



Travis County Commissioners Court Agenda Request

Meeting Date: 03/12/2013, 9:00 AM, Voting Session

Prepared By/Phone Number: Planning and Budget Office

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

Commissioners Court Sponsor: Judge Samuel T. Biscoe

AGENDA LANGUAGE:

Consider and take appropriate action regarding a request from National Instruments for financial incentives and an economic development agreement.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

National Instruments has requested financial incentives under an economic development agreement to establish a research and development center in Travis County, to create 1,000 new jobs, and to make investments in Travis County that will increase the value of the County's tax base. On February 21, 2013, the State of Texas announced its commitment to invest \$4.4 million through the Texas Enterprise Fund in National Instruments, contingent upon finalization of local incentives. The Commissioners Court conducted a public hearing on February 26, 2013, to receive comments about the proposed economic development agreement with National Instruments. A presentation to the Commissioners Court was made as part of this public hearing that summarized key information about the company, the major elements of the proposed project, and the key terms of the proposed agreement.

The County Attorney's Office has worked with legal representatives of National Instruments to prepare the proposed draft agreement, which is attached. The draft agreement is redlined in order to highlight recent changes to the agreement that were requested by the company. A separate summary of the key agreement terms is also attached.

The Austin City Council is considering an economic development agreement with National Instruments over two City Council meetings (February 28th and March 7th).

STAFF RECOMMENDATIONS:

The Planning and Budget Office recommends approval of the economic development agreement with National Instruments, which substantially conforms to the County's economic development policy. The proposed agreement is in compliance with all requirements of the County's policy with the exception of one provision. The company's employee benefits policy does not extend benefits to an employee's domestic partner of the opposite sex, but it is important to note that the company does provide benefits to an employee's same sex domestic partner. Other changes proposed by the company, which are reflected in the redlined agreement, are not significant.

The Planning and Budget Office recommends that the Commissioners Court approve the proposed economic development agreement with National Instruments.

ISSUES AND OPPORTUNITIES:

N/A

FISCAL IMPACT AND SOURCE OF FUNDING:

N/A

REQUIRED AUTHORIZATIONS:

Planning and Budget Office
County Judge's Office

Jessica Rio
David Salazar

PROPOSED TERM SHEET
NATIONAL INSTRUMENTS CORPORATION
ECONOMIC INCENTIVES AGREEMENT

1. Company: National Instruments Corporation
2. Location: 11500 N. MoPac Expressway, Austin Texas
Within Austin Desired Development Zone
3. Project: Research and Development, Sales and Marketing Center
300,000 square feet
8.1 acres
4. Investment: \$80,000,000 +
\$4,000,000 by 12/31/14
Remainder by 12/31/15
Building: \$46,929,000
Machinery and
Equipment and FFE: \$33,353,000
5. Term: 10 Years
Base Year: 2013
Effective Date: March 15, 2013
Payment Term: 1/1/16 – 12/31/25
Construction Commencement: 6/30/14
Construction Completion: 12/31/15
6. Incentive: 43%
\$80 million investment: 25%
1,000 new employees: 15%
Silver LEED 3%
7. Property: Will be owned by Company; may have short term lease to allow initial hiring
8. Competitive Siting Yes
9. Hiring: Salaries for employees and construction workers at \$11/hr. minimum
10. Jobs: 1,000 new jobs; maintain 2,550 existing jobs
Recruitment efforts – work with non-profits
Good faith effort to hire residents
11. Annual Compensation: Average: \$63,000
Median: \$55,667
12. Benefits: As set forth in the agreement
Extends benefits to an employee's same sex domestic partner
Does not extend benefits to an employee's domestic partner of the opposite sex
13. LEED Certification: To be determined based on level achieved
14. Recapture: Last 5 years of Agreement if fail to meet investment and new employee requirements by the end of the term.

ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN TRAVIS COUNTY AND
NATIONAL INSTRUMENTS CORPORATION

This Economic Development Agreement ("Agreement") is entered into by and between Travis County, Texas, a political subdivision of the State of Texas ("County"), and National Instruments Corporation, a Delaware corporation with its principal place of business in Austin, Texas, qualified to do business in Texas, its successors and assigns ("Company"), which owns or will own, or have allowable interest in (as defined in this Agreement) 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 38 1.004(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, Travis County has adopted Chapter 28 of the Travis County Code, "Travis County Economic Development Incentives Policy, Guidelines and Criteria ("County Policy")" the provisions of which govern this Agreement, and the Commissioners Court finds that the proposal of the Company meets the requirements of that County Policy.

