



Travis County Commissioners Court Agenda Request

Meeting Date: 10/15/2013, 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 on revised economic development incentives agreement with National Instruments.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

On March 12, 2013, the Commissioners Court approved an agreement with National Instruments to provide ad valorem property tax incentives in exchange for an \$80 million investment in a new facility and the creation of 1,000 new jobs in Travis County. On March 8, 2013, the Austin City Council approved incentives for this project, and the project will also receive funding from the state's Texas Enterprise Fund.

Several months subsequent to receiving the approval of the Commissioners Court and the Austin City Council, National Instruments requested a change in the agreement, primarily related to project timing. Because the agreements had not yet been executed by the County or the City, the contracting participants concluded that the simplest approach would be to revise both agreements to reflect the changed terms. The City of Austin completed revisions in July 2013, and forwarded a copy of its executed agreement to County staff to help ensure consistency as much as possible.

Attached is a revised contract that has been prepared by the County Attorney's Office and reviewed by National Instruments representatives. The scope of the agreement remains unchanged with the exception of the modifications outlined below.

- A change in the completion date of the project from 12/31/15 to 12/31/16
- One year shift in all other related dates in the contract
- Clarification that a few of the new jobs may be physically assigned to location(s) at the existing corporate campus, while the bulk of the new jobs will be working at the new building

A "redlined" copy of the agreement is attached to highlight these minor changes. A "clean" copy is also attached.

STAFF RECOMMENDATIONS:

The Planning and Budget Office recommends approval of this revised contract. These changes do not affect the level of investment or the new job opportunities outlined in the original agreement.

ISSUES AND OPPORTUNITIES:

National Instruments must provide \$80 million in investment of the facility, create 1,000 new full-time jobs with an average salary of \$63,000, provide healthcare benefits (including same sex partners), receive LEED certification on the new facility, work with local non-profits to facilitate recruitment and make a good faith effort to hire as many local residents as possible. In addition, the company has agreed to require a minimum wage of \$11.00 per hour, consistent with the County's minimum wage, which would apply to the new jobs covered under the agreement, and to contracted construction workers who help build the new facility.

FISCAL IMPACT AND SOURCE OF FUNDING:

National Instruments is eligible to receive up to a 45% tax rebate grant over 10 years after completion of the new facility and compliance with other terms of the agreement. The base rebate is 40% and up an additional 5% is available depending on the level of LEED certification awarded to the new facility.

REQUIRED AUTHORIZATIONS:

Planning and Budget Office
County Judge's Office

Jessica Rio
David Salazar

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~~ 2026.

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1.4 "Base Year" means calendar year 2014~~5~~ 5.

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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~~5~~, 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, 201~~5~~6.

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 "Corporate Campus" means the Company's Corporate Campus at 11500 N. MoPac Expressway, Austin, Texas.

1.1~~2~~ "County Auditor" means Nicki Riley, the Travis County Auditor, or her successor.

1.1~~3~~ "Effective Date" for purposes of the Agreement Term, will be ~~March~~ ~~August~~ June 15, 201~~3~~4, upon execution of the Agreement by both Parties

1.1~~4~~ "Employees" means, collectively, employees of the Company performing existing Fulltime Jobs or New Full-time Jobs.

1.1~~5~~4 "Employment Year" means each of the ten (10) years referenced in paragraph (b) of Section 5.1.2.

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

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

1.187 "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.

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

1.198.1 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

1.198.2 Lending 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:

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

1.198.4 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.

1.1920 "Key Contracting Person" means any person or business listed in Exhibit A to the Ethics Affidavit attached to this Agreement and marked Attachment B.

1.210 "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 or at the Corporate Campus after the Effective Date.

1.224 "New Improvements" ~~means~~ 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.

1.232 "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.

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

1.254 "Payment Term" means that time period beginning on January 1, 20167, and ending on December 31, 20256, unless earlier terminated pursuant to the terms of this Agreement. Each calendar year within the Payment Term is designated as a Payment Year.

1.265 "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.

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

1.287 "Project" means the proposed development, as described herein, of the new Center of the Company, as more fully described in Attachment A.

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

1.2930 "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.

1.310 "Required Average Annual Compensation" means the average annual compensation, excluding health insurance and retirement benefits.

1.324 "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).

1.332 "TCAD" means the Travis Central Appraisal District.

1.343 "Termination Date" means the earlier to occur of

(a) December 31, 20256, 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~~ ~~August~~ ~~June 15~~, 20134 (the Effective Date, as defined herein), and continuing through December 31, 20256, 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~~7~~, and continues through December 31, 2025~~6~~ (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~~5~~.

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.

2.5 **Prior Agreement.** The Parties understand and agree that this Agreement replaces a prior agreement between the Parties which had an effective date of March 15, 2013 ("Prior Agreement"); that said Prior Agreement was never fully executed by the Parties; and that said Prior Agreement is void and of no effect.

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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~~ National Instruments
- 3.2.6. Attachment F – County Policy

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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~~7~~ - December 31, 2025~~6~~), 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 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 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) 1/1/145 – 12/31/145 Base Year Value determined by TCAD
- (b) ~~38/6/14~~ Effective Date (upon execution by both Parties)
- (c) ~~38/15/134~~ – 12/31/256 Agreement Term
- (d) 12/31/134 51 Additional New Jobs Created (See Sec. 5.1.2 for Remaining Employment Timetable)
- (e) 12/31/145 Deadline for Commencement of Construction
- (f) 12/31/145 \$4,000,000 Investment
- (g) 12/31/156 \$76,282,000 Investment (Total: \$80,292,000 investment)
- (h) 12/31/156 Latest Date for Completion of Facilities Construction
- (i) 1/1/167 Payment Term begins (Payment made in 20167, would be based on 20145 performance)
- * (j) 3/31/167 Annual Report due as to performance for 20145
- * (k) 5/31/167 County response due on Annual Report (as applicable)
- * (l) 2/1/167 – 9/30/167 County budget process for FY '178
- * (m) 10/31/167 County payment due (if full compliance confirmed)
- (n) 1/1/178 Second Payment Year begins (Payment based on 20156 performance)
- * (o) 3/31/178 Annual Report due as to performance for 20156
- * (p) 2/1/178 – 9/30/178 County budget process for FY '189
- * (q) 10/31/178 County payment due (if full compliance confirmed)
- (r) 12/31/256 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 20156. 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 (beginning March 31, 2017) 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 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~~6~~, 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~~6~~, 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~~5~~. 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, 2014⁵; and an additional \$76,282,000 for new improvements and new business and personal property by December 31, 2015⁶ 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~~3~~, 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.

(iii) Location of Jobs. The Parties agree to the following regarding jobs existing and created by Company during the Agreement Term:

(1) Existing jobs, as referenced in Section 5.1.2(a)(i) above, will be those jobs existing at the Corporate Campus as of the Effective Date of this Agreement.

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(2) New jobs, as referenced in Section 5.1.2(a)(ii) above, will be those 1,000 New Full-Time jobs created by Company under the terms of this Agreement. The Parties agree that, in order to be counted by Company for compliance under this Agreement, those New Full-Time jobs are jobs not in existence as of the Effective Date of this Agreement and created and maintained during the Agreement Term at either the Project or the Corporate Campus.

(3) Company reporting of jobs will include information specifying the number of New Full-Time employees at the Project and the number at the Corporate Campus, and the number of retained employees at either site.

(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 4	2550	51	2601
2014 5	2601	91	2692
2015 6	2692	94	2786
2016 7	2786	98	2884
2017 8	2884	101	2985
2018 9	2985	105	3090
2019 20	3090	109	3199
2020 1	3199	113	3312
2021 2	3312	117	3429
2022 3	3429	121	3550
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~~3~~.

(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; 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%

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~~ March 31, 2017, 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 the taxable value of the property subject to this Agreement and shall record that taxable value on which the Agreement Grant will be based 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~~6~~.
- (b) \$4,000,000 invested no later than December 31, 2014~~5~~.
- (c) \$76,282,000 invested no later than December 31, 2015~~6~~.
- (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 A
DESCRIPTION OF PROPERTY AND PROJECT
Approximately 8.5 acres in NI's Corporate Campus at
11500 N. MoPac Expressway located within the City of
Austin Desired Development Zone.



11500 NORTH MOPAC EXPRESSWAY

ATTACHMENT B
ETHICS AFFIDAVIT

NOTE: Need up to date key persons list.

