



# Travis County Commissioners Court Agenda Request

**Meeting Date:** 05/01/2012, 9:00 AM, Voting Session

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

**Elected/Appointed Official/Dept. Head:** Leslie Browder, County Executive  
Planning and Budget

**Commissioners Court Sponsor:** Judge Samuel Biscoe

## AGENDA LANGUAGE:

Consider and take appropriate action on an economic development agreement with Apple, Inc.

## BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

Attached is a final draft of an economic development agreement with Apple, Inc. The agreement incorporates all the key terms approved by Commissioners Court on 4/17/12 and it includes all attachments and minor revisions discussed on 4/24/12. It has been reviewed by Apple and their legal representatives.

## STAFF RECOMMENDATIONS:

PBO recommends approval.

## ISSUES AND OPPORTUNITIES:

N/A

## FISCAL IMPACT AND SOURCE OF FUNDING:

The estimated ad valorem tax rebate over a 15 year agreement period is between \$5.4 million and \$6.4 million depending on level of performance by the Apple on the terms of the agreement.

## REQUIRED AUTHORIZATIONS:

Planning and Budget Office  
County Judge's Office

Leslie Browder  
Cheryl Aker

**ECONOMIC DEVELOPMENT AGREEMENT**  
**BETWEEN TRAVIS COUNTY AND**  
**APPLE INC.**

This Economic Development Agreement (“**Agreement**”) is entered into by and between Travis County, Texas, a political subdivision of the State of Texas (“**County**”), and Apple Inc., a California corporation qualified to do business in Texas, its successors and assigns (“**Company**”), the owner of the taxable real property in Travis County, Texas.

**RECITALS**

WHEREAS, Travis County is authorized to enter into this Agreement under Chapter 381 of the *Texas Local Government Code* (“**Chapter 381**”); Subsection 381.004(b), authorizing counties to develop and administer community and economic development program(s) to stimulate business and commercial activity in a county; and Subsection 381.004(h), authorizing counties to develop and administer a program under Subsection 381.004(b) for making loans and grants of public money; and counties are authorized to pursue economic development under other statutes.

WHEREAS, it is the intent of Travis County and the Company that, as a result of the Company’s development under this Agreement, business and commercial activity in Travis County will be stimulated, and commercial activity will be encouraged, developed and stimulated, producing additional tax revenue, job opportunities, and small business opportunities for Travis County.

WHEREAS, the Company has stated that the Project described in this Agreement would not be completed as set forth without the herein granted County assistance.

WHEREAS, the Company intends to develop a new Americas Operations Center (“**Americas Operations Center**,” or “**Center**”), with up to 200,000 square feet in Phase I and up to 800,000 square feet in Phase II, to be located at West Parmer Lane and Delcour Drive in Austin, Texas, which will contribute to the general economy of Travis County, Texas; make significant capital investments, thus increasing the tax base for Travis County; and create new full time jobs which will benefit the job force of Travis County.

WHEREAS, the investment by the Company is estimated to be approximately \$282,500,000.

WHEREAS, the Commissioners Court finds that the development set forth in this Agreement will result in substantial immediate and long-term benefit to Travis County and significant financial benefit to other taxing entities within Travis County and will promote state and local economic development, all furthering a public purpose.

NOW, THEREFORE, in consideration of the hereinafter set forth agreements, covenants, reimbursements and payments, the amount and sufficiency of which are acknowledged, the County and the Company agree to the terms and conditions stated in this Agreement.

**1.0**     **DEFINITIONS.** In this Agreement,

1.1 “**Ad Valorem Taxes**” means those property taxes assessed by the County on real and personal property located within Travis County.

1.2 “**Affiliate**” means all companies under common control with, controlled by, or controlling the Company. For purposes of this definition, “control” means 50% or more of the ownership determined by either value or vote.

1.3 “**Agreement Funds**” means all money paid to the Company pursuant to this Agreement.

1.4 “**Agreement Term**” means that time period commencing on the Effective Date of this Agreement, and continuing through December 31, 2030.

1.5 “**Base Year**” means calendar year 2012.

1.6 “**Base Year Value**” means the taxable value assessed by the County for the purpose of the payment of Travis County Ad Valorem Taxes on the Eligible Property on January 1, 2012, as set forth on the certified tax rolls of the County.

1.7 “**City Agreement**” means the Economic Development Agreement between the Company and the City of Austin, a copy of which is attached to this Agreement and marked Attachment D.

1.8 “**Commissioners Court**” means the Travis County Commissioners Court.

1.9 “**Completion Date**” references construction, and means the date of issuance of the Certificate of Occupancy for the Project. The Parties agree that the Completion Dates will be as follows:

1.9.1 Phase I Completion Date: on or before December 31, 2015

1.9.2 Phase II Completion Date: on or before December 31, 2021

1.10 “**Construction Delay**” means a material delay in the construction of the New Improvements for the Project that affects the Construction Timetable and is the result of (i) force majeure as described in Section 14.6, or (ii) the inability of the Company, through no fault of its own, to obtain the necessary permits and approvals of the City of Austin, or other governmental entity, in a timely manner.

1.11 “**Construction Timetable**” means the timetable for the commencement and completion of construction of the various buildings comprising the New Improvements that will be needed to enable the Company to provide the Required Number of Jobs in accordance with the Employment Schedule.

1.12 “**Contract Employees**” means, collectively, Employees of the Company, or persons hired by an employment agency or other company, to perform Contract Jobs.

1.13 “**Contract Jobs**” mean those jobs performed by independent contractors of the Company or employees of the Company’s independent contractors.

1.14 “**County Auditor**” means Susan Spataro, the Travis County Auditor, or her successor.

1.15 “**Effective Date**” for purposes of the Agreement Term, will be May 1, 2012, upon execution of the Agreement by both Parties.

1.16 “**Employees**” means, collectively, employees of the Company performing existing Full-time Jobs or New Full-time Jobs.

1.17 “**Employment Year**” means each of the ten (10) years referenced in paragraph (b) of Section 5.1.2

1.18 “**Employment Schedule**” means the schedule in paragraph (b) of Section 5.1.2 for the Company to provide the Required Number of Jobs.

1.19 “**Existing Full-time Jobs**” are full-time jobs held by employees of the Company or independent contractors or employees of independent contractors that are employed at an existing Company facility in Austin prior to the Effective Date, excluding employees of the Company’s retail stores.

1.20 “**Eligible Property**” means all real and tangible business personal property of the Project which was not present on the Property as of the Base Year of this Agreement and which is subject to assessment for Ad Valorem Taxation by the County (excluding inventory, supplies and the purchase price of the real property) as more fully described in this Agreement as more fully described in Attachment A, also referred to herein as the New Improvements and New Machinery and Equipment.

1.21 “**Is doing business**” and “**has done business**” mean:

1.21.1 Paying or receiving any money or other valuable thing in exchange for personal services or for purchase or use of any property interest, either real or personal, either legal or equitable; or

1.21.2 Loaning or receiving a loan of money, services, or goods or otherwise creating or having in existence any legal obligation or debt;

but does not include:

1.21.3 Any payments, receipts, loans, or receipts of a loan which are less than \$250.00 per calendar year in the aggregate; or

1.21.4 Any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public.

1.22 “**Key Contracting Person**” means any person or business listed in Exhibit A to the Ethics Affidavit attached to this Agreement and marked Attachment B.

1.23 “**New Full Time Jobs**” are full-time jobs created after the Effective Date and held by employees of the Company or independent contractors or employees of independent contractors that are employed at the Project.

1.24 “**New Improvements**” means that development done by the Company as part of the Project to be constructed, expanded and renovated as set forth in this Agreement. A list of the proposed New Improvements is set forth on Attachment A hereto and made a part hereof.

1.25 “**New Machinery and Equipment**” means machinery, equipment, and other items treated as personal property by the relevant taxing authorities, and purchased after the Effective Date, and installed and used at the Project for the purpose of supporting the operations of the Company.

- 1.26 “Parties” and “Party” means the County and/or the Company.
- 1.27 “Payment Term” means that time period beginning on January 1, 2016, and ending on December 31, 2030, unless earlier terminated pursuant to the terms of this Agreement. Each calendar year within the Payment Term is designated as a Payment Year.
- 1.28 “Payment Year Value” means the taxable value of new improvements on the Property determined by TCAD for the purpose of the payment of Travis County Ad Valorem Taxes on the Eligible Property for any tax year included in the Payment Term of this Agreement as set forth on the certified tax rolls of the County.
- 1.29 “PBO” means Travis County Planning and Budget Office.
- 1.30 “Project” means the proposed development, as described herein, of the new Americas Operations Center of the Company, as more fully described in Attachment A.
- 1.31 “Property” means the land (real property) on which the Project will be developed as further described in Attachment A.
- 1.32 “Rebate” means grant funds paid by the County to the Company (pursuant to *Texas Local Government Code*, Chapter 381, Subsection 381.004(h) and other statutes) as a result of performance of obligations under this Agreement, the amount of which is based on a percentage of specified Ad Valorem Taxes paid by the Company on the Eligible Property.
- 1.33 “Rebate Percentage” means the percentages referenced in Section 4.1.1 to be used to calculate the Rebate paid to the Company pursuant to this Agreement.
- 1.34 “Required Annual Compensation” means the average annual compensation, excluding health insurance and retirement benefits.
- 1.35 “Required Number of Jobs” means, for any calendar year during the Agreement Term, the minimum number of Existing Full-time Jobs and New Full-time Jobs the Company is required to either create or maintain during that calendar year as stated in Section 5.1.2.
- 1.36 “Subcontract” means any agreement between the Company and another party to fulfill, either directly or indirectly, any of the requirements of this Agreement, in whole or in part.
- 1.37 “Subcontractor” means any party providing services required under this Agreement pursuant to an agreement between Company and that party, including contractor(s), subcontractor(s), and other subrecipient(s) of the Company; and any party or parties providing services for the Company which are required under the terms of this Agreement.
- 1.38 “TCAD” means the Travis Central Appraisal District.
- 1.39 “Termination Date” means the earlier to occur of
- (a) December 31, 2030, or
  - (b) the date on which this Agreement Term is terminated pursuant to the other provisions of this Agreement.

## **2.0 GENERAL TERMS**

2.1 **Authority; Statutory Authorization.** The County is authorized to enter into this Agreement under the *Texas Local Government Code*, Chapter 381, Subsection 381.004 (and other applicable provisions of the *Texas Local Government Code*, Chapter 381, and other applicable statutes), in order to stimulate business and commercial activity in Travis County, Texas.

2.2 **Purpose.** The purpose of this Agreement is to grant benefits to the Company in order to stimulate and encourage business and commercial activity in Travis County, to create more job opportunities, build the sales and property tax base and promote a partnership relationship with the private sector businesses that will bring capital intensive projects to Travis County.

### **2.3 Terms.**

2.3.1. **Agreement Term.** The County and the Company acknowledge and agree that, unless earlier terminated by the Parties pursuant to the terms of this Agreement, this Agreement shall be effective commencing on May 1, 2012 (the Effective Date, as defined herein), and continuing through December 31, 2030, unless earlier terminated pursuant to the terms of the Agreement.

2.3.2. **Payment Term.** The payment of the Agreement Funds will take place upon compliance with all terms of this Agreement beginning on the first year of the Payment Term which begins January 1, 2016 , and continues through December 31, 2030 (unless earlier terminated pursuant to the terms of this Agreement), as defined in this Agreement; provided, however, in recognition of the fact that Agreement Funds will be calculated and paid after taxes have been assessed and paid to the County, and therefore always in arrears, the Agreement Term shall be deemed to include the time necessary for the payment of any Agreement Funds to the Company which extend beyond the period of time defined as the Agreement Term in Section 1.4.

2.4 **Administration of Agreement.** This Agreement shall be administered for the County by the Travis County Planning and Budget Office (PBO). Company shall provide the County through PBO with all information required for the County to determine and ensure compliance with every term of this Agreement, including those forms attached hereto.

## **3.0 ENTIRE AGREEMENT**

3.1 **All Agreements.** All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement, including the applicable terms of the Agreement, have been reduced to writing and are contained in this Agreement.

3.2 **Attachments.** The attachments enumerated and denominated below are hereby made a part of this Agreement, and constitute promised performances by the Company in accordance with all terms of this Agreement.