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 Research and Development and Sales and Marketing center ("Center"), with approximately 300,000 square feet or more, to be located on approximately 8.5 acres adjacent to the Company's Corporate Campus at 11500 N. MoPac Expressway, Austin, Texas (within the City of Austin's Desired Development Zone), 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 \$80,000,000 (including construction labor).

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 Term” means that time period commencing on the Effective Date of this Agreement, and continuing through December 31, 2025.

1.4 “Base Year” means calendar year 2014.

1.5 “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, 2014, as set forth on the certified tax rolls of the County.

1.6 “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.

1.7 “Commissioners Court” means the Travis County Commissioners Court.

1.8 “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 no later than December 31, 2015.

1.9 “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.

1.10 “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.

1.11 “County Auditor” means Nicki Riley, the Travis County Auditor, or her successor.

1.12 “Effective Date” for purposes of the Agreement Term, will be March 15, 2013, upon execution of the Agreement by both Parties

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

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

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

1.16 "Eligible Property" means New Improvements and New Machinery and Equipment classified as new construction by TCAD for valuation purposes.

1.17 "Grant Funds" or "Grant Payment" means those funds paid by the County to the Company pursuant to this Agreement and applicable law 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 Eligible Property.

1.18 "Is doing business" and "has done business" mean:

1.18.1 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

1.18.2 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:

1.18.3 Any payments, receipts, loans, or receipts of a loan which are less than \$250 per calendar year in the aggregate; or

1.18.4 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.

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

1.20 "New Full Time Jobs" are full-time jobs created after the Effective Date and held by employees of the Company that are hired and employed at the Project after the Effective Date.

1.21 "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.

1.22 "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.

1.23 "Parties" and "Party" means the County and/or the Company.

1.24 "Payment Term" means that time period beginning on January 1, 2016, and ending on December 31, 2025, unless earlier terminated pursuant to the terms of this Agreement. Each calendar year within the Payment Term is designated as a Payment Year.

1.25 "Payment Year Value" means the taxable value of new improvements on the Property determined by Travis Central Appraisal District 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.

1.26 "PBO" means Travis County Planning and Budget Office.

1.27 “Project” means the proposed development, as described herein, of the new Center of the Company, as more fully described in Attachment A.

1.28 “Property” means the land (real property) on which the Project will be developed as further described in Attachment A.

1.29 “Grant Percentage” means the percentages referenced in Section 4.1.1 to be used to calculate the Grant Funds paid to the Company pursuant to this Agreement.

1.30 “Required Average Annual Compensation” means the average annual compensation, excluding health insurance and retirement benefits.

1.31 “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(a).

1.32 “TCAD” means the Travis Central Appraisal District.

1.33 “Termination Date” means the earlier to occur of

(a) December 31, 2025, 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. The County has also adopted the County Policy, which also governs the terms and conditions of this Agreement.

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 March 15, 2013 (the Effective Date, as defined herein), and continuing through December 31, 2025, unless earlier terminated pursuant to the terms of the Agreement.

2.3.2. **Payment Term.** The payment of the Grant Funds will take place upon compliance with all terms of this Agreement beginning on the first year of the Payment Term which begins no later than January 1, 2016, and continues through December 31, 2025 (unless earlier terminated pursuant to the terms of this Agreement), as defined in this Agreement;

provided, however, in recognition of the fact that Grant 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 Grant Funds to the Company which extend beyond the period of time defined as the Agreement Term in Section 1.3.

2.3.3 **Construction Commencement Date.** The Company agrees to commence construction no later than December 31, 2014.

2.4 **Administration of Agreement.** This Agreement shall be administered for the County by PBO. The 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 – Annual Report Form
- 3.2.4 Attachment D – City of Austin Agreement
- 3.2.5 Attachment E – Affirmative Action at HID Global Corporation
- 3.2.6 Attachment F – County Policy

4.0 GRANT FUNDS

4.1 **Grant Funds.**

4.1.1 **Grant 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 agrees to make Grant payments to the Company as follows:

(a) **Annual Grant Payment.** For the Payment Term (defined as January 1, 2016 - December 31, 2025), the Grant Payment 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 (subject to a possible additional **3% incentive percentage** based on achievement of specified LEED certification as set forth in Section 5.2.1 of this Agreement). Said Grant Payment shall be computed as follows:

(Payment Year Ad Valorem Taxes Paid - Base Year Ad Valorem Taxes Paid) X 0.40 =
Annual Grant Payment by County

(b) Adjustment. The above Grant Percentage is subject to adjustment as provided in Section 5.2 and other applicable provisions of this Agreement.

