis, Acting County Executive
Planning and Budget

Commissioners Court Sponsor: Judge Samuel Biscoe

A handwritten signature in blue ink, which appears to be "Leroy Nellis", is written over the typed name in the "Elected/Appointed Official/Dept. Head" line.

AGENDA LANGUAGE:

Consider and take appropriate action on amendment to the economic development agreements with Hewlett Packard's Tandem and Ed Bluestein locations to combine and average the employee and property value requirements.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

Please see attached memo

STAFF RECOMMENDATIONS:

PBO recommends approval of this amendment.

ISSUES AND OPPORTUNITIES:

Please see attached memo

FISCAL IMPACT AND SOURCE OF FUNDING:

N/A

REQUIRED AUTHORIZATIONS:

Planning and Budget Office
County Judge's Office

Leroy Nellis
Cheryl Aker



**PLANNING AND BUDGET OFFICE
TRAVIS COUNTY, TEXAS**

700 Lavaca, Ste 1560
P.O. Box 1748
Austin, Texas 78767

MEMORANDUM

TO: Commissioners Court
FROM: Katie Petersen Gipson, Sr. Planning and Budget Analyst
DATE: January 18, 2012
RE: Amendment to HP Economic Development agreements

A handwritten signature in blue ink, appearing to read "Katie Petersen", is written over the "FROM:" line of the memorandum.

Travis County has two economic development agreements with Hewlett Packard, at the "Tandem" site and "Ed Bluestein" site. According to the original agreements with both the Tandem and Ed Bluestein sites they needed 70, but no fewer than 56 Full Time Equivalents by 10/1/09, 110 but no fewer than 88 by 10/1/10 and 140 but no fewer than 112 by 10/1/11.

Since signing the agreements, HP has shifted their plans whereby most of the workers (489) are at the Tandem site. If the requirements are combined then HP has exceeded the employee requirements for both agreements, however if they are not combined they are not in compliance at the Ed Bluestein site. HP is also very close, but has not quite met, the required investment amount. Should they not make the final requirements, the abatement will be reduced on a pro rata basis. Since has fulfilled the spirit of the agreement and has more than the required number of employees overall, PBO recommends that the requirements be amended whereby the totals of the two sites are averaged for the FTE count, salary and property value.

If you have any questions, please contact me at 854-9346 or Mary Etta Gerhardt at 854-9176.

cc: Mary Etta Gerhardt, County Attorney's Office
Leroy Nellis, PBO

AMENDMENT OF ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN TRAVIS COUNTY AND
HEWLETT-PACKARD COMPANY
[Tandem and Ed Bluestein Sites]

This Amendment ("Amendment") of Agreements is entered into by the following Parties: Travis County, a political subdivision of the State of Texas ("County") and Hewlett-Packard Company, a Delaware corporation duly authorized to transact business in Texas ("Company").

County and Company entered into two agreements, effective May 23, 2006, pursuant to Chapter 381, TEXAS LOCAL GOVERNMENT CODE, Chapter 312, TEXAS TAX CODE, and other applicable law whereby Company would develop data center facilities on sites designated as the Ed Bluestein Site ("Ed Bluestein Agreement") and the Tandem Site ("Tandem Agreement") pursuant to the terms of the respective agreement (collectively referred to as the "Original Agreements").

The Original Agreements provided for amendment by the written agreement signed by both of the Parties.

Pursuant to the terms, the Parties have agreed to amend the Original Agreements previously (said Original Agreements as so amended by those amendments collectively now being herein called the "Agreements").

County and Company desire to again the Agreements to reflect the change in terms as agreed to by the Parties. This Amendment is intended to reflect the change in terms in both the Ed Bluestein Agreement and the Tandem Agreement.

NOW, THEREFORE, in consideration of the mutual benefits received by these changes, and other good and adequate consideration as specified herein, the Parties amend the Agreement as follows:

1.0 EFFECT OF AMENDMENT ON AGREEMENTS

1.1 The Parties understand and agree that this Amendment will be effective as to changes in both the Ed Bluestein Agreement and the Tandem Agreement. as both have been previously amended.

2.0 COMPANY PERFORMANCE

2.1 **Required Components - Jobs - Total Number of Jobs.** As to Section 5.1.1(b)(i), the Parties agree to amend the Original Agreements so that all requirements related to the number of FTE's required to be created and maintained by Company will be considered on the basis of the totals from both the Ed Bluestein Site and the Tandem Site, with the average from the two sites being applied to determine compliance with the Agreement terms. For example, if each agreement requires a total of no fewer than 112 employees, Company may take the total of the FTE's from the Ed Bluestein Site and the total of FTE's from the Tandem Site, add those together, and take the average to determine compliance as to both Agreements. As long as the average of the totals from the two sites equals 112 or more for the applicable year, the Company will be

deemed to be in compliance. This concept will apply to all provisions in the Agreements which address FTE's.