- 3.2.1. Attachment A - Description of Property and Project
- 3.2.2. Attachment B - Ethics Affidavit
- 3.2.3 Attachment C - Reporting Form
- 3.2.4 Attachment D - City of Austin Agreement

## **4.0 AGREEMENT FUNDS**

4.1 **Agreement Funds.**

4.1.1. **Rebate Basis.** Subject to the terms and conditions set forth in this Agreement, in consideration of full and satisfactory performance of the requirements and obligations under this Agreement, the County hereby grants the Company a Rebate as follows:

(a) **Initial Ten Year Payment Period.** For the Initial Ten Year Payment Term (defined as January 1, 2016 – December 31, 2025, the Rebate shall be computed as an amount equal to sixty percent ( 60%) of the excess of the Payment Year Ad Valorem Taxes paid on Eligible Property over the Base Year Ad Valorem Taxes paid on Eligible Property. Said Rebate shall be computed as follows:

*(Payment Year Ad Valorem Taxes Paid – Base Year Ad Valorem Taxes Paid) X .60 = Annual Reimbursement/Rebate by County*

(b) **Subsequent Five Year Payment Period.** For the Subsequent Five Year Period (defined as the five-year period following the Initial Ten Year Period, or January 1, 2026 – December 31, 2030) rebate shall be computed as an amount equal to forty percent (40%) of the excess of the Payment Year Ad Valorem Taxes paid on Eligible Property over the Base Year Ad Valorem Taxes paid on Eligible Property. Said rebate shall be computed as follows:

*(Payment Year Ad Valorem Taxes Paid - Base Year Ad Valorem Taxes Paid) X .40 = Annual Reimbursement/Rebate by County*

The above Rebate Percentages are subject to adjustment as provided in Section 5.2 and Section 8.4.

4.1.2. **Rebate Due Date.** Until the Termination Date, County shall reimburse Company annually the amount due under this Agreement with respect to a tax year according to the schedule set forth in Section 4.2.1.

4.1.3. **New Improvements and New Machinery and Equipment.** The incentives provided under this Agreement shall be granted for the New Improvements and New Machinery and Equipment for the Project described in Attachment A.

4.1.4. **Continuing Taxation.** During the Agreement Term, the Company shall be subject to all County taxation not rebated under this Agreement, and to all other applicable taxation. Ad Valorem Taxes shall be payable in full on the Company's taxable property, with rebate to be paid by the County pursuant to this Agreement as follows:

(a) The taxable value of ineligible property (property not included under the definition of Eligible Property) shall be fully taxable, with no rebate.

(b) The Base Year Value of the properties of the Company shall be fully taxable, with no Rebate.

(c) The value of Eligible Property shall be fully taxable with rebate by County to Company of sixty percent (60%) of that payment (if attributable to the Initial Ten Year Payment Period) or forty percent (40%) of that payment (if attributable to the Subsequent Five-Year Payment Period) as set forth in this Agreement.

#### 4.2 **Determination and Payment of Agreement Funds.**

4.2.1. **Reporting/Completion/Payment Dates.** The following dates will guide performance, reporting and payment under the terms of the Agreement. The Parties agree that, at any time, reporting, compliance determination and monitoring may allow for payment on an earlier schedule or may require payment on a later schedule, and the Parties will both cooperate to meet all Agreement requirements and provide for payment as expeditiously as possible. However, the following guidelines will be utilized to direct reporting, monitoring and payment to the best abilities of the Parties:

(a)	1/1/12 – 12/31/12	Base Year Value determined by TCAD (tax bill for 2012)
(b)	5/1/12	Effective Date (upon execution by both Parties)
(c)	5/1/12 – 12/31/30	Agreement Term
(d)	12/31/15	Completion of Phase I \$56,500,000 Investment
(e)	1/1/16	Payment Term begins (Payment made in 2016 will be based on 2015 performance)
*(f)	3/31/16	Annual Report due as to performance for 2015
*(g)	4/30/16	County response due on Annual Report (as applicable)
*(h)	9/1/16 – 9/30/16	County budget process for FY '17
*(i)	10/31/16	County payment due (if full compliance confirmed)
(j)	12/31/16	300 New Full-time Jobs Created
(k)	1/1/17	Second Payment Year begins
*(l)	3/31/17	Annual Report due as to performance for 2016
*(m)	9/1/17 – 9/30/17	County budget process for FY '18
*(n)	10/31/17	County payment due (if full compliance confirmed)
(o)	12/31/17	Additional 300 New Full-time Jobs Created (600 total)
(p)	12/31/18	Additional 50 New Full-time Jobs Created (650 total)
(q)	12/31/21	Completion of Phase II
(r)	12/31/25	End of Initial Ten Year Payment Period Additional 2,985 New Full-time Jobs Created (3,635 total)
(s)	12/31/30	End of Subsequent Five Year Payment Period End of 15 year payment period

\* Report/Payment process repeats each year of 15 year Payment Term.

All above dates are subject to adjustment pursuant to the provisions of this Agreement.

4.2.2. **Annual Report.** For each tax year during the Payment Term of this Agreement, subject to performance by the Company of its obligations hereunder, the County shall rebate and pay to the Company by check or wire transfer the amount to be rebated from Ad Valorem Taxes paid by Company for said tax year according to the following procedure:

(a) **Annual Reporting Form.** On or before March 31 of each year during the Payment Term (beginning as shown in Section 4.2.1 above), the Company shall notify TCAD, Travis County Tax-Assessor Collector and PBO in writing of its calculation of the Agreement Funds due to the Company by the County for the immediately preceding tax year ("**Annual Reporting Form**") using the format of the Annual Reporting Form attached to this Agreement as Attachment C. The Annual Reporting Form will show the amount of Ad Valorem Taxes paid on



Eligible Property by the Company for said tax year that are attributable to the Base Year Value and the amount of Ad Valorem Taxes paid on Eligible Property by the Company that are attributable to the Payment Year Value for that tax year, and will include a completed Annual Reporting Form, a copy of the tax bill and a copy of the evidence of payment issued by the Company in payment of that bill (and a copy of any other documentation required by the County pursuant to this Agreement). Initial submission of the Annual Reporting Form and Payment shall proceed as set forth in Section 4.2.1.

(b) **Certification of Compliance.**

(i) **Annual Certification.** The Reporting Form (also referred to herein as the “**Agreement Funds Notice**”) attached to this Agreement will also include the Company’s signature certifying that the Company warrants to the County that it is in full compliance with each of its obligations under this Agreement, including the number of jobs maintained by the Company for the preceding year. The Company shall provide such forms annually, and shall certify annually to the County that the Company is in compliance with all applicable terms of this Agreement.

(ii) **Inability to Comply.** If the Company cannot certify complete compliance with the terms of the Agreement, the Company shall include a full and complete explanation of the reasons for the failure to comply along with the Company’s plans to achieve compliance or reasons that compliance cannot be achieved. Upon receipt of such explanation, the Commissioners Court of the County may, at its sole discretion, agree to work with the Company to develop a mutually agreeable amendment to this Agreement with which the Company can comply, or terminate the Agreement by written notice given to the Company within ninety (90) days after the Agreement Funds Notice including the notice of inability to comply is given to the County.

(c) **Access, Monitoring and Inspections.**

(i) **Access.** The Company shall provide access to and authorizes monitoring visits of the Project as necessary to determine compliance with this Agreement.

(ii) **Inspection.** The County has the right to inspect the Project (see Sections 5.3.2 and 5.8.2) and pertinent records of the Company as necessary to verify compliance. Inspections shall be preceded by at least seventy-two hours’ notice by telephone to the head of the Center or other person designated by the Company, and may be attended by the Company representatives. Visits and Inspections shall be conducted so as not to interfere with the business operations of the Company and shall comply with the Company’s safety standards. The County acknowledges and agrees that the work of constructing and installing the Project is of highly sensitive nature and, therefore, the County agrees that it will not make any type of recording or photographic record of the interior of the facility and agrees to keep all information relating to its contents confidential to the maximum extent allowed by law. Inspections/monitoring visits will be made by the County Executive of PBO (or her designee, with the Company’s approval) and staff, and will be limited to review of those reports and information necessary to verify the Company’s compliance with the requirements of this Agreement.

(iii) **Monitoring.** In order to verify compliance with employment requirements, the County will be provided access on site to those original reports submitted by the Company to the Texas Workforce Commission and any and all other data used by the Company as the basis for certification of the number of FTE's, the average salary, and the investment made pursuant to the requirements of the Agreement. Supporting documentation will be made available at the Company's Austin location in a format that allows for easy review by the County (magnetic tapes will not be considered acceptable format). The Company acknowledges and agrees that the County may make ongoing inspections/monitoring visits under these same conditions as specified in this Agreement throughout the Agreement Term to ensure ongoing compliance with the terms of this Agreement. Any additional review will be as mutually agreed to by the County and the Company, and strictly limited to that information necessary to confirm Agreement compliance. If the County determines that the documentation provided is insufficient to adequately document the accuracy of the information or disputes the accuracy of the information, the County reserves the right to require additional information as reasonably necessary to complete the final review and approval of the information submitted and to withhold approval of the Agreement Funds Notice until such additional information is made available pursuant to this Section 4.2.2.

(iv) **Personal Data.** In the course of verifying, the Company's compliance with the requirements of this Agreement, the County and the County's employees, agents, consultants and contractors assigned to perform any portion of the review and inspection may obtain certain information relating to identified or identifiable individuals ("**Personal Data**"). The County acknowledges that it shall have no right, title or interest in any Personal Data obtained by it as a result of this Agreement, and will not use the Personal Data for any purpose other than verification of the Company's compliance with the requirements of this Agreement. The County shall take appropriate legal, organizational and technical measures to ensure the confidentiality of Personal Data, and protect Confidential Data against unauthorized disclosure or access, and against all other unlawful forms of processing, keeping in mind the nature of such data. In the event the County collects Personal Data, the County shall at all times comply with the Company's lawful instructions regarding the Personal Data, as well as all applicable laws, regulations, and international accords or treaties.

(v) **County Coordination With City of Austin.** The Parties agree that the County may designate individuals from the City of Austin ("**City**") or a designated outside consultant of the County or the City to assist in accessing, inspecting, monitoring and evaluating the Company's performance under this Agreement, and the Company agrees to cooperate with the City representatives (or consultant) in such instances.

4.2.3. **Rebate Amount.** Upon verification by the County of the amount shown in the Agreement Funds Notice and other reporting information provided by the Company to the County under this Agreement, the County shall grant and pay to the Company the Agreement Funds calculated in accordance with Section 4.1.1.

4.2.4. **Material Issues in Agreement Funds Notice.** If the County identifies any material issues in the Agreement Funds Notice, the County will advise the Company of such material issues that are identified in the verification process within 30 days of receipt of the Agreement Funds Notice and other reporting information to allow the Company to correct/complete such Agreement Funds Notice. Should the Company and the County be unable to agree to the completion/correction of the Agreement Funds Notice within thirty (30) days of receipt of the notice by the Company of material issues, the matters will be addressed as provided in Section 8 of this Agreement.

4.2.5. **Final Rebate.** The final grant of Agreement Funds by the County to the Company pursuant to this Agreement shall be based on the Agreement Funds Notice relevant to the last year of the Agreement Term. Upon the County's paying of said final payment as described in this Section 4.2.5, this Agreement shall terminate.

## 5.0 **COMPANY PERFORMANCE**

5.1 **Requirements for Rebate.** The Company agrees to do the following to receive and retain the 60% Rebate during the Initial Ten Year Term and the 40% Rebate during the Subsequent Five Year Period, as described in Section 4.1.1:

5.1.1. **Construction and Operation of Project.** The Project, as described in Attachment A, must meet the following requirements regarding the construction and operation of the Project:

(a) **Location.** The Project will be located at West Parmer Lane and Delcour Drive in Austin, Texas, or other location within the City of Austin's Desired Development Zone (as defined in Section 25-1-21 of the *Austin City Code*).

(b) **Ownership and Use.** The Property on which the current Project is located must be owned by the Company or its Affiliate, and the Project will be used for the Company's Americas Operations Center, as more particularly described in Attachment A. Any additional land utilized under this Agreement will be owned by the Company or its Affiliate and subject to the requirements of this Section 5.1.1. The Company agrees that the Project is not located in an improvement project financed by tax increment bonds and does not include any property that is owned or leased by a member of the Commissioners Court.

(c) **Phased Construction and Required Investment.** The Project will be constructed in two phases. Phase I will have approximately 200,000 square feet of space in two buildings, and the Company will invest a minimum of \$56,500,000 for New Improvements and New Machinery and Equipment for Phase I by no later than December 31, 2015. Phase II will have approximately 800,000 square feet in several buildings, and the Company will invest a minimum of \$226,000,000 for New Improvements and New Machinery and Equipment for Phase II by no later than December 31, 2021. In the event that the Company exceeds the minimum Phase I investment, the value of such excess may be applied toward the minimum Phase II investment. Investments will be as documented by the Company in its rendition to TCAD for each year of the Agreement Term.