(c) Eligible Property. As defined in this Agreement, Eligible Property includes only that property classified as new construction by TCAD for valuation purposes.

4.1.2. Grant Due Date. Until the Termination Date, County shall make Grant Payments to the Company annually in the amount due under this Agreement, and upon compliance with the Agreement terms, 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 classified as new construction by TCAD for valuation purposes 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 under this Agreement, and to all other applicable taxation. Ad Valorem Taxes shall be payable in full on the Company's taxable property, with Grant Payments to be made 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.

(b) The Base Year Value of the properties of the Company shall be fully taxable.

(c) The value of Eligible Property shall be fully taxable with Grant Payments by the County to Company of forty percent (40%) of that payment (subject to a possible additional ~~3%~~ incentive percentage based on achievement of specified LEED certification as set forth in Section 5.2.1 of this Agreement).

4.2 Determination and Payment of Grant 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) | 1/1/14 – 12/31/14 | Base Year Value determined by TCAD |
| (b) | 3/15/13 | Effective Date (upon execution by both Parties) |
| (c) | 3/15/13 – 12/31/25 | Agreement Term |
| (d) | 12/31/13 | 51 Additional New Jobs Created (See Sec. 5.1.2 for Remaining Employment Timetable) |
| (e) | 12/31/14 | Deadline for Commencement of Construction |
| (f) | 12/31/14 | \$4,000,000 Investment |
| (g) | 12/31/15 | \$76,282,000 Investment (Total: \$80,292,000 investment) |
| (h) | 12/31/15 | Latest Date for Completion of Facilities Construction |

(i)	1/1/16	Payment Term begins (Payment made in 2016, would be based on 2014 performance)
* (j)	3/31/16	Annual Report due as to performance for 2014
* (k)	5/31/16	County response due on Annual Report (as applicable)
* (l)	2/1/16 – 9/30/16	County budget process for FY '17
* (m)	10/31/16	County payment due (if full compliance confirmed)
(n)	1/1/17	Second Payment Year begins (Payment based on 2015 performance)
* (o)	3/31/17	Annual Report due as to performance for 2015
* (p)	2/1/17 – 9/30/17	County budget process for FY '18
* (q)	10/31/17	County payment due (if full compliance confirmed)
(r)	12/31/25	End of Agreement Term

* Report/Payment process repeats each year of 10-year Payment Term.

It is understood that the schedule above is based on completion of construction in 2015. If construction is completed at an earlier date, then the above schedule would be adjusted accordingly.

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 pay to the Company by check or wire transfer the amount to be paid as a Grant based on Ad Valorem Taxes paid by Company for said tax year according to the following procedure:

(a) Annual Report 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 Grant Funds due to the Company by the County for the immediately preceding tax year using the format of the Annual Report Form attached to this Agreement as Attachment C. The Annual Report 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 Report 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 Report and Payment shall proceed as set forth in Section 4.2.1.

(b) Certification of Compliance.

(i) Annual Certification. The Annual Report 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 Existing and New Full-time Jobs maintained by the Company for the preceding year. The Company shall provide such Annual Reports, 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 Annual Report 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 (72) 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, installing, and operating the Project is of a 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 and operations 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, and other requirements of the Agreement, as necessary, 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 FTEs, the average salary, and the investment made pursuant to the requirements of the Agreement and documentation of compliance with any other 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 Annual Report until such additional information is made available pursuant to this Section 4.2.2. All monitoring activities by County under this Agreement will be subject to the requirements of 4.2.2(c)(ii) above.

(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. Grant Amount. Upon verification by the County of the amount shown in the Annual Report and other reporting information provided by the Company to the County under this Agreement, the County shall grant and pay to the Company the Grant Funds calculated in accordance with Section 4.1.1.

4.2.4. Material Issues in Grant Funds Notice. If the County identifies any material issues in the Annual Report, the County will advise the Company of such material issues that are identified in the verification process within 30 days of receipt of the Annual Report and other reporting information to allow the Company to correct/complete such Annual Report. Should the Company and the County be unable to agree to the completion/correction of the Annual Report within thirty (30) days of receipt of the notice by the Company of material issues, the matters will be addressed as provided in Section 8.0 of this Agreement.