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 Wilston	

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 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)]
- C. Median Salary for New Full-time Jobs \$ _____
- D. Are Contract Employees meeting salary and benefits requirements outlined in 5.1.2 (c) and (e)? Yes _____ No _____
- E. 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:

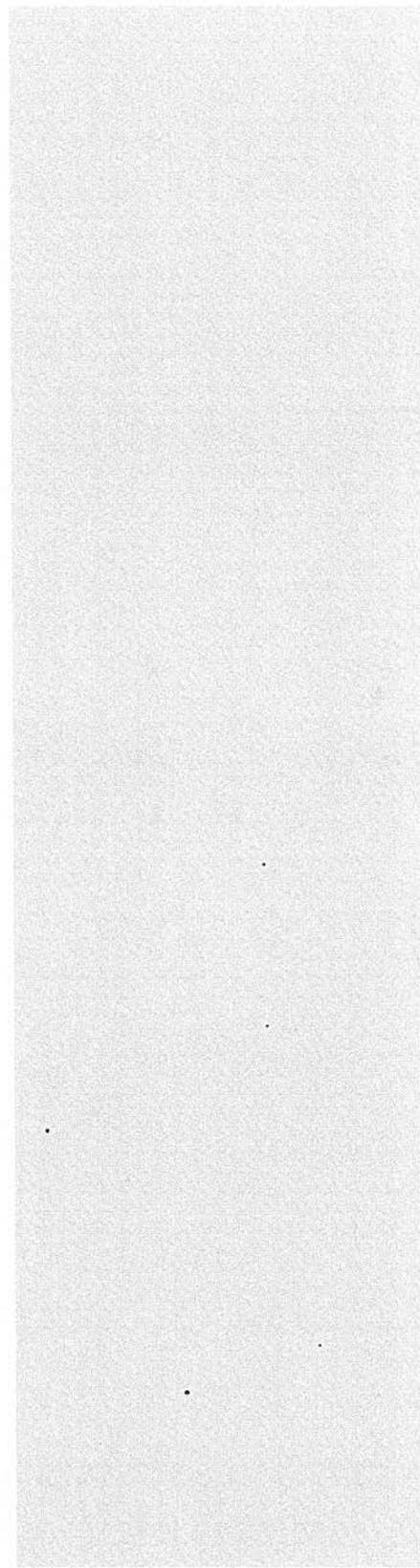
BY: _____
Printed Name: _____
Title: _____
Date: _____

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.





EQUAL EMPLOYMENT OPPORTUNITY POLICY

DATE: August 1, 2005

TO: NATIONAL INSTRUMENTS EMPLOYEES

SUBJECT: Equal Employment Opportunity

I am committed to the goal of equal employment opportunity and affirmative action ("EEO/AA"). Enhancing and using the abilities of all individuals to their fullest extent will continue the profitable and responsible growth of our company. As we implement business processes to grow the company into a billion dollar corporation, our quest to hire should include proactive recruiting practices which are congruent with attaining this goal and include hiring from a diverse population, which values employees differences. Although we continue to make progress toward this goal through my personal commitment, there is still work to be done in this important area.

To carry out my personal commitment to EEO/AA, I have designated Mr. Mark Finger as our company's EEO/AA Officer and Ms. Ruth Maroney as EEO/AA Coordinator, and have charged them with the responsibility to develop and thereafter maintain the necessary programs, records, and reports to comply with all government regulations, and with the goals and objectives of our Equal Employment Opportunity Policy and our Affirmative Action Programs (pursuant to Executive Order 11246 and pursuant to the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Rehabilitation Act of 1973, as amended) and to report to me on our progress. Employees or applicants who wish to review our Affirmative Action Programs, or who have any questions about our Affirmative Action Programs or EEO policy, should contact the EEO Officer or the EEO Coordinator.

Our employment decisions will advance the principles of equal employment opportunity and affirmative action. To ensure this, I am directing that National Instruments will:

1. Recruit, hire, train and promote persons in all job titles, without regard to race, sex, age, religion, disability, veteran status or national origin.
2. Base decisions on employment so as to further the principle of equal employment opportunity.
3. Insure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.
4. Insure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreational programs, will be administered without regard to race, sex, age, religion, disability, veteran status of national origin.

All employees are encouraged to become actively involved in programs, which increase our ability to find qualified candidates for all job positions. Also, I encourage you to participate in community organizations that foster social and economic opportunity for all members of our community.

I am confident that you will continue to approach this responsibility with the sensitivity and human concern you have demonstrated in the past.

James J. Truchard
President and CEO

ATTACHMENT F

COUNTY ECONOMIC DEVELOPMENT POLICY

CHAPTER 28
TRAVIS COUNTY ECONOMIC DEVELOPMENT INCENTIVES POLICY,
GUIDELINES AND CRITERIA

28.001 AUTHORIZATION

(a) **General.** The Travis County Commissioners Court is authorized to develop and administer a program to stimulate business and commercial activity in Travis County pursuant to LOCAL GOVERNMENT CODE, Chapter 381 [specifically, Sections 381.004(b) and 381.004(g)], and other applicable statutes.

(b) **Purpose.** The purpose of this Policy includes the following:

(i) to encourage economic stimulation and prosperity by attracting new businesses to the County;

(ii) to enhance the County tax base by attracting new businesses that will make significant investments in new construction;

(iii) to assist with workforce development in the County by attracting companies that offer significant numbers of new jobs and/or training to current residents who are unemployed or under-employed;

(iv) to encourage diversity of the County's economy by attracting businesses that will contribute to the economy by broadening the scope of business and industry within the County; and

(v) to attract significant new businesses that also help promote the growth of other new businesses needed to provide supporting services or supplies, particularly small companies.

28.002 DEFINITIONS

(a) "Agreement," or "Incentive Agreement" means a contractual agreement between a property owner and/or lessee (and lessor) and an eligible jurisdiction granting or pertaining to an Incentive under this Policy, including any contract entered into under this Policy.

(b) "Applicant" means an authorized representative of a legal business entity who requests in writing the consideration of a proposal for Incentives under this Policy.

(c) "Commissioners Court" means the Travis County Commissioners Court.

(d) "Competitively-Sited Project" means a project where the Applicant has completed a written evaluation for assistance by a governmental entity in another location in which expansion,

relocation or new operations (the project being proposed for Travis County Incentives) are actively being considered by the Applicant.

(e) "Economically Disadvantaged" means a Travis County resident who meets one of the following requirements:

(i) Has a verified income of 200% or less of the current Federal Poverty Guidelines;
or

(ii) Meets two or more of the criteria under the definition of "economically disadvantaged" under TEXAS GOVERNMENT CODE, Section 2303.402(2)(c)(1) – (9) (with documented evidence of such eligibility).

(f) "Eligible Project" means a proposed development which qualifies for Incentives under this Policy by meeting the requirements set forth in Section 28.004(a).

(g) "Eligible Property" means all property (real and business personal) subject to assessment by the Travis Central Appraisal District (TCAD) for the determination of ad valorem taxes that is the subject of any Agreement under this Policy. Eligible Property will be limited to:

(i) real property on which the facility is located (entire approved site as set forth in the Agreement);

(ii) the new construction improvements on the site; and

(iii) new business personal property placed within a facility within the same year the new facility is counted as new construction by TCAD or as agreed to in a specific phasing provision in the Agreement.

In no event shall the Incentive granted in any one year exceed the total ad valorem tax revenue received/due Travis County from the company's cumulative new construction as certified by TCAD. To be eligible and subject to receive Grant Incentives, property, both real and business personal, must also be owned by the Applicant seeking the tax incentive over the entire term of the Agreement; and taxes on that property must be paid by the Applicant seeking the tax incentive. In the case of a project that includes a leasehold interest in real estate that has been approved by the Commissioners Court pursuant to this Policy, the company may retain eligibility for incentives as long as the County is provided a copy of the lease agreement that indicates the obligation of the company to pay all ad valorem taxes (either directly or indirectly) and the company agrees to provide the County with a copy of the cancelled check indicating payment of those ad valorem taxes each year in which incentives are requested.

(h) "Employee" means a person:

(i) whose employment is permanent, full-time and non-seasonal; and

(ii) who is employed by the Applicant for Incentive for a minimum of 1,750 hours per year; and

(iii) whose employment is reflected in the Applicant's report filed with the TWC on December 31 of each year, or reflected in other acceptable company generated and certified payroll report or other documentation of employment deemed adequate by County.

It is understood that, in order to receive Incentives based on employment numbers, Applicant must also provide documentation that required health insurance benefits [see Section 28.004(a)(v)] are provided.

(i) "Grant Incentives" means the grant funds paid by County as a result of performance of obligations under an Agreement, the amount of which is based on a percentage of specified ad valorem taxes paid on certain Eligible Property pursuant to that Agreement entered into under this Policy as authorized by TEXAS LOCAL GOVERNMENT CODE, Chapter 381, and other applicable laws, rules, regulations and policies.

(j) "Incentive(s)" means the benefit granted under an Agreement entered into pursuant to this Policy and applicable statutes, including and Grant Incentive.

(k) "Investment" means the capital investment made by the Applicant in new construction and new taxable business personal property as indicated in documentation rendered to TCAD annually. Rendition to TCAD is required by County in order to receive Incentives under this Policy. Applicant will provide a copy of that rendition to County with its reporting information. The Investment total will not include payroll, cost of goods sold, or any other investment not directly related to Eligible Property, as determined by County.

(l) "PBO" means Travis County Planning and Budget Office.

(m) "Taxable Value of Eligible Property" means the certified appraised value of Eligible Property, as finally determined by TCAD.

(n) "TCAD" means Travis Central Appraisal District.

(o) "TCEQ" means the Texas Commission on Environmental Quality.

(p) "TWC" means the Texas Workforce Commission.