(d) **Minority and Women-Owned Business Enterprises.** The Company will use good faith efforts and will encourage its agents and contractors to use good faith efforts, to ensure that Minority and Women-Owned Business Enterprises and Historically Underutilized Businesses have the opportunity to participate in the design, construction and operation of the Project. The Company will comply with the conditions and requirements of Section 1.04 of the City

Agreement regarding the opportunity for Minority and Women-Owned Business Enterprises to participate in the design and construction of the Project and as suppliers for materials and services for the operation of the Project, and such compliance will be deemed to be compliance with the above provisions in this paragraph (d).

(e) **Construction Laws.** In the execution of the construction contracts for Phase I and Phase II, the Company will comply with all applicable state and federal laws relating to construction, including laws related to labor, equal employment opportunity, safety, and minimum wage. The Company agrees to make commercially reasonable efforts to work with the Workers Defense Project in an effort to meet this obligation.

5.1.2. **Employment.** The Company must meet the following employment requirements:

(a) **Required Number of Jobs.** In addition to retaining 3,100 Existing Full-time Jobs, the Company shall create at least 3,635 New Full-time Jobs by December 31, 2025. If there is a shortfall during any year of the Agreement Term regarding the Company's retention of 3,100 Existing Full-time Employees, such shortfall shall be offset to the extent that the actual cumulative total of New Full-time Jobs exceeds the specified cumulative total of New Full-time Jobs for such year as stated the following Employment Schedule. Contract Jobs shall not exceed 25% of the total of Existing Full-time Jobs and New Full-time Jobs at any time during the Agreement Term.

(b) **Employment Schedule.** The 3,635 New Full-time Jobs shall be added by the Company in accordance with the following Employment Schedule:

Employment Year One: 300 New Full-time Jobs by December 31, 2016.

Employment Year Two: 300 additional New Full-time Jobs by December 31, 2017, for a cumulative total of 600 New Full-time Jobs.

Employment Year Three: 50 additional New Full-time Jobs by December 31, 2018, for a cumulative total of 650 New Full-time Jobs.

Employment Year Four: 150 additional New Full-time Jobs by December 31, 2019, for a cumulative total of 800 New Full-time Jobs.

Employment Year Five: 350 additional New Full-time Jobs by December 31, 2020, for a cumulative total of 1,150 New Full-time Jobs.

Employment Year Six: 420 additional New Full-time Jobs by December 31, 2021, for a cumulative total of 1,570 New Full-time Jobs.

Employment Year Seven: 450 additional New Full-time Jobs by December 31, 2022, for a cumulative total of 2,020 New Full-time Jobs.

Employment Year Eight: 450 additional New Full-time Jobs by December 31, 2023, for a cumulative total of 2,470 New Full-time Jobs.

Employment Year Nine: 525 additional New Full-time Jobs by December 31, 2024, for a cumulative total of 2,995 New Full-time Jobs.

Employment Year Ten: 640 additional New Full-time Jobs by December 31, 2025, for a cumulative total of 3,635 New Full-time Jobs.

(i) Ongoing Employment Obligations. During each year of the remainder of the Agreement Term after December 31, 2025, the Company shall continue to have not less 3,100 Existing Full-time Jobs and 3,635 New Full-time Jobs.

(ii) Excess Credits. If the cumulative total of New Full-time Jobs during any Employment Year exceeds the required number for such Employment Year, the excess number shall be credited against any shortfall in the required number of New Full-time Jobs during any subsequent Employment Year.

(iii) Construction Delay Impact – Construction Timetable and Employment Schedule. The County acknowledges that the foregoing Employment Schedule is based on the Company’s ability to construct the buildings and other facilities that will be needed to accommodate 3,635 New Full-time Employees in accordance with its Construction Timetable for Phase I and Phase II of the Project. If there is a Construction Delay that will materially affect the Construction Timetable, the Company will give written notice to the County. The County Executive shall thereafter have the authority to extend the deadlines for completing the construction of the Phase I and Phase II Improvements and to modify the Employment Schedule in an equitable manner, if the County Executive reasonably determines that a Construction Delay has occurred and that such Construction Delay will materially affect the Construction Timetable. In no event, however, shall the December 31, 2025 deadline for the Company to create 3,635 of New Full-time Jobs be extended by the County Executive.

(c) **Required Annual Compensation.** The Required Annual Compensation for all New Full-time Jobs, excluding Contract Jobs, must not be less than the following amounts at the end of each Employment Year:

<u>Employment Year</u>	<u>Required Annual Compensation</u>
One	\$ 54,000
Two	\$ 56,000
Three	\$ 58,000
Four	\$ 61,000
Five	\$ 63,000
Six	\$ 65,000
Seven	\$ 67,000
Eight	\$ 70,000
Nine	\$ 72,000
Ten	\$ 73,500

During each year of the remainder of the Agreement Term after December 31, 2025, the Required Annual Compensation shall not be less than \$73,500.

(d) **Recruitment.** The Company will comply with the conditions and requirements of Section 1.03 of the City Agreement regarding the recruitment of Employees for New Full-time Jobs.

(e) **Company Health Benefits.** For Employees who are hired to provide the Required Number of Jobs pursuant to this Agreement, the Company must provide, and ensure that Employees who perform Contract Jobs are provided, health benefits as follows:

(i) the health benefits must be provided to the Employees and their family members and domestic partners; and

(ii) meet all applicable federal requirements for benefits provided;

(iii) with the Company or other provider contributing to such health benefits.

(f) **Livable Wage.** During the Payment Term, the average of the annual wages paid to the lowest paid 10% of the Company's Employees that are included as part of the Required Number of Jobs must be greater than \$35,000, and hourly wages of paid to Contract Employees that are included as part of the Required Number of Jobs must be greater than the County's livable, minimum wage of \$11.00 per hour.

(g) **Opportunity To Correct Deficiency.** If the Company has not satisfied the requirements and conditions described in paragraphs (b), (c), (d), (e), and (f) above at the end of any year during the Payment Term, the Company shall have a period of ninety (90) days after the end of the applicable year to correct such deficiency, but the County shall not have any obligation to give the Company notice concerning such deficiency pursuant to Section 8.5. If the Company fails to correct the deficiency within such 90-day period, the Company shall be not be entitled to receive the applicable Agreement Funds for such year.

### 5.1.3. **Employee Transportation.**

(a) **Transportation Program.** The Company has an existing Transportation Program at its current facilities in the Riata Vista Office Park to encourage its employees to use public transportation services, reduce traffic congestion and promote cycling and other transportation options, which include the following features: (i) free shuttle service is provided to nearby Capital Metro Transit Stations and Express Bus routes; (ii) monthly subsidy for employees using public transportation; (iii) online carpool matching service to connect employees with similar commuting routes; (iv) online bicycle route matching service to connect employee cyclists; (v) monthly subsidy to promote cycling; (vi) onsite showers, lockers and racks for cyclists; (vii) taxi vouchers for employees who use public transportation, carpool or bicycle in the event of a personal or family emergency; and (viii) free onsite shuttle service around the Company's campus. During the Agreement Term, the Company shall continue to maintain a Transportation Program for the employees at the Project with substantially similar features.

(b) **Lone Star Rail District.** The County and the Company agree that convenient access to public transportation is important to the region and to the Project, and the County and the Company support the efforts of the Lone Star Rail District to convert the existing Union Pacific rail line to commuter rail service between the Austin and San Antonio metropolitan areas, and to include one or more transit stations near the Project. The Company agrees to participate in discussions with representatives of the Lone Star Rail District, other governmental entities and other area landowners regarding the proposed location of nearby transit stations and possible sources of financing that may include participation by the Company and other area landowners.

5.2 **Requirements for Additional Rebate and Goal Components.** The 60% Rebate during the Initial Ten Year Period and the 40% Rebate during the Subsequent Five Year Period, as described in Section 4.1.1, shall be increased by the following additional Rebate Percentages if the Company performs the following obligations:

5.2.1 **LEED Certification.** The Company shall be entitled to receive five percent (5%) additional rebate percentage if the Company achieves LEED Certification from the U.S. Green Building Council for building or buildings to be constructed on the Property. The additional Rebate Percentage shall not be applicable until the Company has provided the County with the appropriate documentation concerning the LEED Certification for such buildings.

5.2.2 **Travis County Residents.** If the Company provides written certification to the County that 50% or more of the cumulative total of New Full-time Jobs for any Employment Year, or any year thereafter during the Agreement Term, are held by residents of Travis County, the Rebate Percentage for that year shall be increased by an additional 5%.

5.2.3 **Project Goals.** The following components of the Project are goals which the Company agrees to make a good faith effort to attain:

(i) **Environmental.** The Project will be completed and maintained in a manner which preserves and respects the natural environment by maintaining green space as set forth in the plan of development presented to and approved by the City of Austin, as evidenced by certificates of occupancy from the City of Austin. The Company shall not violate any federal, state or local legislation and/or regulation(s) which prohibit or regulate deleterious effects on the environment within the Project. This Property may not be located over an environmentally sensitive aquifer or contributing zone, and the Company hereby certifies that the Property is not located over an environmentally sensitive aquifer or contributing zone.

(ii) **Parking.** Development will be completed in a manner which includes adequate parking.

(iii) **Community Improvement.** The County acknowledges the active participation by the Company in community development activities which contributes to the development and improvement of Travis County in areas beyond those directly related to business and the economy. The Company agrees to make commercially reasonable efforts to continue such participation related to local education, job training and job mobility through activities such as financial contributions to local schools and volunteer work within the community.

5.3 **Reports.**

5.3.1. **Annual Report.**

(a) **Annual Report Filing.** Beginning the end of the first year of the Payment Term, the Company shall provide an annual report (and/or other reports as reasonably requested by County) reflecting the fulfillment of all requirements of this Agreement in a format provided by County and included in this Agreement as Attachment C ("**Reporting Form.**") The Company shall provide the Chief Appraiser of TCAD ("**Appraiser**"), the Travis County Tax Assessor-Collector and PBO any and all information necessary for administration of this Agreement,

including a completed reporting form (Attachment C - "Reporting Form – Agreement Funds Notice") within a reasonable time after the end of each calendar year in the Payment Term, allowing adequate time for the Company to collect the data and submit to the County the resulting report which will reflect information related to the previous 12-month period (or other time period as specified). The Company acknowledges and agrees that the Reporting Form is a document that will be available to the public. The Company considers any other information provided to the County and the other governmental entities referenced above to be proprietary and confidential, and such documents and information will not be disclosed by the County except as required under the Texas Public Information Act.

(b) **Other Information.** The Reporting Form shall include the information necessary to meet applicable requirements under the *Texas Tax Code*. The Appraiser of TCAD shall annually determine (i) the taxable value pursuant to the terms of this Agreement and (ii) full value without rebate under this Agreement. The Appraiser shall record both the rebated taxable value and the full taxable value in the appraisal records. The full taxable value figure listed in the appraisal record shall be used to compute the amount of rebated taxes that are required to be recaptured and paid in the event this Agreement is terminated in a manner that provides for recapture under this Agreement. Each year, the Company shall furnish the Appraiser with such information outlined in the *Texas Tax Code*, Chapter 22, as may be necessary for the administration of the rebate specified herein. Company shall be entitled to appeal any determination of the Appraiser in accordance with the provisions of the *Texas Tax Code*.

5.3.2. **County Monitoring of Reports.** The County retains the right to monitor and audit the findings in all reports provided or made available to the County under this Agreement as necessary to confirm compliance with the terms of this Agreement (see Section 5.8.2). The Company shall retain all reports made by third parties related to this Agreement and allow the County reasonable access to such reports if County requests the opportunity to review such reports. The County will only request such review upon reasonable cause to question the accuracy of the Report submitted by the Company to the County.

5.3.3. **Report Information.** The following general information, as applicable for each year in a reporting period will be included:

- (a) documentation to show commencement date and completion date (as applicable);
- (b) total value of completed Project (as certified by TCAD for Travis County Ad Valorem Taxation);
- (c) total number of Existing Full-time Jobs and total number of New Full-time Jobs and date of hire for each;
- (d) average salary of New Full-time Jobs, excluding Contract Jobs;
- (e) information showing the amount of County Ad Valorem Taxes paid by the Company and the amount of Agreement Funds reimbursed by the County to date;
- (f) other information as necessary to support compliance with terms of this Agreement, including Section 5.1.1(d); and
- (g) certification as to accuracy of report and compliance with the terms of the Agreement.