4.2.5. Final Grant Fund Payment. The final payment of Grant Funds by the County to the Company pursuant to this Agreement shall be based on the Annual Report relevant to the last year of the Agreement Term. Upon the County's paying of said final payment as described in this Section 4.0, this Agreement shall terminate.

5.0 COMPANY PERFORMANCE

5.1 **Requirements for Grant Payment.** The Company agrees to do the following to receive and retain the 40% Grant (subject to a possible additional ~~3%~~ **incentive percentage** based on achievement of specified LEED certification as set forth in Section 5.2.1 of this Agreement) during the Agreement Term, 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 on approximately 8.5 acres adjacent to the Company's Corporate Campus at 11500 N. MoPac Expressway, Austin, Texas, which is a part of the City of Austin's Desired Development Zone.

(b) **Ownership and Use.** The Property on which the current Project is located must be owned by the Company or its Affiliate by no later than December 31, 2015, and the Project will be used for the Company's Center, as more particularly described in Attachment A. The Parties understand and agree that Company may lease property prior to December 31, 2015, in order to allow for the necessary additional hiring prior to the completion date of the Project facilities. Incentive payments made under this Agreement will only be made relevant to property taxes paid by Company. 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) **Change in Ownership.** Section 5.1.1(b) notwithstanding, County and Company agree that, with written notice to County within thirty (30) days of such agreement, Company may enter into future agreement(s) by which ownership of the property transfers to another Party. Regardless of such actions, Company will retain the obligation to pay Ad Valorem Taxes on the property (real and personal business property) either directly or indirectly; will provide County with a copy of such written obligation in the document(s) transferring ownership; and will provide County with a cancelled check or other acceptable documentation showing payment of all Ad Valorem Taxes by Company for each year in which Grant Funds are requested of County under this Agreement. If Company meets the requirements of this subsection 5.1.1(c), requirements as to ownership of the property/facility under this Agreement will be considered to have been met.

(d) **Construction and Required Investment.**

(i) **Construction.** Construction will begin no later than December 31, 2014. The Project will have approximately 300,000 square feet or more of space, and the Company will invest a minimum of \$4,000,000 for new improvements and new business and personal property by December 31, 2014; and an additional \$76,282,000 for new improvements and new business and personal property by December 31, 2015 for a total of \$80,282,000. Investment will be as follows:

Building	\$46,929,000
Machinery and Equipment and FFE	\$33,353,000
TOTAL:	\$80,282,000

(ii) **Rendition.** Investments in new construction and new business and personal property will be as documented by the Company in its rendition to TCAD for each year of the Agreement Term.

(e) **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 the section of the City Agreement setting forth the requirements for opportunities 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).

(f) **Construction Laws.** In the execution of the construction contracts for construction of the Company's facilities covered by this Agreement, 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. In addition, the Company agrees as follows:

(i) To provide salaries to all employees filling positions of New Full Time employees under this Agreement, including contract employees and employees hired by contractors for construction of the Company's facilities related to this incentive Agreement, at an hourly wage that equals or exceeds the County's established minimum wage (currently \$11.00 per hour) set by County throughout the term of the Agreement. PBO maintains the information as to the County's minimum wage and agrees to provide Company with notice if that minimum wage changes.

(g) **Competitive Siting.** Company agrees that the Project is a Competitively-Sited Project as defined in the County Policy, and Company will provide an affidavit on a form provided by County as documentation of such according to the County Policy [Section 28.006(b)(iii)(E)].

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

(a) **Required Number of Jobs.**

(i) **Current Jobs.** The Parties agree that, for purposes of this Agreement, Company has 2,550 existing jobs as of the Effective Date of this Agreement.

(ii) **Creation.** After the Effective Date, the Company shall create at least 1,000 New Full-time Jobs for employees to work at the Project by December 31, 2022, according to the schedule set forth in subsection 5.1.2(b) below.

(ii) **Retention.** Company shall retain at least the corresponding number of existing and new jobs as required in the Employment Schedule in subsection (b) below throughout the Agreement Term.

(b) Employment Schedule.