28.003 AUTHORIZED FACILITIES

(a) **Preferred Facilities.** In considering an application for Incentives under this Policy, preference will be given to an Applicant if it seeks to locate any of the following within Travis County:

(i) **Convergence Technology Facility**, defined as a company engaged in research and development activities, computer and other electronic systems and hardware design or testing, software development, testing, or publishing, wireless telecommunications, or related product manufacturing.

(ii) **Creative Media Facility**, defined as a company engaged in the creation, development, production and distribution of musical works, motion pictures, television and other forms of video programming and content, video games, advertising and informational content.

(iii) **Green Industries**, defined as companies engaged in clean energy and resource conservation. "Clean energy" includes research and development, headquarters or manufacturing projects that involve any type of energy efficiency, energy storage, energy resource conservation, renewable energy or alternative fuel technology. "Resource conservation" includes companies involved in the research, development and manufacturing of products focused on improved efficiency and availability of natural resources including clean air and water.

(iv) **Corporate/Professional Headquarters**, defined as the main office from which a regional, national or international organization is managed. Typical functions that occur in these types of offices include executive decision-making and strategy, sales and marketing, human resources, financial operations, advanced information technology operations, consulting and training. The chief executive officer for the region for which this location serves as a headquarters must be based at the location.

(v) **Healthcare and Life Sciences Facility**, defined as companies in the fields of healthcare, biotechnology, pharmaceuticals, biomedical technologies, life systems technologies, environmental, biomedical devices, and organizations and institutions that devote the majority of their efforts in the various stages of research, development, testing, technology transfer, commercialization or manufacturing.

(vi) **Regional Live Entertainment or Fine Arts Facility**, defined as buildings and structures, including fixed machinery and equipment, used as a venue for live entertainment or the display of fine arts through the admission of the general public where a substantial percentage of users reside at least 100 miles from any part of the County.

(vii) **Research and Development Facility**, defined as buildings and structures, including fixed machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials, the production processes of such, or current technology in biomedicine, electronics or pre-commercial emerging industries.

(viii) **Economically Disadvantaged Job Provision**. A business that will provide substantial opportunities for employment for Economically Disadvantaged individuals.

(ix) **Other**. Other businesses approved by the Commissioners Court that will provide substantial opportunities to enhance or diversify the County's economy.

(b) **Retail Developments**. Developments which are primarily for retail may be reviewed on a case-by-case basis to determine eligibility for Incentive, but will not be considered as preferred development proposals.

(c) **Leased Facilities**. Existing leased facilities will only be eligible for Incentives under this Policy if:

(i) the minimum investment requirement [Section 28.004(a)(i)] is met for new construction by the renovation or building of facilities or addition of business personal property, which are certified by TCAD as new construction; and

(ii) the company shows proof of: obligation of company in the leasehold agreement to pay all ad valorem taxes (either directly or indirectly); payment by the company of the ad valorem property taxes related to such new construction and/or eligible business personal property; and

(iii) the amount of the Incentive is based only on business personal property or real property improvements certified as new construction by TCAD.

If the above conditions are met and leased property will be utilized for new construction that is granted a tax Incentive, the Agreement will be executed with both the lessor (owner) and lessee.

of the land on which the facility is located provided that the term of the lease is equal to or exceeds the term of the Agreement.

(d) **Findings.** An agreement cannot be entered into unless the Commissioners Court finds: that the terms of the Agreement and the Property subject to the Agreement meet the applicable guidelines and criteria set forth in this Policy; and that the development of the Project will result in substantial immediate and long-term financial benefit to Travis County and significant financial benefit to other taxing entities within Travis County.

(e) **Commissioners Court Ownership.** Property that is owned or leased by a person who is a member of the Commissioners Court (or staff of such member) is excluded from receiving Incentives under this Policy.

28.004 BASE INCENTIVE

(a) **Eligible Project.** To be eligible for consideration for the base Incentive a project must meet the following criteria:

(i) **Investment.** Include additions of investment in new construction of Eligible Property, as certified by TCAD, which totals at least twenty-five million dollars (as shown by the Applicant's annual tax rendition, a copy of which will be provided to County) by January 1 of the tax year that will commence immediately following the year in which the construction period defined in the Agreement is completed or the year in which the Incentive begins;

(ii) **Job Transfer.** Not solely or primarily have the effect of transferring employment from one part of the County to another;

(iii) **New Job Creation.** Provide additional full-time, non-seasonal jobs for at least 100 Employees within the time period or periods set forth in the Agreement, with additional Incentive available for more than 100 new jobs [(see Section 28.004(a)(iii)];

(iv) **Competitively Siting.** Be competitively-sited;

(v) **Benefits.** Have a human resources benefits policy:

(A) meeting all applicable state and federal requirements, including provision of health benefits at a level which, as determined by the Commissioners Court, meet or exceed the requirements of the Patient Protection and Affordable Care Act in effect as of the date of the adoption of this Policy; and

(B) including the Applicant's offering group coverage or contribution to health benefits in a dollar amount that provides meaningful opportunity for all workers to purchase coverage for all Employees and Employee family members ("all" Employees and Employee family members defined to include same sex/domestic partners).

(vi) **Location.** An Eligible Project must be located in a Travis County Regional Activity Center located in an area:

- identified in a comprehensive plan (a plan adopted, or to be adopted, by the Commissioners Court for the long-range development of the

unincorporated area of the County which is used to coordinate and guide County programs);

- a Conservation Development that conforms to the provisions of the County Conservation Development Order (Travis County Code, Chapter 82, Subchapter A);

- areas consistent with the City of Austin Growth Concept Map;

or
- in another targeted area specifically identified by Travis County for economic development preference at the time this Policy is approved or at any time this Policy is in effect.

A specific Regional Activity Center, Conservation Development, or other area described above must be identified in the Agreement approved by the Commissioners Court and cannot be added to the Agreement at a later date.

(vii) **Equal Employment Opportunity Policy.** Provide County with a copy of the Applicant's equal employment opportunity policy. If the Applicant does not have a written equal employment policy at the time of application, Applicant may provide County with a written plan for adoption of such policy, to be completed and provided to the County prior to any Agreement being executed. NO Agreement will be entered into until the copy of the policy is provided to County;

(viii) **Cash-Positive Evaluation.** Have been evaluated using an economic development software program (currently, webLOCI, but subject to change at County's discretion) which calculates the benefits and costs to the County from Incentive deals, including the payments and the cost of County services, with such evaluation having a cash-positive result; and

(ix) **Salary Requirements.** Provide salaries to all Employees, including contract Employees and employees hired by contractors for construction of the Company's facilities related to the incentive Agreement, at an hourly wage that equals or exceeds the County's established minimum wage.

(x) **Construction Requirements.** Meet specified County requirements related to wages and safety conditions for employees hired by contractors for construction of the Company's facilities related to the incentive Agreement.

A proposal which meets the above criteria will be considered an Eligible Project. This establishes initial eligibility but does not ensure the granting of Incentives by Travis County.

(b) **Base Incentive Amount.** An Eligible Project may receive a base Incentive of up to 45% of ad valorem taxes on new value of Eligible Property if the Applicant shows a minimum investment as set forth in Section 28.004(a)(i), with the percentage determined as follows:

Investment Amount	Base Incentive Percentage
\$25 Million to \$100 Million	up to 25%
\$101 Million to \$200 Million	up to 33.5%
More than \$200 Million	up to 45%

28.005 ABOVE BASE INCENTIVE.

(a) **Maximum Incentive.** No Incentive will be granted that exceeds eighty percent (80%), regardless of the total above-base requirements that an Applicant may fulfill. Additional Incentives above the base may be considered as set forth in this Section 28.005.

(b) **Jobs.**

(i) **Additional Incentive.** An additional Incentive of up to fifteen percent (15%) may be granted based on Employee jobs created as follows:

Number of Jobs	Additional Incentive Percentage
100 – 150	up to 6%
151 – 200	up to 10%
201 +	up to 15%

(ii) **Advertising.** To qualify for additional Incentive for jobs created, Applicant must advertise jobs and provide documentation of such on public job boards (i.e., Workforce Solutions) and other resources as identified by County.

(c) **Residency.** An additional Incentive of 5% may be granted of the Company fills at least 50% of its new positions for the project with Travis County residents. For purposes of this requirement, "residency" will be defined as having a permanent address within Travis County and not having worked for the Company prior to the Effective Date of the Agreement.

(d) **Leadership in Energy and Environmental Design (LEED) Certification.**

(i) **Additional Incentive.** An additional Incentive of up to five percent (5%) may be given for Leadership in Energy and Environmental Design (LEED) certification.

(ii) **Level of Certification.** If the owner or lessee of a new commercial facility or an existing facility to be adapted or renovated has registered with the U. S. Green Building Council (USGBC) seeking LEED Certification, then PBO may recommend approval of an additional Incentive based upon the level of certification obtained after completion of construction as follows:

LEED Certification Level	Additional Incentive Percentage
Basic	up to 2%
Silver	up to 3
Gold	up to 4%
Platinum	up to 5%

(iii) **Registration.** Applicant must be registered with USGBC seeking LEED Certification prior to submitting its application for additional LEED Incentive to the County. The additional Incentive for LEED shall not commence until construction of the project is completed and LEED Certification is obtained by the Applicant and acceptable documentation provided to County of that certification.