5.3.4. **Job Data.** The Reporting Form shall also include data showing the number of Existing and New Full-time Jobs created and maintained as a result of the Project and the average



salary for those jobs, including that information specifically set forth in the Reporting Form (Attachment C). The Company shall create and maintain such records as necessary for the County to audit performance under this requirement, including documentation which supports that information shown in the Reporting Form and any other information reasonably necessary to calculate FTEs as related to performance under this Agreement. As provided in Section 5.8.2, the County may require such other documentation as reasonably deemed necessary to support reported employment efforts of the Company as required under this Agreement.

5.3.5. **Ad Valorem Taxes.** The Reporting Form shall include information showing the amount of Travis County Ad Valorem Taxes due for payment by Company, the amount by which the Ad Valorem taxes would be rebated as a result of compliance with the applicable terms of this Agreement and other information as specified in the form attached as Attachment C.

5.4 **Company Authority.** The Company warrants that Company has the authority to enter into this Agreement and that the person signing this Agreement on behalf of the Company is duly authorized to do so.

5.5 **Accuracy of Information.** The Company will use commercially reasonable efforts to ensure that all reports, data and information submitted to the County will be accurate, reliable and verifiable according to the terms of this Agreement. Approval by the County of such information shall not constitute nor be deemed a release of the responsibility and liability of the Company, its employees, agents or associates for the accuracy and competency of their reports, information documents, or services, nor shall approval be deemed to be the assumption of such responsibility by the County for any defect, error, omission, act or negligence or bad faith by the Company, its employees, agents, or associates.

5.6 **W-9 Taxpayer Identification Form.** The Company shall provide the County with an Internal Revenue Service Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations, and a statement of entity status in a form satisfactory to the County Auditor before any Agreement Funds may be paid to the Company.

5.7 **Indemnification and Claims.**

5.7.1. **INDEMNIFICATION.** The Company agrees to and shall indemnify and hold harmless the County, its officers, agents, and employees, from and against any and all claims, losses, damages, negligence, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees ("Claim"), for injury to or death of any person, for any act or omission by the Company, or for damage to any property, arising out of or in connection with the work done by the Company under this Agreement, whether such injuries, death or damages are caused by the Company's sole negligence or the joint negligence of the Company and any other third party.

5.7.2. **Claims Notification.** If any claim, or other action, including proceedings before an administrative agency is made or brought by any person, firm, corporation, or other entity against the Company or the County relating to the enforcement of this Agreement, the Party with notice of the Claim shall give written notice to the other Party of the Claim, or other action within three (3) working days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a Claim, or that instituted or threatened to institute any type of action or proceeding; the basis of the Claim, action or proceeding; the court or administrative tribunal, if any, where the Claim, action or proceeding was instituted; and the name or names of any person against whom this Claim is being made or

threatened. This written notice shall be given in the manner provided in the “**Notice**” provision of this Agreement. Except as otherwise directed, the Party with notice of the Claim shall furnish to the other Party copies of all pertinent papers received by that Party with respect to these Claims or actions.

## 5.8 **Miscellaneous Responsibilities.**

5.8.1. **Change in Project.** The Company shall notify the County immediately and in advance where possible, of any significant change relating to the Project that may affect the Company’s performance under this Agreement, including any change in the Company’s name or identity.

5.8.2. **Employment Records and Investment Certification.** In order to verify compliance with employment, salary and investment requirements, the Company will provide the County with an annual written certification (attached to the Reporting Form) by an authorized representative of the Company of the following:

- (i) Number of Existing and New Full-time Jobs
- (ii) Average Salary of New Full-time Jobs
- (iii) Amount of investment pursuant to this Agreement

The Company agrees to provide the County access at the Company’s Austin location at the time of submission of the certification and as needed to any and all supporting documentation which was utilized in making the determinations reported in the certification as to the number of FTE’s, the average salary and the amount of investment by the Chief Financial Officer. This supporting documentation will be made available at the Company’s Austin location in a format that allows for easy review by the County.

If the County determines that the documentation provided is insufficient to adequately document the accuracy of the information or disputes the accuracy of the information, the County reserves the right to require additional information as necessary to complete the final review and approval of the information submitted and to withhold approval of the Agreement Funds Notice until such additional information is made available pursuant to this **Section 5.8.2.**

5.8.3. **Record Maintenance.** Company shall maintain all records and reports required under this Agreement for a period of three years after the termination date, or until all evaluations, audits and other reviews have been completed and all questions or issues, including litigation, are resolved satisfactorily, whichever occurs later.

## 6.0 **AMENDMENTS**

6.1. **Written Amendments Only.** Unless specifically provided otherwise in this Agreement, any change to the terms of this Agreement or any attachments to it shall be made in writing and signed by both Parties. An amendment may only be approved by the Parties if the terms and provisions of the amendment reflect provisions which could have been included in the original Agreement.

6.2. **Acknowledgments as to Amendments.** It is acknowledged by the Company that no officer, agent, employee or representative of the County has any authority to change the terms of this Agreement or any attachments to it unless expressly granted that authority by the Commissioners Court under a specific provision of this Agreement or by separate action by the Commissioners Court. Verbal discussion or other indications of changes to this Agreement will not be effective.

6.3. **Submission**. The Company shall submit all requests for all changes, alterations, additions or deletions of the terms of this Agreement or any attachment to it to PBO , Attention: Leslie Browder, County Executive (or her successor in office) with a copy to the County Judge, Samuel T. Biscoe, or his successor in office. This Agreement shall be administered by PBO, and all information provided by the Company to the County shall be provided through PBO.

## 7.0 **COMPLIANCE**

7.1. **Federal, State and Local Laws**. The Company shall provide all services and activities performed under the terms of this Agreement in compliance with the Constitutions of the United States and Texas and with all applicable federal, state, and local orders, laws, regulations, rules, policies, and certifications governing any activities undertaken during the performance of this Agreement. The Company shall meet all applicable requirements of the County and the City codes and ordinances, rules and regulations and permit requirements, and all necessary inspections will take place in a timely manner. The Company will make all hiring decisions in compliance with the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990 and will not discriminate against any employee or applicant for employment on the basis of race, religion, color, national origin, age or handicapping condition in accordance with the Company's policies.

7.2. **Law and Venue**. This Agreement is governed by the laws of the State of Texas and all obligations under this Agreement shall be performable in the City of Austin, Texas or in Travis County, Texas. It is expressly understood that any lawsuit, litigation, or dispute arising out of or relating to this Agreement will take place in State Court in Travis County and the City of Austin. The Parties acknowledge and agree that each Party shall be responsible for any attorneys' fees incurred by that Party relating to this Agreement.

7.3. **Immunity or Defense**. Section 7.2 notwithstanding, the Company expressly understands and agrees that, neither the execution of this Agreement nor the conduct of any representative of the County shall be considered to be a waiver of, nor shall it be deemed to have waived, any immunity or defense that would otherwise be available to it against claims arising in the exercise of its governmental powers and functions, nor shall it be considered a waiver of sovereign immunity to suit. The Company and the County shall have all remedies and defenses allowed by law.

7.4. **Failure to Comply**. The Commissioners Court may cancel or modify this Agreement, as set forth herein, if the Company fails to comply with the Agreement.

## 8.0 **TERMINATION AND DEFAULT**

8.1. **Termination**. This Agreement may be terminated in the following circumstances:

8.1.1. **Election Not to Proceed Prior to Rebate**. In the event the Company elects not to proceed with the Project as contemplated by this Agreement prior to the first receipt by the Company of the Agreement Funds, the Company shall notify County in writing, and this Agreement and the obligations on the part of both Parties shall be deemed terminated and of no further force or effect.

8.1.2. **Successful Completion**. This Agreement will terminate upon completion of the performance of the respective terms and conditions of the Agreement by both Parties or upon termination pursuant to the terms of this Agreement.

8.1.3. **Failure to Comply.**

(a) **Termination by County.** After notice of default and opportunity to cure pursuant to Section 8.5, this Agreement may be terminated, at the election of the County, if the Company fails to comply with the following conditions and requirements as set forth herein (each referred to herein as a “**Termination Event**”):

(i) The Company fails to comply with the requirements in paragraphs (a) and (b) of Section 5.1.1 regarding the location of the Project and the ownership and use of the Property.

(ii) The Company fails to complete the construction of Phase I and invest a minimum of \$56,500,000 by December 31, 2015 (or any extended deadline as the result of a Construction Delay), or fails to complete the construction of Phase II and invest a minimum additional amount of \$226,000,000 by December 31, 2021 (or any extended deadline as the result of a Construction Delay, as more particularly described in paragraph (c) of Section 5.1.2.

(iii) The Company fails to retain 3,100 Existing Full-time Jobs and create at least 3,635 New Full-time Jobs by December 31, 2025 (or any extended deadline as the result of a Construction Delay), as provided in paragraph (a) of Section 5.1.2.

(iv) The Company allows its Ad Valorem Taxes to the County, the City of Austin, Round Rock Independent School District, Austin Community College District, Central Health District, or other local taxing entity to become delinquent and fails to timely and properly follow the legal procedure for their protest and/or contest.

In the event this Agreement is terminated by the County pursuant to this paragraph (a), the County shall have the right to recapture all of the Agreement Funds paid to the Company for the two (2) previous years pursuant to paragraph (a) of Section 8.2; no further Agreement Funds shall be payable by the County to the Company; and this Agreement shall be of no further force or effect.

(b) **Termination by Company.** After notice of default and opportunity to cure pursuant to Section 8.5, this Agreement may be terminated by the Company without prejudice to any other right or remedy which the Company or the County may possess, if the County fails to comply with its obligations under this Agreement

**8.1.4. Judicial Finding.** This Agreement may be terminated by either the County or the Company if the Rebate agreed to be made by the County herein is found to be invalid or illegal by a court of competent jurisdiction and said judicial decision is not overturned on appeal or is no longer subject to appeal. In the event that this Agreement is terminated under this Section 8.1.4, the County shall have the right to recapture all of the money rebated to Company under this Agreement to the extent but only to the extent that said judicial decision specifically requires said Rebate to be refunded to the County, and there is no other lawful manner by which the County can reimburse, pay or credit the Company with the amount of said Rebate that is refunded as a result of said judicial decision.

8.2. **Recapture of Agreement Funds.** After notice of default and opportunity to cure pursuant to Section 8.5, the County shall have the right to recapture Agreement Funds previously paid to the Company in the following circumstances:

(a) If the Agreement is terminated because of an uncured Termination Event pursuant to paragraph (a) of Section 8.5, the County has the right to recapture an amount equal to all of the Agreement Funds paid to the Company for the two (2) previous years.

(b) If Company fails to meet the following requirements as of December 31, 2030, the County has the right to recapture an amount equal to all of the Agreement Funds paid by to the County for the five (5) year period prior to December 31, 2030:

(i)	Total retained Existing Full-Time Jobs:	3,100
(ii)	Total New Full-time Jobs:	3,635
(iii)	Total Investment:	\$282,500,000

8.3. **Right to Withhold Agreement Funds.** In addition to the rights granted to the County to terminate this Agreement because of a Termination Event pursuant to paragraph (a) of Section 8.1.5, and/or to recapture Agreement Funds previously paid to the Company pursuant to Section 8.2, the County shall have the right to withhold any unpaid Agreement Funds in the following circumstances:

(a) As provided in paragraph (g) of Section 5.1.2, the County may withhold Agreement Funds for any year in which the Company fails to comply with the requirement of paragraphs (b), (c), (d), (e), and (f) of Section 5.1.2; or

(b) If the Company is in default with respect to any of its obligations under this Agreement, the County shall have the right to withhold the payment of any Agreement Funds the Company would otherwise be entitled to receive until such default has been cured.

8.4. **Reduction of Rebate Percentage.** The Company's Contract Jobs exceed 25% of the total Existing Full-time Jobs and New Full-time Jobs during any year of the Payment Term, the Rebate Percentage for the year in which such non-compliance occurred shall be decreased by 5%.

8.5. **Notice and Opportunity to Cure.** If either Party is in default with respect to such Party's obligations under this Agreement, the non-defaulting Party shall give written notice of such default to the defaulting Party pursuant to the notice provisions in Section 10. The defaulting Party shall then have a period of ninety (90) days the receipt of such notice to cure such default. If the defaulting Party fails to cure such default within such 90-day period, the non-defaulting Party shall have the right to exercise the right and remedies provided for in this Agreement; provided, however, the County shall have the right to withhold the payment of Agreement Funds to the Company pursuant to Section 8.3, until the default is cured by the Company.