(i) The 1,000 New Full-time Jobs shall be added by the Company in accordance with the following Employment Schedule:

<u>Year</u>	<u>Existing Jobs</u>	<u>New Jobs</u>	<u>Total Jobs</u>
2013	2,550	51	2,601
2014	2,601	91	2,692
2015	2,692	94	2,786
2016	2,786	98	2,884
2017	2,884	101	2,985
2018	2,985	105	3,090
2019	3,090	109	3,199
2020	3,199	113	3,312
2021	3,312	117	3,429
2022	3,429	121	3,550
TOTAL		1,000	

(ii) Ongoing Employment Obligations. During each year of the Agreement Term after the Effective Date, the Company shall continue to have not less than the number of existing and New Full Time Jobs set forth in Subsection 5.1.2(b)(i) above.

(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 1,000 New Full-time Employees in accordance with its Construction Timetable. 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 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 deadline for the Company to create 1,000 of New Full-time Jobs be extended by the County Executive beyond December 31, 2022.

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

(i)	Average Salary	\$63,000
(ii)	Median Salary	\$55,667

(d) Recruitment. The Company will comply with the conditions and requirements of the section of the City Agreement setting forth the requirements for the recruitment of Employees for New Full-time Jobs. In addition, the Company will:

(i) Work with specified non-profit organizations to expand the pool of diverse candidates for jobs by posting jobs with those organizations throughout the term of the Agreement. Those organizations include, but are not limited to, Skillpoint Alliance, Workforce Solutions, American YouthWorks, Goodwill Industries, Austin Community College, Travis County Health and Human Services and Veterans Services, and Capital IDEA.

(ii) Make good faith efforts to recruit Travis County residents. Company will provide Travis County with data reflecting the percentage of Company employees who reside in Travis County with the annual compliance report in a format mutually agreed to by the Parties.

(iii) Adhere to Company's equal employment/affirmative action policies and practices (see Attachment D).

(iv) Make employment decisions according to its internal employment and personnel practices, and base those employment decisions solely on job related qualifications.

(v) Conduct at least 2 job fairs or similar outreach events in Travis County annually during the first two years of the Payment Term, or until all initial hiring requirements are met.

(vi) Provide documentation of recruitment efforts under the above requirements annually to Travis County. Such documentation may be provided in writing or by County's inspection of Company records on site. Meeting the above requirements and providing documentation of such will meet the definition of "good faith" as required under this Agreement.

(e) Company Health Benefits. Company agrees that the Company's human resources policy meets or exceeds all applicable state and federal requirements, including the requirements of the Patient Protection and Affordable Care Act in effect as of the effective date of the County Policy. For Employees who are hired to provide the Required Number of Jobs pursuant to this Agreement, the Company must provide, and ensure that Employees are provided, health benefits as follows:

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

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

(iii) with the Company or other provider contributing to such health benefits at a dollar amount in a dollar amount that provides the opportunity for employees to purchase affordable coverage for themselves and employee family members. The Parties agree that the health benefits plan provided by Company at the execution of this Agreement meets this requirement, and Company will continue to provide such benefits that meet or equal the current plan.

(iv) if Company maintains the current health benefits plan (including health, dental and life insurance, vision and prescription drug plans, onsite

medical clinic and flexible spending accounts), or a plan with similar benefits, that will be considered compliance with this subsection 5.1.2(e).

(f) Opportunity To Correct Deficiency. If the Company has not satisfied the requirements and conditions described in paragraphs above [Section 5.1.2(a) – (e)] 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 Sections 8.3 since the Company should become aware of any such deficiencies when completing the annual report to County as required under Section 5.3.1; however, County will work with Company upon receipt of any annual report showing any deficiencies to note such deficiencies and develop a plan for resolution within the 90 day cure period. If the Company fails to correct the deficiency within such 90-day period, the Company shall not be entitled to receive the applicable Grant Funds for such year.

5.1.3. Employee Benefits. In addition to the health benefits provided by Company, Company will provide benefits related to retirement (401K), paid leave, counseling, life insurance, training, development opportunities and tuition reimbursements as determined by Company's policies and practices. In addition, Company will continue to assist employees in transportation needs by providing onsite car charging stations, bicycle paths and bike parking.

5.1.4 Community Participation. Company will be an active community member by continuing programs such as: a volunteer program (over 663 employees donating 13,505 hours in 2011); ongoing charitable contributions; investment in improving STEM education, engaging students with technology and equipping educators with resources to teach engineering concepts in a fun hands-on way; strategic partner to FIRST, a key technology supplier to Project Lead the Way and the Infinity Project; partnering with local charitable organizations; and teaching green engineering principles.