(e) **Economically Disadvantaged Hiring/Training.** An additional Incentive of up to ten percent (10%) for training and/or hiring of Economically Disadvantaged residents may be granted as follows:

(i) Option A – Needs Based Scholarships.

(A) Scholarship. Applicant may pursue additional Incentive under this subsection 28.005(e) by providing needs based scholarships covering at least 50% of the full tuition cost of a degree or certification (with "tuition" being defined to include all required fees, books and actual tuition costs) to Economically Disadvantaged individuals.

(B) Number. Scholarships under this subsection must be provided to a number of Economically Disadvantaged individuals equal to at least ten percent (10%) of the Eligible Project's total employment annually. For example, if Applicant will have 200 full time Employees, Applicant would have to fund 20 scholarships.

(C) Administration. The administration of the needs based scholarship must be provided through an institute of higher education, an independent school district, or a workforce training program approved by Travis County. Verification of the funding for and the distribution of the needs based scholarship shall be provided by the educational or workforce training program administering the program.

(ii) Option B – Full Time Employment.

(A) Employment. Applicant may pursue additional Incentive under this subsection 28.005(e) by providing full time employment to Employees who have been participants in any needs based scholarship program or workforce training program approved by Travis County.

(B) Number. Employment under this subsection must be provided to a number of Economically Disadvantaged individuals equal to at least ten percent (10%) of the Eligible Project's total employment annually. For example, if Applicant will have 200 full time Employees, Applicant would have to hire and retain 20 Economically Disadvantaged individuals to qualify for the additional incentive.

(C) Administration. Verification of the employment of Economically Disadvantaged Travis County residents shall be met through documentation by the Applicant that:

(1) the full time Employee has been a recipient of any qualifying based scholarship (as approved by County) within the last four years; or

(2) the full time Employee has completed a workforce training program approved by Travis County within the last four years.

(iii) Option C – Monetary Donations.

(A) Donation. Applicant may pursue additional Incentive under this subsection 28.005(e) by providing a specified monetary donation (the amount to be included in the Agreement) to a workforce training program approved by Travis County or to an established Travis County workforce training fund, if such a fund is established.

(B) Administration. Verification of the donation to the workforce training program must be provided by that program; verification of the donation to a Travis County funds will be provided by County.

(iv) Option D – Other Participation. Applicant may pursue additional Incentive under this subsection 28.005(e) by participating to the level negotiated in the Agreement in an approved Travis County program designed to enhance workforce training/hiring of Economically Disadvantaged. For example, Applicant could agree to participate by providing a specified number of internships under the County summer youth employment program.

(v) Other Requirements. If Applicant pursues additional Incentive under Option A or Option B above:

(A) Pre-Approval. Travis County, through Travis County Health, Human Services and Veterans Services, must pre-approve any proposal by the Applicant under this subsection 28.005(e) as to the educational institution, program or needs based scholarship program.

(B) Addition to Agreement. At the request of the Applicant, and at the discretion of the Commissioners Court, a training and hiring Incentive provision [as set out in this subsection 28.005(e)] may be added as an amendment to a prior Incentive Agreement approved by Commissioners Court. Additional Incentive for such added provision will only be granted effective as of the date of the fully executed amendment.

28.006 PROCESS

(a) General.

(i) Initial Proposal. A company will make written application for Incentives pursuant to the applicable provisions of this Policy. PBO will review the initial application and make recommendation to the Commissioners Court regarding the proposal. The Commissioners Court will, at its sole discretion, determine whether to grant the Incentive, the level of the Incentive to be granted and the terms of the Agreement.

(ii) No Limitation. Nothing in this Policy is meant to or will be construed to limit the discretion of the Commissioners Court to decide whether to enter into a specific Agreement; or limit the discretion of the Commissioners Court to delegate to its employees the authority to determine whether the Commissioners Court should consider a particular application or request for Incentive; or create any property, contract or other legal right in any person to have the Commissioners Court consider or grant a specific application or request for Incentives.

(b) Application Package. Components of a complete application package establishing minimum qualifications for a base Incentive will include:

(i) a completed Travis County Application form (Exhibit 1 of this Policy);

(ii) a non-refundable check in the amount of \$1,000.00 payable to Travis County to reimburse the County the reasonable cost of proposal evaluation; and

(iii) a completed narrative prepared in accordance with the template provided in the County application including, but not limited to:

(A) an investment budget detailing components and costs of the Eligible Property for which Incentive is requested, including type, number, economic life and eligibility for a tax exemption granted by TCEQ, if known;

(B) a map and legal description of the property/properties, if a location or alternate locations have been identified, with the understanding that this information will be provided prior to the execution of the Agreement if not available at the time of application;

(C) a time schedule for undertaking and completing the proposed improvements;

(D) a ten-year environmental and worker safety compliance history for all facilities located within the State of Texas and owned in whole or in part by the Applicant, as defined in "Environmental and Worker Safety Qualification";

(E) an affidavit by the Applicant affirming that the application is a Competitively-Sited Project and acknowledging that documentation confirming the competitive process will be provided to County if an Incentive is granted by Travis County prior to the execution of the final Agreement; failure to provide the acceptable documentation of being a Competitively-Sited Project will result in the termination of Agreement negotiations;

(F) information pertaining to the reasons that the requested Incentive is necessary to ensure that the proposed project is built in the County (i.e., documentation supporting the assertion that "but for" an Incentive, the stated project could not be constructed in the County);

(G) copies of the report filed with the TWC for December 31 of the last complete year prior to the filing of the application documenting the current number of full time non-seasonal Employees, and full-time contract Employees, if any, at the time the application is submitted. Applicant may substitute another company-generated and certified payroll report or other documentation of employment for the previous year deemed adequate by County to provide the above information;

(H) financial and other information as the County deems appropriate for evaluating the financial capacity and other factors of the Applicant's proposal; and

(I) certification prepared by the Travis County Tax Assessor-Collector stating that all tax accounts within the County are paid on a current basis.

Additional information required for Incentives, particularly above base Incentives, may be included if the Applicant desires those proposal to be considered or may be requested on a case by case basis.

(c) **Additional Information – Leased Facility.** The Applicant will provide County, as a part of the application package, the name and address of the lessor and a copy of the proposed lease agreement, or option contract (with a final copy of the executed lease to be provided to County prior to execution of the Agreement). In the event a lease or option contract has already been executed with the owner of the site, the document should include a provision whereby Incentive Applicant may terminate

such contract or lease in the event that the County does not grant an Incentive. Leased property will only be considered for Incentives as to the Eligible Property being proposed. The lease term must extend for at least as long as the requested Incentive Agreement term and the Lease agreement must include the requirement that the Company pay the Ad Valorem taxes (either directly or indirectly) throughout the term of the Agreement.

(d) **Initial County Review by PBO.** Any current or potential owner or lessee of taxable property in the County may request an Incentive by filing a completed application (an application which includes all information set forth in this Policy and deemed necessary by County to make a full assessment of the proposal) with the County Judge, with a copy to PBO prior to any public expression of a site selection decision. The County Judge's office will notify the Commissioners Court of receipt of an application for Incentive and PBO will begin the assessment pursuant to this Policy. PBO may request additional information and clarification from the Applicant as necessary to complete the application. PBO, in consultation with the County Judge, will create an assessment of the proposal and make a best effort to respond to a completed application in a timely manner upon receiving the completed application and completing the financial analysis. The response will include notification by PBO which either:

(i) notifies the Applicant in writing that the Travis County Commissioners Court will not take up the application for consideration; or

(ii) notifies the Applicant in writing that consideration of the application will be set for consideration by the Travis County Commissioners Court.

(e) **County Assessment of Application.** Upon receipt of a completed application and completion of the necessary financial analysis, PBO shall determine whether a project meets the minimum threshold for consideration by the Travis County Commissioners Court for a base Incentive and any additional Incentive under this Policy. If PBO determines that the threshold has been met, or that the proposal warrants consideration with the possibility of waivers, PBO shall offer the application for consideration by the Travis County Commissioners Court at a regularly scheduled voting session. County will make every effort to offer the application for consideration by the Commissioners Court in a timely manner after receipt of the completed application and completion of the financial analysis.

(f) **Consideration.** The Commissioners Court will consider the proposed application for any Incentive in a regularly scheduled voting session with opportunity for public comment.

28.007 LIMITATIONS

(a) **County Indebtedness.** No Incentive shall be approved or allowed if the Applicant is indebted to the County or any other local taxing jurisdiction for past due ad valorem taxes or other obligations.

(b) **Incentive on New Value.** Incentives may only be granted for the increase in taxable value of Eligible Property on or after the effective date of the Agreement granting the Incentive if the Eligible Property is listed by kind or type in the Agreement between the County and Applicant, subject to such limitations as the Commissioners Court and the TEXAS TAX CODE (and other applicable statutes) may require.

(c) **Duration.** An Incentive Agreement between Travis County and an Applicant (and, if applicable, the Applicant's lessor or lessee) shall remain in effect for up to but not more than ten (10) years.

(d) **Failure to Meet Requirements.** No Incentive shall be given for any year in which the Eligible Project fails to meet the contractually-defined minimum new investment requirements and job requirements as set forth in the Agreement, and any other requirements as specified in the Agreement.