## 9.0 **MISCELLANEOUS PROVISIONS**

9.1. **Independent Contractor.** The parties expressly acknowledge and agree that the Company is an independent contractor and assumes all of the rights, obligations and liabilities applicable to it as an independent contractor. No employee of the Company shall be considered an employee of the County or gain any rights against the County pursuant to the County's personnel policies. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party. The relationship of the County and the Company under this Agreement is not and shall not be construed or interpreted to be a partnership, joint venture or agency. The relationship of the Parties shall be an independent contractor relationship. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other Party.

9.2. **Agreement Limitation.** This Agreement sets out the agreements and obligations between the County and the Company only, and does not obligate the County in any way nor create any third party beneficiary rights as between the County and any of the Company's subcontractors, nor to any other third party. The County shall not under any circumstances be liable to the Company's creditors or subcontractors for any reimbursements under this Agreement.

9.3. **Representations and Warranties.** The County represents and warrants to the Company that this Agreement is within its authority, and that it is duly authorized and empowered to enter into this Agreement unless otherwise ordered by a court of competent jurisdiction. The Company represents and warrants to the County that it has the requisite authority to enter into this Agreement.

## 10.0 **NOTICES**

10.1. **Requirements.** Except as otherwise specifically noted herein, any notice required or permitted to be given under this Agreement by one party to the other shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at the address hereinafter specified.

10.2. **County Address.** The address of the County for all purposes under this Agreement shall be:

Honorable Samuel T. Biscoe (or his successor in office)  
County Judge  
P.O. Box 1748  
Austin, Texas 78767

With copies to (registered or certified mail with return receipt is not required):

Honorable David Escamilla (or his successor in office)  
Travis County Attorney  
P.O. Box 1748  
Austin, Texas 78767  
ATTENTION: Civil Transactions

and

Cyd Grimes, Purchasing Agent (or her successor)  
Travis County Purchasing  
P. O. Box 1748  
Austin, Texas 78767

10.3. **Company Address.** The address of the Company for all purposes under this Agreement and for all notices hereunder shall be:

Apple Inc.  
c/o Dana Pesce, Director of Real Estate Development  
1 Infinite Loop, MS 47-2RE  
Cupertino, CA 95014

With a copy to (registered or certified mail with return receipt is not required)

Apple Inc.  
c/o Real Estate Counsel  
1 Infinite Loop, MS 4-DLAW  
Cupertino, CA 95014

10.4 **Change of Address.** Each party may change the address for notice to it by giving notice of the change in compliance with Section 10.0. Any change in the address shall be reported to the County within fifteen (15) days of the change.

10.4. **Change of Name.** If a change of name is required by the Company, in addition to the requirements of Section 5.8.1, the Company shall notify the County in writing immediately pursuant to this Section 10.0.

## 11.0 **PROHIBITIONS**

11.1. **County Forfeiture of Agreement.** As to payment of Agreement Funds, if the Company has done business with a Key Contracting Person as listed in Exhibit "A" to Attachment C to this Agreement during the 365 day period immediately prior to the date of execution of this Agreement by the Company or does business with any Key Contracting Person at any time after the date of execution of this Agreement by the Company and prior to full performance of this Agreement, the Company shall forfeit all County benefits of this Agreement and the County shall retain all performance by the Company and recover all considerations, or the value of all consideration, granted to the Company pursuant to this Agreement.

11.2. **Conflict of Interest.** The Company shall ensure that the Company will not take any action that would result in any person who is an employee, agent, consultant, officer, or elected or appointed official of the County who exercises or has exercised any functions or responsibilities with respect to activities performed pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect to it, or the proceeds under it, either for him or herself or those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

11.3. **Solicitation.** The Company warrants that no persons or selling agency was or has been retained to solicit this Agreement upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by the Company to secure business. For breach or violation of this warranty, the County shall have the right to terminate this Agreement without liability, or, in its discretion to, as applicable, add to or deduct from the consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

11.4. **Gratuities.** The County may cancel this Agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise were knowingly offered or given by the Company or any agent or representative to any County official or employee with a view toward securing favorable treatment with respect to the performing of this Agreement. In the event this Agreement is cancelled by the County pursuant to this provision, the County shall be entitled, in addition to any other rights and remedies, to recover from the Company a sum equal in amount to the cost incurred by the Company in providing such gratuities.

11.5. **Limitation.** The Parties understand and agree that the above prohibitions do not apply to any ceremonial gift which might be offered by the Company and accepted by the County or a County representative in an open and public event to commemorate the decision to locate the Project on the Property to commence construction of the Project so long as such offering and acceptance does not violate applicable law.

## 12.0 **ASSIGNABILITY**

12.1. **Assignment.** This Agreement may not be assigned to a new company without prior written approval of the County; provided, however, the Company may assign to an Affiliate of the Company without approval of the Commissioners Court of the County, so long as Company shall remain responsible and obligated to the County for the performance of its obligations under the Agreement. Written notice of such assignment shall be provided to the County prior to the assignment. No assignment shall be approved if the assignor or assignee are indebted to the County for Ad Valorem Taxes or other obligations.

12.2. **Binding Agreement.** Subject to Section 12.1, this Agreement shall be binding upon the successors, assigns, administrators, and legal representatives of the parties to this Agreement.

## 13.0 **INTERPRETATIONAL GUIDELINES**

13.1. **Computation of Time.** When any period of time is stated in this Agreement, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday or a day that County has declared a holiday for its employees these days shall be omitted from the computation.

13.2. **Numbers and Gender.** Words of any gender in this Agreement shall be construed to include any other gender and words in either number shall be construed to include the other unless the context in the Agreement clearly requires otherwise.

13.3. **Headings.** The headings at the beginning of the various provisions of this Agreement have been included only to make it easier to locate the subject matter covered by that section or subsection, and are not to be used in construing this Agreement.

## 14.0 **OTHER PROVISIONS**

14.1. **Survival of Conditions.** Applicable provisions of this Agreement shall survive beyond termination or expiration of this Agreement until full and complete compliance with all aspects of these provisions has been achieved where the parties have expressly agreed that those provisions should survive any such termination.

14.2. **Non-Waiver of Default.** One or more acts of forbearance by any Party to enforce any provision of this Agreement or any reimbursement, payment, act or omission by any Party shall not constitute or be construed as a waiver of any breach or default of any other Party which then exists or may subsequently exist.

14.3. **Reservation of Rights.** If any Party to this Agreement breaches this Agreement, the other Party(ies) shall be entitled to any and all rights and remedies provided for by the Texas law and any applicable Federal laws or regulations. All rights of either Party under this Agreement are specifically reserved and any payment, reimbursement, act or omission shall not impair or prejudice any remedy or right to said Party under it. The exercise of or failure to exercise any right or remedy in this Agreement or



in accordance with law upon the other Party's breach of the terms, covenants, and conditions of this Agreement, or the failure to demand the prompt performance of any obligation under this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken or not taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

14.4. **Severability.** Subject to Section 8.1.5, if any portion of this Agreement is ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision thereof and the remainder of it shall remain valid and binding and as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

14.5. **Dispute Resolution.** When mediation is acceptable to all Parties in resolving a dispute arising under this Agreement, as a condition precedent to filing any lawsuit, the Parties agree to mediate said dispute with the Dispute Resolution Center of Austin, Texas, as the provider of mediators for mediation as described in *Texas Civil Remedies and Practice Code*, Section 154.023. Unless all Parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in *Texas Civil Remedies and Practice Code*, Section 154.073, unless all Parties agree, in writing, to waive said confidentiality.

14.6. **Force Majeure.** Neither Party shall be financially liable to the other Party for delays in performance or failures to perform under this Agreement caused by force majeure (i.e. those causes generally recognized under Texas law as constituting impossible conditions). Such delays or failures to perform shall extend the period of performance until these exigencies have been removed. The Party seeking to avail itself of this clause shall notify the other Party within ten (10) business days or otherwise waive the right as a defense, unless notification is impractical under the circumstances, in which case notification shall be done in as timely a manner as possible.

14.7. **Multiple Originals.** This Agreement may be executed by the parties in multiple counterparts, each one being considered an original for any purpose.

TRAVIS COUNTY

APPLE INC.

By: \_\_\_\_\_  
Samuel T. Biscoe  
County Judge  
Date: May \_\_, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: May \_\_, 2012

**ATTACHMENT A**

**DESCRIPTION OF PROPERTY AND PROJECT**

**LEGAL DESCRIPTION OF PROPERTY**

Tract 1: Lots 1, 2, 3 and 4, Block "C", Milwood Section 20, a subdivision in Travis county, Texas, according to the map or plat thereof, recorded in Volume 85, Page 129D of the Plat Records of Travis County, Texas.

Tract 2: Lots 1, 2, 4, 5 and 6, Block "A", Milwood Section 20, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 85, Page 129D of the Plat Records of Travis County, Texas.

Tract 3: Lot 3-A, Block "A", Amended Plat of Lot 3, Block A, Milwood Section 20, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded under Document No. 200800185 of the Official Public Records of Travis County, Texas.

**DESCRIPTION OF PROJECT**

The Project will be the Company's Americas Operations Center, which will be the operational center of the Company for the Americas region outside of the Company's global offices in Cupertino, California. The Company requires an operational center to centralize various functions, such as accounting, human resources and finance. The Project will be constructed in two phases. Phase I will be up to 200,000 square feet in two buildings to be located on Tract 1, and Phase II will be up to 800,000 square feet in several buildings to be constructed on Tracts 2 and 3, which are referred to in the foregoing Agreement as the New Improvements. The Project will also include the necessary New Machinery and Equipment (as defined in the Agreement) for the operation of the Americas Operations Center.

**ATTACHMENT B**  
**ETHICS AFFIDAVIT**

Date: \_\_\_\_\_  
Name of Affiant: \_\_\_\_\_  
Title of Affiant: \_\_\_\_\_  
Business Name of Company: \_\_\_\_\_  
County of Company: \_\_\_\_\_

Affiant on oath swears that the following statements are true:

1. Affiant is authorized by Company to make this affidavit for Company.
2. Affiant is fully aware of the facts stated in this affidavit.
3. Affiant has read and fully understands the agreement and this affidavit.
4. Company has received the list of key contracting persons associated with this Agreement which is attached to this affidavit as Exhibit "A".
5. Affiant has personally read Exhibit "A" to this Affidavit.
6. Affiant has no knowledge of any key contracting person on Exhibit "A" with whom Company is doing business or has done business during the 365 day period immediately before the date of this affidavit whose name is not disclosed in the Invitation for Bids.

Signature of Affiant

\_\_\_\_\_

Address:

SUBSCRIBED AND SWORN TO before me by \_\_\_\_\_ on \_\_\_\_\_, 200\_\_.  
Notary Public, State of Texas

Typed or printed name of notary: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**EXHIBIT A TO ATTACHMENT B**  
**LIST OF KEY CONTRACTING PERSONS**

**March 27, 2012**

**CURRENT**

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Name of Business Individual</u>	<u>is</u>
<u>Associated</u>			
County Judge.....	Samuel T. Biscoe		
County Judge (Spouse).....	Donalyn Thompson-Biscoe		
Executive Assistant .....	Cheryl Brown		
Executive Assistant .....	Melissa Velasquez		
Executive Assistant .....	Josie Z. Zavala		
Executive Assistant .....	Cheryl Aker		
Commissioner, Precinct 1.....	Ron Davis		
Commissioner, Precinct 1 (Spouse) .....	Annie Davis	Seton Hospital	
Executive Assistant .....	Deone Wilhite		
Executive Assistant .....	Felicitas Chavez		
Commissioner, Precinct 2 .....	Sarah Eckhardt		
Commissioner, Precinct 2 (Spouse).....	Kurt Sauer	Daffer	McDaniel,
<u>LLP</u>			
Executive Assistant .....	Loretta Farb		
Executive Assistant .....	Joe Hon		
Executive Assistant .....	Peter Einhorn		
Commissioner, Precinct 3.....	Karen Huber		
Commissioner, Precinct 3 (Spouse) .....	Leonard Huber	Retired	
Executive Assistant .....	Garry Brown		
Executive Assistant .....	Lori Duarte		
Executive Assistant .....	Jacob Cottingham		
Commissioner, Precinct 4.....	Margaret Gomez		
Executive Assistant .....	Edith Moreida		
Executive Assistant .....	Norma Guerra		
County Treasurer .....	Dolores Ortega-Carter		
County Auditor .....	Susan Spataro, CPA		
County Executive, Administrative .....	Vacant		
County Executive, Planning & Budget .....	Leslie Browder*		
County Executive, Emergency Services .....	Danny Hobby		
County Executive, Health/Human Services .....	Sherri E. Fleming		
County Executive, TNR .....	Steven M. Manilla, P.E.*		
County Executive, Justice & Public Safety .....	Roger Jefferies		
Director, Facilities Management .....	Roger El Khoury, M.S., P.E.		
Chief Information Officer .....	Joe Harlow		