5.2 Requirements for Additional Grant and Goal Components. The 40% Grant during the Agreement Term, as described in Section 4.1 .1, shall be increased by the following additional Grant Percentages if the Company performs the following obligations:

5.2.1 LEED Certification. The Company shall be entitled to receive up to five percent (5%) additional Grant 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 Grant Percentage shall not be applicable until the Company has provided the County with the appropriate documentation concerning the LEED Certification for such buildings. The Grant percentage will be determined as follows:

Basic	2%
Silver	3%
Gold	4%
Platinum	5%

~~Company expects to achieve Silver LEED Certification for an additional 3% Grant Percentage.~~

5.2.2 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. 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 the Annual Report (and/or other reports as reasonably requested by County) reflecting the fulfillment of all requirements of this Agreement. 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 the Annual Report 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 Annual Report 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 Annual Report 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 payment under this Agreement. The Appraiser of the property subject to this Agreement and~~ shall record ~~both the that~~ taxable value on which the Agreement Grant will be based ~~and the full taxable value~~ in the appraisal records. 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 Grant specified herein. The 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. The Company shall retain all reports made by third parties (if any such reports are created by third parties other than the County or City that reflect compliance with Agreement requirements) 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 Annual Report submitted by the Company to the County.

5.3.3. Annual 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;
- (e) information showing the amount of County Ad Valorem Taxes paid by the Company and the amount of Grant Funds reimbursed by the County to date;
- (f) information as set forth in Section 28.008(b)(i)-(viii) of the County Policy.
- (g) other information as necessary to support compliance with terms of this Agreement; and
- (h) 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 jobs retained and New Full-time Jobs maintained as a result of the Project and the average salary for those jobs, including that information specifically set forth in the Annual Report (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 Annual Report 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 Annual Report shall include information showing the amount of Travis County Ad Valorem Taxes due for payment by the Company, the amount by which the Grant Funds would be paid 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 the 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 Grant 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, 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.**

(a) 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 New Full-time Jobs
- (ii) Average Salary of New Full-time Jobs
- (iii) Amount of investment pursuant to this Agreement

(b) 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.

(c) 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 Grant Funds Notice until such additional information is made available pursuant to this Section 5.8.2.

5.8.3. Record Maintenance. The 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. County agrees to advise Company of any need to maintain records beyond the three year period prior to the termination of that three year period.

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 NON-PAYMENT, TERMINATION AND DEFAULT

8.1 **Non-Payment.** Company understands and agrees that NO payment of Grant Funds will be made for any Payment Year in which the following conditions (as applicable) of this Agreement are not met:

8.1.1 **Investment/Construction.**

- (a) Construction completed no later than December 31, 2015.
- (b) \$4,000,000 invested no later than December 31, 2014.
- (c) \$76,282,000 invested no later than December 31, 2015.
- (d) Construction and installation of new business personal property investment documented in rendition to TCAD and classified as new construction.

8.1.2 **Jobs.**

- (a) conditions to be met under terms of the Agreement, including the cure period set forth in Section 8.4 .
- (b) Meet minority participation and recruiting requirements set forth in Sections 5.1.1(e) and 5.1.2(d).

8.1.3 **Recapture.** Company agrees that Incentives received by Company for the last five (5) years of the Agreement are subject to recapture by County if Company fails by the termination date to fulfill the requirement for the total Investment amount and the total number of new jobs to be created.

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

8.2.1. **Election Not to Proceed Prior to Grant.** 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 Grant 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.

8.2.2. **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.

8.2.3. **Failure to Comply.**

(a) After notice of default and opportunity to cure pursuant to Section 8.4, 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 requirement in paragraphs (a), (b) or (c) of Section 5.1.1 regarding the location of the Project and the ownership and use of the Property.

(ii) The Company allows its Ad Valorem Taxes to the County, the City of Austin, Austin 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 subparagraph (a), the County shall have the right to terminate this Agreement immediately upon notice; and, no further Grant 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 8.4, 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.

8.2.4. **Judicial Finding.** This Agreement may be terminated by either the County or the Company if the Grant 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, the County shall have the right to recapture all of the money granted to the Company under this Agreement to the extent but only to the extent that said judicial decision specifically require said Grant 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 Grant that is refunded as a result of said judicial decision.