(e) **Prior Construction or Improvements.** The County will not enter into an Incentive Agreement if it finds that an application was received after a project commenced construction or installation of improvements which are proposed to be considered for Incentive.

(f) **Non-Compete Agreements.** An Incentive will not be granted for projects whose competitive siting consists only of consideration of taxing jurisdictions that have agreed with County to forego the use of tax incentives in competing with the County for such projects.

28.008 AGREEMENT TERMS

(a) **Negotiation.** After the approval of the general concept of the initial proposal by the Commissioners Court, the County may negotiate and execute an Agreement with the owner of the facility (and/or lessee/lessor, where applicable) as required by this Policy and applicable law. Travis County will make all reasonable efforts to execute an Agreement in a timely manner upon the Court's approval to commence negotiations.

(b) **Terms.** The terms of the Agreement will include:

(i) **Annual Certification.** A requirement that the Applicant annually submit (or provide acceptable access for monitoring purposes) notarized written certification to PBO of compliance with the Agreement terms, including the following:

(A) A January Employee count for the Eligible Project which is the subject of the Agreement which corresponds to Employee counts reported in the facility Employer's Quarterly Report to TWC (or other acceptable company-generated and certified payroll report or other documentation of employment deemed adequate by County) for the quarter most recently ended at calendar year-end;

(B) A description of employment, including: the number of jobs created as a direct result of the improvements which are the subject of the Incentive Agreement; the number of Employees in other facilities located within Travis County; and the compliance with the environmental and worker safety requirements in the Agreement for the preceding calendar year, as of January 1, as required by the Agreement;

(C) A copy of the tax bill for the year for which Incentives are claimed and proof of payment; and

(D) Other reporting data and documentation necessary to confirm compliance with all terms and conditions of the Agreement and to evaluate long-term effects of the performance of the Agreement terms.

Submission of all required reporting information shall be used to determine Incentive eligibility and shall be subject to audit if requested by the Commissioners Court. Failure to submit will result in the ineligibility to receive an Incentive.

(ii) **Monitoring.** A provision requiring the Applicant to allow the County or other authorized representatives (including third-party consultant/auditor) to have access and the ability

to review and evaluate all Applicant information and data related to the performance of the Agreement on-site or as provided to County to confirm compliance and to perform other evaluation of long-term results of the Agreement.

(iii) Permits. A requirement that the owner or lessee will:

(A) obtain and maintain all required permits and other authorization from the United States Environmental Protection Agency and the TCEQ for the construction and operation of its facility and for the storage, transport and disposal of solid waste; and

(B) seek a permit from the TCEQ for all grandfathered units on the site of the facility by filing with the TCEQ, within three years of receiving the Incentive, a technically complete application for such a permit.

(iv) Competitively Sited Documentation. A requirement that the Applicant provide to PBO within one month of executing the Agreement documentation confirming the Eligible Project was in fact part of a competitively-sited process where applicable. Documentation may include, but will not be limited to:

(A) documentation (correspondence or financial information) presented to the Applicant by other taxing jurisdictions; and

(B) results of a competitive site survey conducted by Applicant (or consultant for the Applicant).

Failure to provide this documentation confirming a competitively-sited process will make any Incentive Agreement null and void or subject to a reduction in Incentive, as determined by the Commissioners Court.

(v) Recapture. A requirement for recapture of the Incentive received by Applicant for the last five (5) years of the Agreement if the Applicant fails by the termination date to fulfill the requirement for the total Investment amount and the total number of new jobs to be created.

(vi) Hiring. A statement certifying that the Applicant does not and will not knowingly employ an undocumented worker; and, if after receiving Incentives under the Agreement, the company is convicted of a violation under 8 U.S.C., Section 1324a(f), the company will repay the amount of Incentive, with interest at the rate and according to the other terms of the Agreement not later than the 120th day after the date the company is notified by County of the violation.

(vii) Commissioners Court Ownership Statement. A statement whereby the Applicant warrants that none of the Property subject to the Agreement is owned or leased by any member of the Commissioners Court (or staff of such member).

(viii) Other Terms. Other terms and conditions as required by applicable law or determined by the Commissioners Court to be necessary.

28.009 OTHER PROVISIONS

(a) Assignment. An Incentive Agreement may be assigned to a new owner or lessee of a facility with the prior written consent of the Commissioners Court, which consent will not be

unreasonably withheld. Any assignment shall provide that the assignee will irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the Agreement. Any assignment will be to an owner that continues the same improvements or repairs to the property (except to the extent such improvements or repairs have been completed), and continues the same use of the facility as stated in the original Agreement with the initial Applicant. No assignment will be approved if the assignor or the assignee is indebted to the County for past due ad valorem taxes or other obligations.

(b) **Amendments and Waivers.**

(i) **Agreement Changes.** Amendment of any Agreement entered into under this Policy can only be made by written instrument signed by all parties, and only so long as the terms and conditions of the amendment reflect provisions which could have been included in the original Agreement under this Policy and which meet all applicable statutory requirements. Submissions for amendments to an Agreement will be made in writing to PBO.

(ii) **Waivers of Policy Requirements.** The Commissioners Court reserves the right to waive any provision of this Policy that is not required by law upon determination that the waiver requested does not violate the purpose of the Policy and is in the best interest of the County.

(c) **Application of Policy.** Application of this Policy will be implemented as of the effective date set forth in Section 28.010; however, the Commissioners Court may consider the terms of this Policy as guidelines in evaluating proposals for Incentives submitted prior to the adoption of this Policy as desired by the Commissioners Court.

28.010 SUNSET PROVISION. The guidelines and criteria set forth in this Policy are effective November 27, 2012, and will remain in place unless earlier terminated by the Commissioners Court.

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, 2026.

1.4 "Base Year" means calendar year 2015.

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, 2015, 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 Date will be no later than December 31, 2016.

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 "Corporate Campus" means the Company's Corporate Campus at 11500 N. MoPac Expressway, Austin, Texas.

1.12 "County Auditor" means Nicki Riley, the Travis County Auditor, or her successor.

1.13 "Effective Date" for purposes of the Agreement Term, will be June 1, 2014, upon execution of the Agreement by both Parties

1.14 "Employees" means, collectively, employees of the Company performing existing Fulltime Jobs or New Full-time Jobs.

1.15 "Employment Year" means each of the ten (10) years referenced in paragraph (b) of Section 5.1.2.

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

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

1.18 "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.

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

1.19.1 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

1.19.2 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:

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

1.19.4 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.

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

1.21 "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 or at the Corporate Campus after the Effective Date.

1.22 "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.

1.23 "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.

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

1.25 "Payment Term" means that time period beginning on January 1, 2017, and ending on December 31, 2026, unless earlier terminated pursuant to the terms of this Agreement. Each calendar year within the Payment Term is designated as a Payment Year.

1.26 "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.

1.27 “PBO” means Travis County Planning and Budget Office.

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

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

1.30 “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.

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

1.32 “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).

1.33 “TCAD” means the Travis Central Appraisal District.

1.34 “Termination Date” means the earlier to occur of

(a) December 31, 2026, 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 June 1, 2014 (the Effective Date, as defined herein), and continuing through December 31, 2026, 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, 2017, and continues through December 31, 2026 (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, 2015.

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.

2.5 **Prior Agreement.** The Parties understand and agree that this Agreement replaces a prior agreement between the Parties which had an effective date of March 15, 2013 ("Prior Agreement"); that said Prior Agreement was never fully executed by the Parties; and that said Prior Agreement is void and of no effect.

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 National Instruments
- 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, 2017 - December 31, 2026), 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 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 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/ 15 – 12/31/ 15 Base Year Value determined by TCAD

(b)	6/1/14	Effective Date (upon execution by both Parties)
(c)	8/15/14 – 12/31/26	Agreement Term
(d)	12/31/14	51 Additional New Jobs Created (See Sec. 5.1.2 for Remaining Employment Timetable)
(e)	12/31/15	Deadline for Commencement of Construction
(f)	12/31/15	\$4,000,000 Investment
(g)	12/31/16	\$76,282,000 Investment (Total: \$80,292,000 investment)
(h)	12/31/16	Latest Date for Completion of Facilities Construction
(i)	1/1/17	Payment Term begins (Payment made in 2017, would be based on 2015 performance)
* (j)	3/31/17	Annual Report due as to performance for 2015
* (k)	5/31/17	County response due on Annual Report (as applicable)
* (l)	2/1/17 – 9/30/17	County budget process for FY '18
* (m)	10/31/17	County payment due (if full compliance confirmed)
(n)	1/1/18	Second Payment Year begins (Payment based on 2016 performance)
* (o)	3/31/18	Annual Report due as to performance for 2016
* (p)	2/1/18 – 9/30/18	County budget process for FY '19
* (q)	10/31/18	County payment due (if full compliance confirmed)
(r)	12/31/26	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 2016. 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 (beginning March 31, 2017) 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 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, 2016, 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, 2016, 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, 2015. 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, 2015; and an additional \$76,282,000 for new improvements and new business and personal

property by December 31, 2016 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, 2023, 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.