2.2 **Required Components - Jobs - Average Salary.** As to Section 5.1.1(b)(v), the Parties agree to amend the Agreements so that all requirements related to the average salary of Company FTE's will be considered on the basis of the totals from both the Ed Bluestein Site and the Tandem Site, with the average from the two sites being applied to determine compliance with the Agreement terms. For example, if each agreement requires an average salary of \$60,000 per year with benefits, the Company may take the total of the salaries from the Ed Bluestein Site and the total of salaries from the Tandem Site, add those together, and take the average to determine compliance as to both Agreements. As long as the average from the two sites equals \$60,000 for the applicable year, the Company will be deemed to be in compliance. This concept will apply to all provisions in the Agreements which address salaries.

2.3 **Required Components - Value/Investment.**

2.3.1 **Average From Both Sites.** As to Section 5.1.1(c), "Value - Investment," the Parties agree to amend the Agreements so that all requirements related to "Value - Investment" ("Investment") in real property improvements, facilities and structures, business personal property and non-capital expenditures, the Investment required to be made by the Company will be considered on the basis of the totals from both the Ed Bluestein Site and the Tandem Site, with the average from the two sites being applied to determine compliance with the Agreement terms. For example, if each agreement requires an annual Investment of \$23,000,000, Company may take the total of the investment made at the Ed Bluestein Site and the total Investment made at the Tandem Site, add those together, and take the average to determine compliance as to both Agreements. As long as the average Investment from both sites equals \$23,000,000 for the applicable year, the Company will be deemed to be in compliance. This concept will apply to all provisions in the Agreements which address Investment.

2.3.2 **Pro-Rata Reduction.** The Parties agree to amend Section 5.1.1(c), "Value-Investment," by adding the following:

5.1.1(c)(i) **Reduction.** If, at any time during the Agreement, the amount of Investment reported by Company is less than the total required under Section 5.1.1(c) of the Agreement (utilizing the averaging technique agreed to in Section 2.3 of this Amendment), as a penalty, the amount of annual Agreement Benefits granted by County shall be decreased such that Company's benefit for that year shall be a percentage of the amount that would otherwise have been applicable for that year calculated as follows:

Actual amount of Investment divided by
Amount required by the agreement
Times 60
Equals
The percentage of abatement to be granted.

For example, if the required Investment is \$500 million, and the amount of the actual Investment is \$475 million, then the abatement percentage would be:

$$\begin{array}{rcl} (475 \div 500) & \times & 60 \text{ or} \\ .95 & \times & 60 & = & 57 \end{array}$$

meaning that the percentage of abatement for that reporting year would be 57%.

5.1.1(c)(ii) Reduction Limitation. This Section 2.3.2 notwithstanding, if the investment by Company in any year is less than the required amount by more than ___%, Company will be considered out of compliance with the Agreement, and subject to Termination under Section 8.0 of this Agreement.

2.4 **Adjacent Property.** The Parties agree that jobs referred to in Sections 2.1 and 2.2 of this Amendment include those jobs at the original Tandem and Ed Bluestein sites as well as those jobs at the "Adjacent Property" site referenced in the previous amendment to the Tandem Agreement ("Tandem Amendment"). As agreed in the Tandem Amendment, investment or construction compliance requirements do not include anything related to the Adjacent Property.

3.0 REPORTING FORM

3.1 **Attachment D, "Reporting Form."** The Parties agree to amend Attachment D as to each Agreement as follows:

- 3.1.1 Section 2, "Amount of Investment." Amend by adding the following:
B. If Company is utilizing averaging of amounts as to both the Ed Bluestein Site and the Tandem Site, Company will attach a worksheet showing the applicable numbers for each site and the average being submitted for compliance purposes.
- 3.1.2 Section 3, "Employees." Amend by adding the following:
B. If Company is utilizing averaging of numbers of FTE's as to both the Ed Bluestein Site and the Tandem Site, Company will attach a worksheet showing the applicable numbers for each site and the average being submitted for compliance purposes.
- 3.1.3 Section 4, "Salary." Amend by adding the following:
B. If Company is utilizing averaging of salaries as to both the Ed Bluestein Site and the Tandem Site, Company will attach a worksheet showing the applicable numbers for each site and the average being submitted for compliance purposes.

4.0 INCORPORATION

4.1 County and Company hereby incorporate the Agreement into this Amendment. Except for the changes made in this Amendment, County and Company hereby ratify all the terms and conditions of the Agreement as amended herein. The Agreement with the changes made in this Amendment constitutes the entire agreement between the Parties and supersedes any prior undertaking or written or oral agreements or representations between the Parties.

5.0 EFFECTIVE DATE

3.1 This Amendment is effective _____, _____, when it is approved and signed by both of the Parties. The Agreement, as amended, shall remain in effect until further modified or terminated in writing by the Parties, or until the termination date.

TRAVIS COUNTY

HEWLETT-PACKARD COMPANY

By: _____
Samuel T. Biscoe
County Judge

By: _____
Printed Name: _____
Title:

Date: _____

Date: _____