Director, Records Mgmt & Communications Steven Broberg  
 Travis County Attorney ..... David Escamilla  
 First Assistant County Attorney ..... Steve Capelle  
 Executive Assistant, County Attorney ..... James Collins  
 Director, Land Use Division ..... Tom Nuckols  
 Attorney, Land Use Division..... Julie Joe  
 Attorney, Land Use Division..... Christopher Gilmore  
 Director, Transactions Division ..... John Hille  
 Attorney, Transactions Division..... Tamara Armstrong  
 Attorney, Transactions Division..... Daniel Bradford  
 Attorney, Transactions Division..... Mary Etta Gerhardt  
 Attorney, Transactions Division..... Barbara Wilson  
 Attorney, Transactions Division..... Jim Connolly  
 Attorney, Transactions Division..... Tenley Aldredge  
 Director, Health Services Division..... Vacant  
 Attorney, Health Services Division..... Prema Gregerson  
 Purchasing Agent ..... Cyd Grimes, C.P.M., CPPO  
 Assistant Purchasing Agent ..... Marvin Brice, CPPB  
 Assistant Purchasing Agent..... Bonnie Floyd, CPPO, CPPB, CTPM  
 Purchasing Agent Assistant IV..... Vacant  
 Purchasing Agent Assistant IV..... Lee Perry  
 Purchasing Agent Assistant IV..... Jason Walker  
 Purchasing Agent Assistant IV..... Richard Villareal  
 Purchasing Agent Assistant IV..... Patrick Strittmatter\*  
 Purchasing Agent Assistant IV..... Lori Clyde, CPPO, CPPB  
 Purchasing Agent Assistant IV..... Scott Wilson, CPPB  
 Purchasing Agent Assistant IV ..... Jorge Talavera, CPPO, CPPB  
 Purchasing Agent Assistant IV..... George R. Monnat, C.P.M., A.P.P.  
 Purchasing Agent Assistant IV..... John E. Pena, CTPM  
 Purchasing Agent Assistant IV..... Rosalinda Garcia  
 Purchasing Agent Assistant III..... Shannon Pleasant, CTPM\*  
 Purchasing Agent Assistant III..... David Walch  
 Purchasing Agent Assistant III..... Michael Long, CPPB  
 Purchasing Agent Assistant III..... Vacant  
 Purchasing Agent Assistant III..... Loren Breland, CPPB  
 Purchasing Agent Assistant III..... Nancy Barchus, CPPB  
 Purchasing Agent Assistant III..... Jesse Herrera, CTP, CTPM, CTCM\*  
 Purchasing Agent Assistant III..... C.W. Bruner, CTP  
 HUB Coordinator ..... Sylvia Lopez  
 HUB Specialist..... Betty Chapa  
 HUB Specialist..... Jerome Guerrero  
 Purchasing Business Analyst..... Scott Worthington  
 Purchasing Business Analyst..... Jennifer Francis

**FORMER EMPLOYEES**

Name of Individual

<u>Position Held</u>	<u>Expiration</u>	<u>Holding Office/Position</u>	<u>Date of</u>
Purchasing Agent Assistant IV.....	07/31/12	Oralia Jones, CPPB ...	
County Executive, Planning & Budget .....	08/19/12	Rodney Rhoades.....	
Purchasing Agent Assistant IV.....		Diana Gonzalez .....	12/16/12
Director, Health Services Division....		Beth Devery... ..	03/09/13
Purchasing Agent Assistant III.....		Elizabeth Corey, C.P.M.....	03/14/13

\* - Identifies employees who have been in that position less than a year.

**CURRENT - continued**

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Name of Business Individual is Associated</u>
Purchasing Agent Assistant III.....	Oralia Jones, CPPB	
Purchasing Agent Assistant III.....	Lori Clyde, CPPB	
Purchasing Agent Assistant III.....	Rosalinda Garcia	
Purchasing Agent Assistant III.....	Loren Breland	
Purchasing Agent Assistant III.....	Jorge Talavera*	
Purchasing Agent Assistant II.....	Donald E. Rollack	
Purchasing Agent Assistant II.....	Vacant	
Purchasing Agent Assistant II.....	Nancy Barchus*	
HUB Coordinator.....	Sylvia Lopez	
HUB Specialist. ....	Betty Chapa	
HUB Specialist. ....	Jerome Guerrero*	
Business Analyst II .....	Scott Worthington	

**FORMER EMPLOYEES**

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Date of Expiration</u>
Purchasing Agent Assistant III.....	Jimmy Ramirez, CPPB.....	01/21/06
Purchasing Agent Assistant IV .....	Jerry Raisch, CPPB .....	03/04/06
Executive Assistant.....	Barbara Cilley ....	05/02/06
Executive Assistant.....	Cheryl Aker.....	07/27/06
Purchasing Agent Assistant II.....	Manuel Perez.....	07/29/06
Purchasing Agent Assistant IV .....	Sylvia Gonzalez..	08/12/06

\* - Identifies employees who have been in that position less than a year.

**ATTACHMENT C- REPORTING FORM – AGREEMENT FUNDS NOTICE**  
**TRAVIS COUNTY ECONOMIC DEVELOPMENT PROGRAM**

**REPORTING YEAR:** \_\_\_\_\_

**(YEAR** \_\_\_\_\_ **OUT OF 15)**

Company shall complete the following pursuant to the applicable terms of the Agreement.

**1. CONSTRUCTION COMMENCEMENT AND COMPLETION**

**A. Date construction on Project commenced:**

\_\_\_\_\_

**B. Date Certificate of Occupancy Issued:**

\_\_\_\_\_

**C. Date of LEED Certification**

\_\_\_\_\_

*Please attach Certificate of Occupancy and proof of LEED Certification (if any)*

**2. VALUE OF IMPROVEMENTS**

**A. Total value of eligible property (amount subject to Travis County Ad Valorem Taxation):**  
**\$** \_\_\_\_\_

*This amount must equal at least the amount specified in Section 5.1.1(c) for Company to receive benefits under the Agreement. Please attach a list of eligible property equal to the investment amount above and rendered to the Travis Central Appraisal District.*

**3. EMPLOYEES**

**A. Total Number of Full time employees for the reporting year**  
**[Must equal the numbers specified in Section 5.1.2 ]**

\_\_\_\_\_

**B. Total Number of Full time new employees for the reporting year (Sec. 5.1.2 (b))**

\_\_\_\_\_

**i. How many of the above employees are contract workers?**

\_\_\_\_\_

**B. Average Salary for Apple employees**  
**[Must equal at least the amount specified in Section 5.1.2(c)]**

**\$** \_\_\_\_\_

i. Are Contract employees meeting salary requirements outlined in 5.1.2 (f)?

\_\_\_\_\_

C. How many full time employees are residents of Travis County?

\_\_\_\_\_

*All employment figures must be collected and maintained by Company, certified as accurate by the Company as specified in this Agreement and supported by documentation as set forth in Section 5.8.2. In addition, Travis County will need evidence that Apple and contract employees have been eligible for health benefits, including domestic partner benefits.*

4. AGREEMENT BENEFITS

A. Travis County Ad Valorem Taxes paid on Eligible Property for this Reporting Year:

\$ \_\_\_\_\_

B. Base Year Travis County Ad Valorem Taxes Paid on Eligible Property:

\$ \_\_\_\_\_

C. Incremental Travis County ad valorem taxes paid  
(Difference between "A" and "B")

\$ \_\_\_\_\_

D. Agreement Benefits Claimed by Company

\_\_\_\_\_% rebate \$ \_\_\_\_\_

*Please attach receipt of County taxes paid*

*In addition please provide a copy of Apple's Transportation program (Sec. 5.1.3 (a)) and any evidence of participating in discussions with the Lone Star Rail District (Sec. 5.1.3 (b)).*

I, Company's authorized representative, hereby certify that the above information is correct and accurate pursuant to the terms of this agreement:

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_



Attachment D

**CITY OF AUSTIN / APPLE INC.**

**CHAPTER 380**

**ECONOMIC DEVELOPMENT AGREEMENT**

This Chapter 380 Economic Development Agreement (“**Agreement**”) is made and entered into by and between APPLE INC. (“**APPLE**”), a California corporation qualified to do business in Texas, and the CITY OF AUSTIN, TEXAS, a home rule city and municipal corporation (“**City**”).

The City is authorized by Chapter 380 of the Texas Local Government Code to make grants of money to promote state and local economic development and to stimulate business and commercial activity in Austin.

The City has authorized the City Manager to make a grant of money to APPLE to (i) open a new Americas Operations Center and make capital investments in the Desired Development Zone, and (ii) create New Full-time Jobs at the Americas Operations Center ((i) and (ii) together are the “**Project**”).

The City believes that expansion of APPLE’s Austin presence will further state and local economic development and stimulate business and commercial activity in Austin.

APPLE accepts the City’s grant and agrees to carry-out the Project, the terms of which are the subject of this Agreement.

The parties therefore agree as follows:

**Article I. APPLE’s Obligations**

1.01 Investment in the Desired Development Zone. The Project will be constructed in two phases (“**Phase I**” and “**Phase II**”). For Phase I of the Project, after the Effective Date (as defined in Section 3.01) and by December 31, 2015, APPLE shall invest at least Fifty-six Million Five Hundred Thousand and No/100 Dollars (\$56,500,000) (“**Phase I Investment**”) in real property improvements (“**New Improvements**”) and New Machinery and Equipment (as hereafter defined) associated with the construction of new facilities that will function as APPLE’s Americas Operations Center, to be located at West Parmer Lane and Delcour Drive in Austin, Texas, or any other location within the City’s Desired Development Zone (as defined in Section 25-1-21 of the Austin City Code), that

will serve as APPLE's Americas Operations Center. **"New Machinery and Equipment"** means machinery, equipment, and other items treated as personal property by the relevant taxing authorities, and purchased after the Effective Date, and installed and used at the Americas Operations Center for the purpose of supporting the operations of APPLE.

For Phase II of the Project, APPLE shall invest an additional amount of at least Two Hundred Twenty-six Million and No/100 Dollars (\$226,000,000) (**"Phase II Investment"**) in New Improvements and New Machinery and Equipment associated with the additional build-out of APPLE's Americas Operations Center by December 31, 2021. In the event APPLE exceeds the requisite Phase I Investment, the value of such excess may be applied toward the Phase II Investment requirement. Only the value of like-kind investments (i.e. New Improvements or New Machinery and Equipment) may be applied toward the respective investment requirement.

In the execution of the contracts for **Phase I** and **Phase II**, APPLE will comply with all applicable state and federal laws relating to construction, including laws related to labor, equal employment opportunity, safety, and minimum wage; APPLE agrees to make commercially reasonable efforts to work with the Workers Defense Project in an effort to meet this obligation.

1.02 Creation and Retention of New Full-time Jobs. In addition to retaining 3,100 Existing Full-time Jobs (as hereafter defined), APPLE shall create at least 3,635 New Full-time Jobs (as hereafter defined) by the end of Employment Year Ten (as hereafter defined). **"Existing Full-time Jobs"** are full-time jobs held by employees of APPLE or independent contractors or employees of independent contractors that are employed at an existing Austin APPLE facility prior to the Effective Date, excluding employees of APPLE retail stores. **"New Full-time Jobs"** are full-time jobs created after the Effective Date and held by employees of APPLE or independent contractors or employees of independent contractors that are employed at APPLE's Americas Operations Center. **"Contract Jobs"** means those jobs performed by independent contractors of APPLE or employees of APPLE's independent contractors. Contract Jobs shall not exceed 25% of the total of Existing Full-time Jobs and New Full-time Jobs at any time during the Term (as defined in Section 3.01) of this Agreement. For purposes of this Agreement, the term **"Employment Year"** means each of the ten (10) calendar years referenced below, beginning with the first full calendar year after the issuance of a Final Certificate of Occupancy for Phase I of APPLE's Americas Operations Center (**"Employment Year One"**), and continuing thereafter through

the tenth (10<sup>th</sup>) full calendar year after the issuance of such Final Certificate of Occupancy (“**Employment Year Ten**”).