(iii) **Location of Jobs.** The Parties agree to the following regarding jobs existing and created by Company during the Agreement Term:

(1) Existing jobs, as referenced in Section 5.1.2(a)(i) above, will be those jobs existing at the Corporate Campus as of the Effective Date of this Agreement.

(2) New jobs, as referenced in Section 5.1.2(a)(ii) above, will be those 1,000 New Full-Time jobs created by Company under the terms of this Agreement. The Parties agree that, in order to be counted by Company for compliance under this Agreement, those New Full-Time jobs are jobs not in existence as of the Effective Date of this Agreement and created and maintained during the Agreement Term at either the Project or the Corporate Campus.

(3) Company reporting of jobs will include information specifying the number of New Full-Time employees at the Project and the number at the Corporate Campus, and the number of retained employees at either site.

(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>
2014	2550	51	2601
2015	2601	91	2692
2016	2692	94	2786
2017	2786	98	2884
2018	2884	101	2985
2019	2985	105	3090
2020	3090	109	3199
2021	3199	113	3312
2022	3312	117	3429
2023	3429	121	3550
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, 2023.

(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; 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%

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 March 31, 2017, 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 the taxable value of the property subject to this Agreement and shall record that taxable value on which the Agreement Grant will be based 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, 2016.
- (b) \$4,000,000 invested no later than December 31, 2015.
- (c) \$76,282,000 invested no later than December 31, 2016.
- (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 A
DESCRIPTION OF PROPERTY AND PROJECT
Approximately 8.5 acres in NI's Corporate Campus at
11500 N. MoPac Expressway located within the City of
Austin Desired Development Zone.



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**

EXHIBIT A
LIST OF KEY CONTRACTING PERSONS
October 9, 2013

CURRENT

Position Held	Name of Individual Holding Office/Position	Name of Business Individual is Associated
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	David Salazar*	
Commissioner, Precinct 1.....	Ron Davis	
Commissioner, Precinct 1 (Spouse).....	Annie Davis	Seton Hospital
Executive Assistant	Deone Wilhite	
Executive Assistant	Felicitas Chavez	
Commissioner, Precinct 2	Bruce Todd*	
Commissioner, Precinct 2 (Spouse).....	Elizabeth Christian	Consultant
Executive Assistant	Sara Krause*	
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	
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	
Attorney, Transactions Division.....	Jim Connolly	
Attorney, Transactions Division.....	Tenley Aldredge	
Director, Health Services Division	Beth Devery	
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.....	CW Bruner, CTP	
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..... Loren Breland, CPPB
 Purchasing Agent Assistant IV..... John E. Pena, CTPM
 Purchasing Agent Assistant IV..... Rosalinda Garcia
 Purchasing Agent Assistant IV..... Angel Gomez*
 Purchasing Agent Assistant III..... Shannon Pleasant, CTPM
 Purchasing Agent Assistant III..... David Walch
 Purchasing Agent Assistant III..... Michael Long, CPPB
 Purchasing Agent Assistant III..... Jesse Herrera, CTP, CTPM, CTCM
 Purchasing Agent Assistant III..... Sydney Ceder*
 Purchasing Agent Assistant III..... Ruena Victorino*
 Purchasing Agent Assistant III..... Rachel Fishback*
 Purchasing Agent Assistant II..... Vacant
 Purchasing Agent Assistant II..... L. Wade Laursen
 Purchasing Agent Assistant II..... Sam Francis
 HUB Coordinator..... Sylvia Lopez
 HUB Specialist..... Betty Chapa
 HUB Specialist..... Jerome Guerrero
 Purchasing Business Analyst..... Scott Worthington
 Purchasing Business Analyst..... Jennifer Francis

FORMER EMPLOYEES

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Date of Expiration</u>
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
Commissioner, Precinct 2	Sarah Eckhardt.....	05/ 31/14
Purchasing Agent Assistant III.....	Nancy Barchus, CPPB.....	06/28/14

* - 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)]
- C. Median Salary for New Full-time Jobs \$ _____
- D. Are Contract Employees meeting salary and benefits requirements outlined in 5.1.2 (c) and (e)? Yes _____ No _____
- E. 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

**ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF AUSTIN
AND NATIONAL INSTRUMENTS CORPORATION**

This Economic Development Agreement ("Agreement") is made and entered into as of July 1, 2013 (the "Effective Date") by and between National Instruments Corporation (the "Company"), a Delaware corporation, with its principal places of business in Austin, Texas, and the City of Austin, a home-rule municipal corporation situated in Hays, Travis and Williamson Counties acting by and through its duly authorized City Manager or his designee (the "City"). The City is authorized by Chapter 380 of the Texas Local Government Code to create programs for the grant of public money to promote state and local economic development and to stimulate local business and commercial activity.

The City has authorized the creation of an economic development program under Chapter 380 of the Texas Local Government Code and has authorized the City Manager to make a grant of money to the Company to (i) locate, a Research and Development Facility in Austin and make capital investments in the Desired Development Zone, and (ii) create New Full-Time Jobs at the Research and Development Facility ((i) and (ii) together are the "Project").

The location of the Company's Research and Development Facility in Austin will further state and local economic development and stimulate business and commercial activity in Austin. The Company accepts the City's grant and agrees to carry-out the Project, the terms of which are the subject of this Agreement.

The City and the Company agree as follows:

AGREEMENT

I. Company's Obligations

- 1.01 Investment in the Desired Development Zone. The Company shall locate its Research and Development Facility (the "Research and Development Facility") on approximately 8.5 acres situated on the Company's campus at 11500 North Mopac Expressway. The Company shall ensure that:
- (a) The Company or its lessor, or landlord or owner of the real property at which the Research and Development Facility is located, has used commercially reasonable efforts to achieve LEED Certification for the Research and Development Facility; and
 - (b) After the Effective Date of this Agreement, and before December 31, 2016, the Company or its lessor, or landlord, or owner of the real property at which the Research and Development Facility is located, has invested at least \$47,000,000 in new real property improvements; and
 - (c) After the Effective Date of this Agreement and before December 31, 2016 the Company has invested at least \$33,000,000 in the purchase and installation of business personal property at the Research and Development Facility to be used at the Facility to support the operations of the Facility.

1.02 **Creation and Retention of New Full-Time Jobs.** The Company shall create at least 1,000 New Full-Time Jobs (as hereafter defined) located at the Company's Research and Development Facility, by December 31, 2023. A "New Full-Time Job," is a full-time job created after the Effective Date of this Agreement that is performed at the Research and Development Facility by employees of the Company, and created as the result of the improvements to and operation of the Research and Development Facility.

- (a) The Company shall create and retain the New Full-Time Jobs as follows:
 - (i) 142 New Full-time Jobs before December 31, 2015;
 - (ii) 236 New Full-time Jobs before December 31, 2016;
 - (iii) 334 New Full-time Jobs before December 31, 2017;
 - (iv) 435 New Full-time Jobs before December 31, 2018;
 - (v) 540 New Full-time Jobs before December 31, 2019;
 - (vi) 649 New Full-time Jobs before December 31, 2020;
 - (vii) 762 New Full-time Jobs before December 31, 2021;
 - (viii) 879 New Full-time Jobs before December 31, 2022; and
 - (ix) 1000 New Full-time Jobs before December 31, 2023.
- (b) The Company shall maintain the required New Full-Time Jobs as of December 31st of each year thereafter throughout the term of this Agreement.
- (c) Each employee in a New Full-time Job must be compensated at a rate of at least \$11 per hour throughout the term of the Agreement.
- (d) The average annual compensation, excluding health insurance and retirement benefits, for all New Full-time Jobs must not be less than the following amounts:

<u>Year</u>	<u>Average Annual Compensation</u>
2015	\$64,840
2016	\$66,837
2017	\$68,842
2018	\$70,907
2019	\$73,034
2020	\$75,225
2021	\$77,482
2022	\$79,807
2023	\$82,201
2024	\$82,201

If the average annual compensation for all New Full-time Jobs is less than the amount required, the Company shall not be entitled to receive the Chapter 380 Payment for that year.

- (e) If the number of people employed in New Full-Time Jobs falls below the number of jobs required by Sections 1.02(a) & (b):

1. The Company shall create or reinstate the requisite number of New Full-Time Jobs within ninety (90) days after December 31st of the applicable year; and
 2. The average annual compensation for all New Full-time Jobs must not be less than the amount required in Section 1.02(c) as of the date which is 90 days after December 31st of the applicable year.
- (f) National Instruments Corporation shall retain at least 2,440 full-time jobs at its corporate headquarters, which is currently located in Austin, throughout the term of this Agreement. To count towards satisfaction of this provision, each retained job must be a full-time job performed in the City of Austin by employees of National Instruments Corporation (the "Existing Job").
- (g) If on December 31 of any year during the term of this Agreement the number of Existing Jobs retained is less than 2,440, the number of New Full-Time Jobs required under Section 1.02 shall be increased job for job by the amount of the deficit in Existing Jobs.
- (h) Throughout the term of this Agreement, National Instruments Corporation shall provide health insurance coverage for all employees in New Full-time Jobs and their families/dependents, including same-sex partners of employees in New Full-time Jobs.
- (i) Throughout the term of the Agreement, the Company shall continue its local Science, Technology, Engineering and Math (STEM) outreach program efforts at existing or expanded level, including providing services to 1,000 students each year.
- (j) If the Company fails to comply with the preceding requirements in Section 1.02, the City, at its sole discretion, may terminate this Agreement in accordance with Section 3.08(b) after giving the Company notice and an opportunity to cure said failure in accordance with Section 3.04 below.