8.3. **Right to Withhold Grant Funds.** In addition to the rights granted to the County to terminate this Agreement because of a Termination Event pursuant to Section 8.0, the County shall have the right to withhold any unpaid Grant Funds 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 such Grant Funds the Company would otherwise be entitled to receive until such default has been cured.

8.4 **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 Grant Funds to the Company pursuant to Section 8.0, 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:

National Instruments Corporation
Attn: David Hugley, Vice President
11500 N. MoPac Expressway
Austin, Texas 78759
Phone: (512) 683-5713 or (512) 683-0100
Fax: (512) 683-6913
Re: Economic Development Agreement
Email: david.hugley@ni.com

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.

10.5 **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 Grant Funds, if the Company has done business with a Key Contracting Person as listed in Exhibit "A" to Attachment B 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, to 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 with or engagement by the County 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 Commissioners Court 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 the 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 and/or assigns of the parties to this Agreement. In the case of assignment to an Affiliate, benefits and obligations of the Agreement shall inure to the benefit of such Affiliate without the prior approval of County so long as such assignment includes the requirements set forth under Section 12.1.

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**. 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.

NATIONAL INSTRUMENTS CORPORATION

TRAVIS COUNTY

By _____
Printed Name _____
Title _____
Date _____

By: _____
Samuel T. Biscoe
Travis County Judge
Date: _____

ATTACHMENT A
DESCRIPTION OF PROPERTY AND PROJECT
LEGAL DESCRIPTION OF PROPERTY

ATTACHMENT B
ETHICS AFFIDAVIT

Date: _____

Name of Affiant: _____

Title of Affiant: _____

Business Name of Contractor: _____

County of Contractor: _____

Affiant on oath swears that the following statements are true:

1. Affiant is authorized by Contractor to make this affidavit for Contractor.
2. Affiant is fully aware of the facts stated in this affidavit.
3. Affiant can read the English language.
4. Contractor has received the list of key contracting persons associated with this invitation for bids 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 Contractor 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 _____, 20__.

Notary Public, State of _____

Typed or printed name of notary

EXHIBIT A – ATTACHMENT A
LIST OF KEY CONTRACTING PERSONS
January 16, 2013

CURRENT

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Name of Business Individual is Associate</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	Vacant	
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, LLP
Executive Assistant	Loretta Farb	
Executive Assistant	Joe Hon	
Executive Assistant	Peter Einhorn	
Commissioner, Precinct 3	Gerald Daugherty*	
Commissioner, Precinct 3 (Spouse)	Charyl Daugherty	Consultant
Executive Assistant	Bob Moore*	
Executive Assistant	Martin Zamzow*	
Executive Assistant	Barbara Smith*	
Commissioner, Precinct 4	Margaret Gomez	
Executive Assistant	Edith Moreida	
Executive Assistant	Norma Guerra	
County Treasurer	Dolores Ortega-Carter	
County Auditor	Nicki Riley*	
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.	
Interim Chief Information Officer	Tanya Acevedo	
Interim Chief Information Officer	Rod Brown	
Interim Chief Information Officer	Walter Lagrone	
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	Daniel Bradford	
Attorney, Transactions Division	Elizabeth Winn	
Attorney, Transactions Division	Mary Etta Gerhardt	
Attorney, Transactions Division	Barbara Wilson	

DRAFT

DRAFT

DRAFT

Attorney, Transactions Division
 Attorney, Transactions Division
 Director, Health Services Division
 Attorney, Health Services Division
 Purchasing Agent
 Assistant Purchasing Agent
 Assistant Purchasing Agent
 Purchasing Agent Assistant IV
 Purchasing Agent Assistant IV
 Purchasing Agent Assistant IV
 Purchasing Agent Assistant IV
 Purchasing Agent Assistant IV
 Purchasing Agent Assistant IV
 Purchasing Agent Assistant IV
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 Purchasing Agent Assistant III
 Purchasing Agent Assistant III
 Purchasing Agent Assistant III
 Purchasing Agent Assistant III
 Purchasing Agent Assistant III
 Purchasing Agent Assistant III
 Purchasing Agent Assistant III
 Purchasing Agent Assistant II
 Purchasing Agent Assistant II
 Purchasing Agent Assistant II
 HUB Coordinator
 HUB Specialist
 HUB Specialist
 Purchasing Business Analyst
 Purchasing Business Analyst