- (a) **APPLE shall create and retain the Existing Full-time Jobs and New Full-time Jobs as follows during each Employment Year:**
  - (i) **Retain 3,100 Existing Full-time Jobs and create 300 New Full-time Jobs by December 31st of Employment Year One;**
  - (ii) **Retain 3,100 Existing Full-time Jobs and the 300 New Full-time Jobs created in Employment Year One, and create 300 additional New Full-time Jobs, by December 31st of Employment Year Two;**
  - (iii) **Retain 3,100 Existing Full-time Jobs and the 600 New Full-time Jobs previously created, and create 50 additional New Full-time Jobs by December 31st of Employment Year Three;**
  - (iv) **Retain 3,100 Existing Full-time Jobs and retain a cumulative total of 650 New Full-time Jobs previously created by December 31st of Employment Year Four;**
  - (v) **Retain 3,100 Existing Full-time Jobs and retain a cumulative total of 650 New Full-time Jobs previously created by December 31st of Employment Year Five;**
  - (vi) **Retain 3,100 Existing Full-time Jobs and retain a cumulative total of 650 New Full-time Jobs previously created by December 31st of Employment Year Six;**
  - (vii) **Retain 3,100 Existing Full-time Jobs and retain a cumulative total of 650 New Full-time Jobs previously created by December 31st of Employment Year Seven;**
  - (viii) **Retain 3,100 Existing Full-time Jobs and retain a cumulative total of 650 New Full-time Jobs previously created by December 31st of Employment Year Eight;**
  - (ix) **Retain 3,100 Existing Full-time Jobs and retain a cumulative total of 650 New Full-time Jobs previously created by December 31st of Employment Year Nine; and**

- (x) Retain 3,100 Existing Full-time Jobs and the 650 New Full-time Jobs previously created and create an additional 2,985 New Full-time Jobs by December 31<sup>st</sup> of Employment Year Ten.

If there is a shortfall during any Employment Year with regard to APPLE's retention of 3,100 Existing Full-time Jobs, such shortfall shall be offset to the extent that the actual cumulative total of New Full-time Jobs exceeds the specified cumulative total of New Full-time Jobs for such Employment Year.

If, during any Employment Year, APPLE has not (i) retained 3,100 Existing Full-time Jobs (subject to the offset rights referenced above); or (ii) created the required cumulative total of New Full-time Jobs, APPLE shall not be entitled to receive the Chapter 380 Payment for such Employment Year, unless APPLE corrects such deficiency as provided in paragraph (c) below.

- (b) The average annual compensation, excluding health insurance and retirement benefits, for all New Full-time Jobs, excluding Contract Jobs, must not be less than the following amounts at the end of each Employment Year:

<u>Employment Year</u>	<u>Average Annual Compensation</u>
One	\$ 54,000
Two	\$ 56,000
Three	\$ 58,000
Four	\$ 61,000
Five	\$ 63,000
Six	\$ 65,000
Seven	\$ 67,000
Eight	\$ 70,000
Nine	\$ 72,000
Ten	\$ 73,500

If the average annual compensation for all New Full-time Jobs, excluding Contract Jobs, is less than the amount stated above for any Employment Year, APPLE shall not be entitled to receive the Chapter 380 Payment for such Employment Year.

- (c) If APPLE has not satisfied the requirements and conditions described in paragraph (a) above at the end of any Employment Year, APPLE shall have a period of ninety (90) days after the end of the applicable Employment Year to correct such deficiency. The City is not required to provide notice of such deficiency as is required under Section 3.04 and Section 3.04 does not otherwise apply to this provision. If APPLE fails to correct the deficiency within such 90-day period, APPLE shall not be entitled to receive the Chapter 380 Payment for such Employment Year.

### 1.03 Recruitment.

- (a) In addition to its own efforts, APPLE shall make commercially reasonable efforts to work with non-profit organizations such as the Austin Asian American Chamber of Commerce, the Austin Gay and Lesbian Chamber of Commerce, the Capital City African American Chamber of Commerce, the Greater Austin Hispanic Chamber of Commerce, the Texas Asian Chamber of Commerce, the Austin/Travis County Reentry Roundtable, Minorities for Equality in Employment Education Liberty, the Texas Department of Assistive and Rehabilitative Services (DARS), the National Society of Black Engineers, the Society of Hispanic Professional Engineers, and/or other appropriate organizations to expand its pool of diverse candidates in hiring recruitment efforts for jobs at the Americas Operations Center. APPLE shall provide documentation of its efforts if requested to do so by the City. For purposes of this paragraph (a), “commercially reasonable efforts” may be satisfied by advertising for job openings in any job listings sponsored by the specified organizations.
- (b) APPLE shall adhere to its equal employment policies and practices (attached hereto as Exhibit A).
- (c) APPLE shall make commercially reasonable efforts to recruit residents of the Austin area for its New Full-time Jobs. APPLE shall provide documentation of its efforts to the City if requested to do so by the City.
- (d) If APPLE fails to comply as provided for in paragraphs (a), (b), or (c) above, APPLE will be required to forfeit the Chapter 380 Payments

scheduled to be paid pursuant to Section 2.01 for the Employment Year in which such default occurred.

1.04 Local Business Participation.

- (a) In an effort to further stimulate and positively impact the local economy, APPLE shall use commercially reasonable efforts to provide local certified minority-owned and women-owned business enterprises (“M/WBEs”) an equal opportunity to participate as suppliers for materials and services purchased by APPLE exclusively for use at its Americas Operations Center. To assist in recruiting efforts, APPLE is required to contact the City’s Department of Small and Minority Business Resources (“SMBR”) for a list of available City certified M/WBEs. Within ninety (90) days after the Effective Date, APPLE shall submit to the City a reasonable supplier diversity policy regarding APPLE’s procurement of materials and services to be used exclusively at the Americas Operations Center which may be reasonably modified from time to time by APPLE. APPLE agrees to adhere to this policy for the procurement of materials and services for which the cost is more than Five Thousand and No/100 Dollars (\$5,000.00) and for which there are qualified local certified M/WBE suppliers, providing competitive prices and with sufficient financial resources in light of the particular materials and services to be supplied. Failure to comply with this obligation shall be considered a breach of this Agreement. Should SMBR determine that APPLE has failed to satisfy its obligation under this paragraph (a) APPLE will forfeit the next anticipated Chapter 380 Payment as described in paragraph (f). With respect to any individual procurement of materials or services for which the cost is Five Thousand and No/100 Dollars (\$5,000.00) or less, APPLE is encouraged, but not required, to adhere to the requirements of this paragraph (a). At the request of SMBR, APPLE shall provide documentation of its efforts to comply with this paragraph (a) to SMBR.
- (b) APPLE shall comply with the applicable standards and principles of Chapters 2-9A through 2-9D of the City’s ordinance for M/WBEs (“M/WBE Program Ordinance”) in the design and construction of its Americas Operations Center.
- (c) With respect to any design or construction projects for APPLE’s Americas Operations Center, including, but not limited to, leasehold

improvements, APPLE, the architect and the general contractor shall meet the following gender and ethnic-specific participation goals for each year in which design or construction occurs:

	Professional Services Participation Goals	Construction Participation Goals
African-American-owned Business Enterprises	1.9%	1.7%
Hispanic-owned Business Enterprises	9.0%	9.7%
Asian-American and Native American-owned Business Enterprises	4.9%	2.3%
Women-owned Business Enterprises	15.8%	13.8%

In an effort to meet the gender and ethnic-specific M/WBE utilization goals, APPLE shall implement an outreach program designed to solicit participation of M/WBEs. These outreach efforts should also target small businesses generally. APPLE may seek the assistance of SMBR in these outreach efforts as described in paragraph (d) below.

For any year in which APPLE, the architect and the general contractor fail to meet each of these goals, APPLE, the architect and the general contractor must demonstrate good faith efforts to meet the goals as described in the City's M/WBE Program Ordinance. APPLE shall submit periodic documentation demonstrating its own and the architect's and general contractor's good faith efforts to meet the goals as is required under following paragraph (e). If APPLE provides documentation to SMBR evidencing its own and its architect's and general contractor's good faith efforts, APPLE shall be deemed in compliance with this paragraph (c). Failure to perform this obligation shall be considered a material breach of this Agreement. The City acknowledges that this obligation does not require APPLE to modify, nullify or abrogate any contracts that APPLE has entered into prior to the Effective Date of this Agreement.

- (d) APPLE shall apprise SMBR when APPLE desires assistance from SMBR in its efforts to meet the gender and ethnic specific M/WBE utilization goals. This assistance may include providing a list of certified M/WBE firms from which APPLE may solicit or cause the architect or its general contractor to solicit participation in the design and construction of any improvements, identifying potential scopes of work, establishing the bid packages available, scheduling and hosting outreach meetings, and assisting APPLE, its architect, or general contractor in soliciting M/WBE firms to provide bids. APPLE is not required to solicit participation during a period in which APPLE is not engaged in designing and/or constructing its Americas Operations Center, but rather, APPLE is required to incorporate the standards and principles of the City's M/WBE Program Ordinance including the foregoing M/WBE utilization goals into its development process as and when such process exists in connection with the Americas Operations Center.
- (e) APPLE shall provide monthly reports to SMBR to track (i) the utilization on a percentage basis of M/WBE firms in the design and construction of the New Improvements; and (ii) a summary of APPLE's efforts to implement the standards and principles of the City's M/WBE Program Ordinance. SMBR shall provide the forms to be used by APPLE in submitting such reports.
- (f) Within thirty (30) days of receipt of APPLE's final monthly report (as is required under paragraph (e) above for the preceding year, January 1st through December 31<sup>st</sup> (the "SMBR Compliance Period"), SMBR shall determine whether APPLE is in compliance with the requirements of this Section 1.04. Should SMBR determine that APPLE (or its architect or general contractor), has not complied with the obligations of this Section 1.04, APPLE will forfeit the next anticipated Chapter 380 Payment. For example, if APPLE (or its architect or general contractor) fails to comply with its obligations under Section 1.04 for one year, APPLE will be required to forfeit one Chapter 380 Payment. If APPLE fails to comply with the obligations for two years, APPLE will be required to forfeit two Chapter 380 Payments, and so on. Any finding of noncompliance by SMBR under this paragraph (f) may be appealed as an Adverse Decision as provided for under the M/WBE Ordinance at §§ 2-9(A-D)-16.

1.05 Compliance with City Regulations. For the construction of all



improvements to the Americas Operations Center, and the construction or remodeling of any future APPLE facilities in the City's planning jurisdiction during the term of this Agreement, APPLE will comply with all City Code regulations, including water quality regulations in effect at the time any site plan application is filed, unless APPLE has negotiated an agreement with the City to comply with overall impervious cover limits and provide the currently required water quality controls. This means APPLE will not assert possible rights under Chapter 245 of the Texas Local Government Code to avoid compliance with water quality regulations for any future development within Austin's planning jurisdiction during the term of this Agreement. If, during the term of this Agreement, APPLE's development does not comply with water quality regulations in effect at the time any site plan application is filed for such development, after proper notice and reasonable opportunity to cure the deficiency, this Agreement shall, at the option of the City, terminate by giving APPLE written notice of its election.

**1.06 Certificate of Compliance and Inspection.**

- (a) APPLE shall deliver to the City before March 31<sup>st</sup> of each year, beginning March 31<sup>st</sup> of the year following Employment Year One and each year thereafter during the term of this Agreement, a Certificate of Compliance utilizing the form attached as Exhibit B. The form is subject to revision by the City, in its sole discretion, provided that such revision does not materially change APPLE's rights or obligations under this Agreement.
- (b) In the Certificate of Compliance, APPLE shall warrant to the City that it is in full compliance with each of its obligations under this Agreement, including the number of Existing Full-time Jobs, New Full-time Jobs and Contract Jobs maintained by APPLE for the preceding period pursuant to Section 1.02 above.
- (c) The City and/or its representative(s), including third-parties contracted by the City, shall have the right to inspect all relevant records of APPLE as are reasonably necessary to verify compliance with all requirements of this Agreement. Such inspections shall be preceded by at least two (2) weeks notice in writing to APPLE and shall not unreasonably interfere with APPLE's business activities.
- (d) The City is not obligated to make Chapter 380 Payments under Section 2.01 if APPLE fails to timely submit its Certificate of

Compliance. If the City, and its independent compliance reviewer, are unable to confirm APPLE's compliance for its obligations in any year during the Agreement due to APPLE not providing proof of compliance within one year from the due date of the Certificate of Compliance, that year's Chapter 380 Payment will be irrevocably lost to APPLE.