1.03 Recruitment.

- (a) In addition to its own efforts, the Company shall make commercially reasonable efforts to work with local non-profit organizations such as the Austin Gay and Lesbian Chamber of Commerce, the Capital City African American Chamber of Commerce, the Greater Austin Asian Chamber of Commerce, the Greater Austin Hispanic 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 Research and Development Facility. The Company shall provide documentation of its efforts to the City upon request.
- (b) The Company shall make commercially reasonable efforts to recruit residents of the Austin area for its New Full-time Jobs. The Company shall provide documentation of its efforts to the City upon request.

- (c) The Company shall adhere to its equal employment policies and practices (attached hereto as Exhibit A).
- (d) If the Company fails to comply as provided for in paragraphs (a), (b), or (c) above, the Company will be required to forfeit the Chapter 380 Payments scheduled to be paid pursuant to Section 2.01 for the year in which such default occurred.

1.04 Local Business Participation.

- (a) In an effort to further stimulate and positively impact the local economy, the Company shall use commercially reasonable efforts to provide minority-owned, women-owned and local small businesses certified by the City's Small and Minority Business Resources Department (SMBR) an equal opportunity to participate as suppliers for materials and services purchased by the Company exclusively for use at its Research and Development Facility. To assist in recruiting efforts, the Company is required to contact SMBR for a list of available City certified minority-owned, women-owned and local small businesses.
- (b) Within ninety (90) days after the Effective Date, the Company shall submit to the City a reasonable supplier diversity policy regarding the Company's procurement of materials and services to be used exclusively at the Research and Development Facility which may be reasonably modified from time to time by the Company, provided the policy and all modifications are approved by SMBR. The Company 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 the Company has failed to satisfy its obligation under these paragraphs (a) and (b) the Company 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, the Company is encouraged, but not required, to adhere to the requirements of these paragraphs (a) and (b). The Company shall maintain and provide documentation of its efforts to comply with this paragraph to SMBR as part of its monthly reports required under subsection 1.04(e) below.
- (c) The Company 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 Research and Development Facility.

With respect to any design or construction projects for the Company's Research and Development Facility, including, but not limited to, leasehold improvements, the Company, the architect and the general contractor shall meet the gender and ethnic-specific participation goals or subgoals for each year in which design or construction occurs as determined by the Director of SMBR in accordance with the M/WBE Program Ordinance and rules. Prior to advertising a bid for any

portion of the design or construction work, the Company shall submit to SMBR a copy of a proposed solicitation in order for the City to determine the gender and ethnic-specific participation goals or subgoals for the project. The determination by the Director shall be based on the proposed size, type and scope of work to be undertaken by the Company and described in the bid documents, and the availability of each group of MBEs to perform elements of the work. The City may utilize either the cumulative MBE goal or the subgoals for each group of minority persons in the proposed solicitation, or set project MBE/WBE participation goals as provided in Section 2-9A-19 (*Establishment of MBE/WBE Participation Levels for Individual Contracts in Construction*), or as may subsequently be amended. The Director shall have ten business days from receipt of a bid package from the Company in order to evaluate and determine the required level for utilization of M/WBE project or phase-specific goals or subgoals, and shall notify the Company in writing of the Director's determination.

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

For any year in which the Company, the architect and the general contractor fail to meet each of the goals or subgoals established by the Director, the Company, 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. The Company shall submit documentation demonstrating its own and the architect's and general contractor's good faith efforts to meet the goals as is required under the following paragraph (e). If the Company provides documentation to SMBR evidencing its own and its architect's and general contractor's good faith efforts, the Company 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 the Company to modify, nullify or abrogate any contracts that the Company has entered into prior to the Effective Date of this Agreement.

- (d) The Company shall apprise SMBR when the Company 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 the Company 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, scheduling and hosting outreach meetings, and assisting the Company, its architect, or general contractor in soliciting M/WBE firms to provide bids. The Company is not required to solicit participation during a period in which the Company is not engaged in designing and/or constructing its Research and Development Facility, but rather, the Company 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 Research and Development Facility.

- (e) The Company shall provide monthly reports to SMBR no later than the 10th day of each month 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 the Company'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 the Company in submitting such reports.
- (f) Within thirty (30) days of receipt of the Company's final monthly report (as is required under paragraph (e) above for the preceding year, January 1st through December 31st (the "SMBR Compliance Period"), SMBR shall determine whether the Company is in compliance with the requirements of this Section 1.04. Should SMBR determine that the Company (or its architect or general contractor), has not complied with the obligations of this Section 1.04, the Company will forfeit the next anticipated Chapter 380 Payment. For example, if the Company (or its architect or general contractor) fails to comply with its obligations under Section 1.04 for one year, the Company will be required to forfeit one Chapter 380 Payment. If the Company fails to comply with the obligations for two years, the Company will be required to forfeit two Chapter 380 Payments, and so on.

1.05 Construction Worker Wages.

- (a) For purposes of construction referenced in 1.01(b), the Company agrees to pay new facility construction workers the higher wage of:
 - (1) Prevailing wages, as defined by the City of Austin; or
 - (2) \$11 per hour.

The City has defined prevailing wage as the wage specified in a Department of Labor (DOL) published wage determination for a particular construction trade in Travis County or as the result of a City of Austin wage survey conducted according to DOL established methodology, in effect at the time of solicitation for a construction project.

- (b) National Instruments (NI) agrees to allow City staff from the Contract Management Department (CMD) to audit for wage compliance, to include assigning a single point of contact for these matters, to permit CMD staff to interview workers and conduct on-site observations related to wage compliance, and to permit CMD staff to review all construction-related certified payroll reports on-site once a month or as requested by staff.
- (c) Should a wage issue occur as identified by CMD staff, National Instruments will work with CMD staff to correct the issue.
- (d) The Company shall make commercially reasonable efforts to ensure that contractors and subcontractors constructing the Research and Development Facility cover all their construction workers with workers' compensation insurance.

- 1.06 **Compliance with City Regulations.** For the construction of new real property improvements to the Company's Research and Development Facility, or the construction or remodeling of any future facilities in the City's planning jurisdiction during the term of this Agreement, the Company will comply with City of Austin Zoning Ordinance No. 970814-F, Planned Development Agreement, and all City Code regulations, including water quality regulations in effect at the time any site plan application is filed, unless the Company has negotiated an agreement with the City to comply with overall impervious cover limits and provide the currently required water quality controls. This means the Company will not assert possible Chapter 245 rights to avoid compliance with water quality regulations during the term of this Agreement. If, during the term of this Agreement, a 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 opportunity to cure the deficiency in accordance with Section 3.04, below, the City may terminate this Agreement by giving the Company written notice of its election to terminate.
- 1.07 **Certificate of Compliance and Inspection.**
- (a) Beginning March 31, 2016 and continuing each year thereafter during the term of this Agreement, the Company shall deliver to the City before March 31 of each year a Certificate of Compliance utilizing the form attached as Exhibit "B".
 - (b) In the Certificate of Compliance, the Company shall warrant to the City that it is in full compliance with each of its obligations under this Agreement.
 - (c) The City, and/or its representative(s), including third-parties contracted by the City, has the right to inspect all relevant records of the Company as are reasonably necessary to verify compliance with all requirements of this Agreement. Inspections shall be preceded by at least two weeks' notice in writing to the Company.
- 1.08 **Texas Government Code Chapter 2264.** In accordance with Chapter 2264 of the Texas Government Code, the Company agrees not to knowingly employ any person 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").
- (a) During the term of this Agreement, the Company shall notify City of any complaint brought against the Company alleging that the Company has employed Undocumented Workers.
 - (b) If the Company, or a branch, division or department of the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received, together with interest at the rate of five percent (5%) from the date of each payment of an economic development grant, shall be repaid by the Company to the City not later than the one hundred twentieth (120th) day after the date the City notifies the Company of the violation.
 - (c) The City shall recover court costs and reasonable attorney's fees incurred if it prevails in an action brought pursuant hereto to recover past economic development grants and interest. The Company shall not be liable for a violation

of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom the Company contracts.

- 1.09 **Failure to Meet Obligations.** In the event that the Company fails to fulfill its obligations under this Agreement, and does not cure such failure after City sends notice of an Event of Default (as hereafter defined) to the Company and expiration of the cure period described in Section 3.04 below, City may, at its option, terminate this Agreement in accordance with Section 3.08 (b) below. Upon termination of this Agreement for the Company's failure to cure an Event of Default, the City shall not be required to further pay, and the Company shall not be entitled to receive any further payments under this Agreement. The foregoing sentence shall not release the City from its obligation to make payment for any prior year(s) of this Agreement during which the Company did fulfill its obligations under the performance guidelines set forth in Sections 1.01 through 1.07, above.