Jim Connolly
 Tenley Aldredge
 Beth Devery
 Prema Gregerson
 Cyd Grimes, C.P.M., CPPO
 Marvin Brice, CPPB
 Bonnie Floyd, CPPO, CPPB, CTPM
 CW Bruner, CTP
 Lee Perry
 Jason Walker
 Richard Villareal
 Patrick Strittmatter
 Lori Clyde, CPPO, CPPB
 Scott Wilson, CPPB
 Jorge Talavera, CPPO, CPPB
 Loren Breland, CPPB
 John E. Pena, CTPM
 Rosalinda Garcia
 Angel Gomez*
 Shannon Pleasant, CTPM
 David Walch
 Michael Long, CPPB
 Nancy Barchus, CPPB
 Jesse Herrera, CTP, CTPM, CTCM*
 Sydney Ceder*
 Vacant
 Vacant
 L. Wade Laursen*
 Sam Francis*
 Sylvia Lopez
 Betty Chapa
 Jerome Guerrero
 Scott Worthington
 Jennifer Francis

FORMER EMPLOYEES

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Date of Expiration</u>
Purchasing Agent Assistant III	Elizabeth Corey, C.P.M.	03/14/13
Attorney, Transactions Division	Tamara Armstrong	03/30/13
Executive Assistant	Lori Duarte	06/15/13
Chief Information Officer	Joe Harlow	07/31/13
County Auditor	Susan Spataro, CPA	08/31/13
Purchasing Agent Assistant IV	George R. Monnat, C.P.M., A.P.P.	09/26/13
Executive Assistant	Cheryl Aker	10/05/13
Purchasing Agent Assistant II	Jayne Rybak, CTP	12/14/13
Commissioner, Precinct 3	Karen Huber	01/01/14
Executive Assistant	Garry Brown	01/01/14
Executive Assistant	Julie Wheeler	01/01/14
Executive Assistant	Jacob Cottingham	01/01/14

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

ATTACHMENT C- ANNUAL REPORT FORM
TRAVIS COUNTY ECONOMIC DEVELOPMENT PROGRAM

REPORTING YEAR: _____ (YEAR OUT OF 10)

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 (Please attach Certificate of Occupancy): _____
- C. Date of LEED Certification (Complete this section if Company is requesting additional incentive

outlined in Sec. 5.2.1):

2. VALUE OF NEW IMPROVEMENTS AND NEW MACHINERY AND EQUIPMENT

- A. Total value of Eligible Property (amount subject to Travis County Ad Valorem Taxation):
 - New Improvement: \$ _____
 - New Business/Personal Property \$ _____

This amount must equal at least the amount specified in Section 5.1.1(d) 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 New Full-time Jobs for the reporting year (Sec. 5.1.2(b)) _____
- B. Average Salary for New Full-time Jobs
[Must equal at least the amount specified in Section 5.1 .2(c)]
 - i. Are Contract Employees meeting salary and benefits requirements outlined in 5.1.2 (c) and (e)?
- C. How many Full-time Employees are residents of Travis County? **NOT APPLICABLE**

All employment figures must be collected and maintained by Company, certified as accurate by 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 Company and Contract Employees have been eligible for health benefits, including same sex 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

5. OTHER

Please attach: receipt of County taxes paid and copy of rendition to TCAD
Documentation of: (1) current ownership/lease agreement for property; (2) compliance with Minority and Women-Owned Business requirements; (3) compliance with construction laws requirement; (4) compliance with recruitment requirements; (5) compliance with health benefits requirement; (6) compliance with employee benefits program (requirements under Sections 5.1).

Certification:

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

BY: _____
Printed Name: _____
Title: _____
Date: _____

ATTACHMENT D
CITY OF AUSTIN AGREEMENT

ATTACHMENT E
AFFIRMATIVE ACTION AT NATIONAL INSTRUMENTS CORPORATION

National Instruments (NI) is an equal opportunity employer and is committed to providing a work environment free of discrimination on the basis of race, gender, age, religion, sexual orientation, disability, veteran status or national origin.

National Instruments demonstrates constant respect for the variety of cultures of our employees. At last count, employees working at NI corporate HQ in Austin represent more than 60 national origins, which reflects the success of our Affirmative Action Plan. NI also offers a Cultural Awareness training course.