1.07 Texas Government Code Chapter 2264. In accordance with Chapter 2264 of the Texas Government Code, APPLE agrees not to knowingly employ any person for APPLE's Americas Operations Center who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("**Undocumented Worker**"). During the term of this Agreement, APPLE shall notify City of any complaint brought against APPLE alleging that APPLE has knowingly employed Undocumented Workers. If APPLE is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of Chapter 380 Payments it has received, together with interest at the rate of 5% from the date of each Chapter 380 Payment shall be repaid by APPLE to the City not later than the 120th day after the date the City notifies APPLE of the violation. The City shall recover court costs and reasonable attorneys' fees incurred if it prevails in an action brought pursuant hereto to recover past Chapter 380 Payments and interest. APPLE shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom APPLE contracts.

## **Article II. City Obligations**

2.01 Economic Development Incentive. As consideration for APPLE'S performance of its obligations under this Agreement, for a period of ten (10) years beginning the year following Employment Year One, the City agrees to pay the following amounts ("**Chapter 380 Payments**") to APPLE pursuant to the payment schedule below:

- (a) For APPLE's performance pursuant to Article I during Employment Years One and each Employment Year thereafter through Employment Year Six, each annual Chapter 380 Payment will consist of:
  - (i) An amount equal to one hundred percent (100%) of the City property taxes paid by APPLE on New Machinery and Equipment for the applicable Employment Year; plus
  - (ii) An amount equal to one hundred percent (100%) of the City

property taxes paid by APPLE for the applicable Employment Year on New Improvements constructed at APPLE'S Americas Operations Center after the Effective Date of this Agreement. City property taxes associated with the land and any improvements constructed prior to the Effective Date shall not be included when calculating these Chapter 380 Payments.

- (b) If APPLE has obtained a building permit or issued a notice to proceed with the construction of Phase II New Improvements by December 31 of Employment Year Seven, then for APPLE's performance pursuant to Article I during Employment Year Seven and each Employment Year thereafter through Employment Year Ten, each annual Chapter 380 Payment will consist of:
  - (i) An amount equal to one hundred percent (100%) of the City property taxes paid by APPLE on New Machinery and Equipment for the applicable Employment Year; plus
  - (ii) An amount equal to one hundred percent (100%) of the City property taxes paid by APPLE on New Improvements constructed at APPLE'S Americas Operations Center after the Effective Date of this Agreement, for the applicable Employment Year. City property taxes associated with the land and any improvements constructed prior to the Effective Date shall not be included when calculating the Chapter 380 Payments.
  
- (c) If APPLE has not obtained a building permit or issued a notice to proceed with the construction of Phase II New Improvements by December 31 of Employment Year Seven, then for APPLE's performance pursuant to Article I during Employment Year Seven and each Employment Year thereafter through Employment Year Ten, each annual Chapter 380 Payment will consist of:
  - (i) An amount equal to eighty percent (80%) of the City property taxes paid by APPLE on New Machinery and Equipment for the applicable Employment Year; plus
  - (ii) An amount equal to eighty percent (80%) of the City property taxes paid by APPLE on New Improvements constructed at APPLE'S Americas Operations Center after the Effective Date

of this Agreement, for the applicable Employment Year. City property taxes associated with the land and any improvements constructed prior to the Effective Date shall not be included when calculating the Chapter 380 Payments.

**2.02 Schedule for Chapter 380 Payments and Coordination with TCAD.**

- (a) In order to properly identify property eligible for Chapter 380 Payments, APPLE will work with the Travis Central Appraisal District (“TCAD”) to create separate TCAD accounts and tax statements for both the New Improvements and the New Machinery and Equipment constructed and installed after the Effective Date at APPLE’s Americas Operations Center.
- (b) With respect to the Chapter 380 Payments described in Section 2.01 above, on or before March 31<sup>st</sup> of each year during the Effective Term of this Agreement, APPLE shall notify the City in writing of the amount of the City property taxes paid by APPLE for New Improvements and New Machinery and Equipment for the preceding tax year to the Travis County Tax Collector or its successor (“**Property Tax Notice**”). The Chapter 380 Payments with respect to the property taxes shall be based on the amount stated in the Property Tax Notice.
- (c) Provided APPLE has met its obligations within this Agreement as annually confirmed by the City and its independent compliance reviewer, and APPLE has presented its Property Tax Notice to the City, Chapter 380 payments shall be paid to APPLE by the City according to the schedule in Section 2.01, on or before October 31 following the tax year for which the taxes were paid. For example, the first Chapter 380 Payments shall be based on taxes for Employment Year One and shall be paid on or before October 31 following Employment Year One.
- (d) If, after the October 31 payment date of any year, APPLE is required to pay more City property taxes on its property with respect to which a Chapter 380 Payment is provided under this Agreement than the amount stated in APPLE’S Property Tax Notice to the City for the tax year preceding the applicable payment date, then APPLE shall notify the City in writing of the amount of additional property taxes paid by APPLE to the County Tax Collector or its successor (“**Additional**

**Property Tax Notice”). The City shall pay APPLE the amount stated in the Additional Property Tax Notice at the same time as the next payment is due to APPLE.**

- (e) If APPLE’s property taxes owed are reduced at any time after the City’s receipt of the Property Tax Notice or Additional Property Tax Notice, APPLE must promptly notify the City of this change. If such notification is received by the City after the City has made the applicable Chapter 380 Payment to APPLE, the subsequent Chapter 380 Payment will be reduced to reflect the property tax reduction of the prior year. If this reduction occurs during the last year of the Effective Term, APPLE must promptly refund to the City the amount reflecting the reduction in taxes for the applicable year.
- (f) A Schedule of Reports and Payments due under this Agreement is attached as Exhibit C.

### **Article III. General Terms**

3.01 Effective Date and Term. The “**Effective Date**” of the Agreement is March \_\_, 2012. This Agreement shall become enforceable upon execution and delivery by the City and APPLE. Unless this Agreement is terminated earlier in accordance with its terms, APPLE’s obligations to perform under this Agreement shall be completed on March 31<sup>st</sup> following Employment Year Ten and the City shall make its final payment under this Agreement on or before October 31<sup>st</sup> following Employment Year Ten. The terms of this Agreement (“**Term**”) shall commence on the Effective Date and continue until APPLE has paid the property taxes and received its final Chapter 380 Payment with respect to the property taxes assessed for New Improvements and New Machinery and Equipment for Employment Year Ten.

3.02 Payments Subject to Future Appropriation. This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for payment to APPLE.

- (a) All payments or expenditures made by the City under this Agreement are subject to the City’s appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.
- (b) The payments to be made to APPLE, or other expenditures under this

Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52-a of the Texas Constitution or Chapter 380 of the Texas Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.

- (c) In the event the City does not appropriate funds in any fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to APPLE for such payments or expenditures unless and until appropriation of said funds is made; provided, however, that APPLE, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligations under this Agreement for the year in respect to which said unappropriated funds relate.
- (d) To the extent there is a conflict of this Section 3.02 and any other language or covenants in this Agreement, this Section 3.02 shall control.

**3.03 Representations and Warranties.** The City represents and warrants to APPLE that the City's Economic Development Program and Chapter 380 Payments and this Agreement are within its authority, and that it is duly authorized and empowered to establish the City's Economic Development Program and Chapter 380 Payments and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. APPLE represents and warrants to the City that it has the requisite authority to enter into this Agreement.

**3.04 Default.** If either the City or APPLE should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of ninety (90) days after the receipt of said notice to cure such default, prior to instituting an action for breach or pursuing any other remedy for default.

**3.05 Entire Agreement.** This Agreement contains the entire agreement between the parties. All prior negotiations, discussions, correspondence, and preliminary understandings between the parties and others relating hereto are superseded by this Agreement. This Agreement may only be amended, altered or revoked by written instrument signed by the City and APPLE.

3.06 **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

3.07 **Assignment.** Except as provided below, APPLE may not assign all or part of its rights and obligations to a third party without prior written approval of the City, which approval shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary, APPLE may assign all or part of its rights and obligations without the prior consent of the City to an affiliate of APPLE and to a third party lender advancing funds for the acquisition, construction or operation of APPLE's Americas Operations Center.

3.08 **Termination by APPLE.** In the event APPLE elects not to proceed with the Project as contemplated by this Agreement, APPLE shall notify the City in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect. Among other reasons, APPLE may elect to terminate this Agreement because it has not entered into separate economic development agreements for the Project with Travis County and the State of Texas.

3.09 **Notice.** Any notice and/or statement required or permitted to be delivered shall be deemed delivered by actual delivery, by facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

**APPLE:**

APPLE Inc.  
c/o Dana Pesce, Director of Real Estate Development  
1 Infinite Loop, MS 47-2RE  
Cupertino, CA 95014  
Phone: (408) 930-6844  
Fax: (480) 930-6844  
Re: Economic Development Agreement

with a copy to:

APPLE Inc.  
c/o Real Estate Counsel  
1 Infinite Loop, MS 4-DLAW  
Cupertino, CA 95014  
Phone: (408) 862-6012  
Re: Economic Development Agreement

**CITY:**

City Manager  
301 West 2<sup>nd</sup> Street  
Austin, Texas 78701  
(P.O. Box 1088, Austin, Texas 78767)  
Phone: (512) 974-2200  
Fax: (512) 974-2833

with copies to:

Director, Economic Growth and Redevelopment Services Office  
301 West 2<sup>nd</sup> Street  
Austin, Texas 78704  
Phone: (512) 974-7820  
Fax: (512) 974-7825

and to:

City Attorney  
301 West 2<sup>nd</sup> Street  
Austin, Texas 78701  
(P.O. Box 1546, Austin, Texas 78767)  
Phone: (512) 974-2268  
Fax: (512) 974-2894

Either party may designate a different address at any time upon written notice to the other party.

3.10 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of



which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute regarding its meaning or application, be interpreted fairly and reasonably and neither more strongly for nor against any party.

3.11 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in the State courts of Travis County, Texas.

3.12 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

3.13 Section Headings. The Section headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

3.14 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

3.15 No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with any APPLE facilities or the design, construction or operation of any portion of APPLE's facilities.

3.16 Public Information. The City is committed to compliance with the Texas Public Information Act. Information provided by or on behalf of APPLE under or pursuant to this Agreement that APPLE considers as proprietary shall be maintained as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information Act, the City shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests, and APPLE shall be responsible for defending the confidentiality of such information. Other records and information provided to the City and its representatives to verify compliance with this Agreement shall be available for public inspection. Regarding the Personal Data (defined in Section 3.17) of any APPLE employee, the employment of which must

be verified under this Agreement, the City does not intend to take possession of any Personal Data relating to that individual employee. The City's right to verify the existence of Full-time employees will be accomplished in a manner that does not breach any privacy policy of APPLE.

3.17 Personal Data. In the course of verifying APPLE's compliance with the requirements of this Agreement as permitted under Section 1.06 (Certificate of Compliance and Inspection), the City and the City's employees, agents, consultants and contractors assigned to perform any portion of the review and inspection may obtain certain information relating to identified or identifiable individuals ("**Personal Data**"). The City acknowledges that it shall have no right, title or interest in any Personal Data obtained by it as a result of this Agreement, and will not use Personal Data for any purpose other than verification of APPLE's compliance with the requirements of this Agreement. The City shall take all appropriate legal, organizational, and technical measures to ensure the confidentiality of Personal Data, and protect Personal Data against unauthorized disclosure or access, and against all other unlawful forms of processing, keeping in mind the nature of such data. In the event the City collects Personal Data, the City shall at all times comply with APPLE's lawful instructions regarding Personal Data, as well as all applicable laws, regulations and international accords or treaties, including without limitation and where applicable, the EU/US Safe Harbor program.

3.18 Exhibits. The following Exhibits are attached and incorporated by reference for all purposes.

Exhibit "A":	Fair Employment Practices
Exhibit "B":	Certificate of Compliance
Exhibit "C":	Schedule of Reports and Payments

3.19 Counterpart Copies. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

EXECUTED by the authorized representatives of the parties on the dates indicated below.

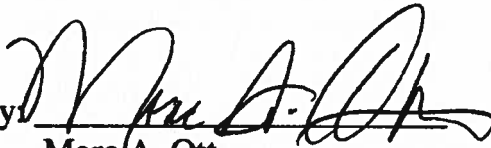
[SIGNATURE PAGES FOLLOW]

**APPLE INC.,**  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: March \_\_, 2012

**CITY OF AUSTIN, TEXAS,**  
a home-rule city and municipal corporation

By:  \_\_\_\_\_  
Marc A. Ott  
City Manager

Date: March \_\_, 2012