II. City's Obligations

- 2.01 **Economic Development Incentive.** As consideration for the Company's performance of its obligations under this Agreement, during the Term of the Agreement City shall pay to the Company annual Chapter 380 payments calculated according to the following formula:
- (a) 50% of the City property taxes levied on all personal property acquired after the Effective Date of this Agreement that is installed in National Instruments Corporation's Research and Development Facility located in Austin, Texas and
 - (b) 50% of the City property taxes levied on the increase of real property taxable valuation after the Effective Date of this Agreement for the Research and Development Facility located in Austin, Texas and improvements thereon which are owned or leased by National Instruments Corporation.

Such payment will commence with the tax year 2015 and terminate upon payment of the taxes for tax year 2024. (The first payment is expected to occur in calendar year 2016, and the final payment is expected to occur in calendar year 2025.) These payments, based on National Instruments Corporation's performance as provided above, are estimated at a total of \$1,667,575.

Replacements of existing personal property must be New Equipment and Machinery in order to be eligible for the Chapter 380 Payment under this Agreement. Real property improvements constructed at the Research and Development Facility, by or for National Instruments Corporation after the Effective Date are included among the property referenced in Section 2.01(b). City property taxes on the value of existing real property improvements are not included in the amount eligible for Chapter 380 Payments.

- 2.02 **Schedule for Chapter 380 Payments and Coordination with Travis Central Appraisal District (TCAD).**
- (a) In order to properly identify property which is eligible for Chapter 380 Payments, National Instruments Corporation will work with TCAD to create separate TCAD accounts for both new real property improvements and personal property acquired after the Effective Date.

- (b) The initial real property taxable valuation for purposes of calculating the increase under Section 2.01(b) shall be the appraised value of the land for tax year 2012 at \$174,240 per acre.
- (c) With respect to the Chapter 380 Payments described in Section 2.01 above, on or before March 31st of each year during the term of this Agreement, National Instruments Corporation shall provide evidence to the City of the amount of the City property taxes paid by National Instruments Corporation to the Travis County tax collector or its successor (the "Property Tax Notice"). The Chapter 380 Payments shall be based on the amount stated in the Property Tax Notice.
- (d) Chapter 380 Payments shall be paid to National Instruments Corporation by the City on an annual basis for the preceding year, on or before October 31st following the tax year for which taxes were paid. For example the first Chapter 380 Payments shall be based on taxes paid for the calendar year 2015, and shall be paid on or before October 31, 2016, and the last Chapter 380 Payment shall be based on taxes paid for the calendar year 2024, and shall be paid on or before October 31, 2025. The City is not obligated to make a grant payment for any year which does not qualify (*i.e.*, the City has determined that the Company has failed to meet the required performance measure or condition applicable to the Company for that year) and has provided written notice to the Company of such determination and has given the Company an opportunity to cure such failure in accordance with Section 3.04 below.
- (e) If, after the October 31 payment date of any year, National Instruments Corporation 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 National Instruments Corporation's Property Tax Notice to the City for the year preceding the applicable October 31 payment date, then National Instruments Corporation shall notify the City in writing of the amount of additional Property Tax paid by National Instruments Corporation to the County tax collector or its successor (the "Additional Property Tax Notice"). The City shall pay National Instruments Corporation the amount stated in the Additional Property Tax Notice at the same time as the next payment is made to National Instruments Corporation.
- (f) If National Instruments Corporation's property taxes are reduced at any time after the City's receipt of the Property Tax Notice or Additional Property Tax Notice, National Instruments Corporation 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 National Instruments Corporation, 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 Term, National Instruments Corporation must promptly refund to the City the amount reflecting the reduction in taxes for the applicable year.

A summary explanation and examples of payment of grants under this Agreement is attached as Exhibit "C".

III. General Terms

- 3.01 **Term.** The term for this Agreement is ten (10) years. This Agreement shall become enforceable upon execution and delivery by the City and the Company. Unless this Agreement is terminated earlier in accordance with Section 3.08, the Company's obligations to perform under this Agreement shall be completed on December 31, 2024 and the City shall make its final payment to the Company under this Agreement on or before October 31, 2025.
- 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 the Company.
- (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 payment(s) to be made to the Company, or other expenditure(s) 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 52a of the Texas Constitution, 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 a given fiscal year for payments due or expenditures under this Agreement, the City shall not be liable to the Company for such payments or expenditures unless and until appropriation of the necessary funds is made; provided, however, that the Company, 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 which the City does not appropriate the necessary funds.
 - (d) To the extent there is a conflict between this Section 3.01 and any other language or covenant in this Agreement, this Section 3.01 shall control.
- 3.03 **Representations and Warranties.** The City represents and warrants to the Company that the economic development program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the economic development program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. The Company represents and warrants to the City that it has the requisite corporate authority to enter into this Agreement.
- 3.04 **Event of Default.** If either the City or the Company should fail in the performance of any of its obligations under this Agreement, such failure or omission to perform shall constitute an "**Event of Default**" under this Agreement. When an Event of Default occurs, the non-defaulting party shall provide the defaulting party with written notice of the alleged Event of Default (pursuant to Section 3.09, below), and allow the defaulting party a minimum period of ninety (90) calendar days after the receipt of this notice to cure such Event of Default, prior to terminating this Agreement, instituting an action for breach of contract or pursuing any other remedy for the event of 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 to the Parties' obligations are superseded by this Agreement. This Agreement may only be modified, altered or revoked by written amendment signed by the City and the Company.
- 3.06 **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.
- 3.07 **Assignment.** Except as provided below, the Company may not assign its rights or obligations under this Agreement to a third party without prior written approval of the City. The City's approval of the assignment shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary, the Company may assign all or part of its rights and obligations under this Agreement without the prior consent of the City to an affiliate of the Company in which the Company owns at least a fifty percent (50%) interest, or to a third party lender advancing funds for the acquisition, construction or operation of the Company's Research and Development facility.
- 3.08 **Termination.**
- (a) **Termination by the Company for convenience.** In the event the Company elects not to proceed with the Project as contemplated by this Agreement, the Company 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.
- (b) **Termination for Cause.** If either Party to this Agreement fails to meet its obligations under this Agreement, and the non-defaulting party provides notice of the Event of Default as set forth in Section 3.04, above, and the Event of Default is not cured within the ninety (90) calendar day cure period, this Agreement may be terminated by the non-defaulting party after expiration of the ninety (90) calendar day cure period.
- 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:

To the Company:

National Instruments Corporation
Attn: David Hugley, Vice President
11500 North Mopac Expressway
Austin, Texas 78759
Phone: (512) 683-5713
Fax: (512) 683-6913
Re: Economic Development Agreement

To the City:

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

with copies to:

City of Austin
Attn: Director, Economic Growth and Redevelopment Services Office
301 West 2nd Street
Austin, Texas 78704
Phone: (512) 974-7802
Fax: (512) 974-7825

City of Austin
Attn: Jacqueline Cullom, Assistant City Attorney
301 West 2nd Street, 4th Floor
Austin, Texas 78701
Phone: (512) 974-2268
Fax: (512) 974-2894

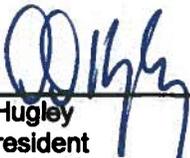
Either party may designate a different address at any time upon written notice to the other party.

- 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 be interpreted as being drafted by both Parties in conjunction with the other, neither more strongly for, nor against any party.
- 3.11 **Applicable Law and Venue.** This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas. Venue for any dispute arising under this Agreement shall lie in the state courts of Travis County, Texas.
- 3.12 **Severability.** In the event any provision(s) of this Agreement is deemed illegal, invalid or unenforceable under present or future law(s) by a court of competent jurisdiction, 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 will be substituted by written amendment to this Agreement which is legal, valid or enforceable and similar in terms to the provision deemed to be illegal, invalid or unenforceable.
- 3.13 **Paragraph Headings.** The paragraph 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, current and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with the Research and Development Facility or the design, construction or operation of any portion thereof.
- 3.16 **Public and Confidential Information.** Information provided by or on behalf of the Company under or pursuant to this Agreement that the Company 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 the Company 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.
- 3.17 **Counterparts.** This Agreement may be executed in several identical counterparts by the Parties on separate counterparts, and each counterpart, when so executed and delivered, shall constitute an original instrument, and all such separate counterparts combined shall constitute one (1) original agreement.

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

National Instruments Corporation
a Delaware corporation

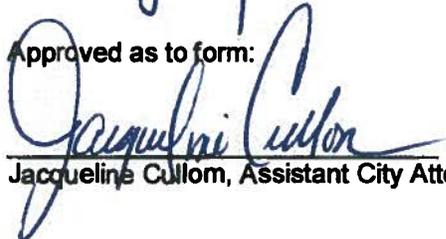
By: 
David Hugley
Vice President

Date: July 10, 2013

CITY OF AUSTIN,
a home-rule municipal corporation

By: 
Marc A. Ott
City Manager

Date: 7/15/13, 2013

Approved as to form:

Jacqueline Cullom, Assistant City Attorney

EXHIBITS:

- Exhibit "A": Fair Employment Policies and Practices
- Exhibit "B": Certificate of Compliance
- Exhibit "C": Schedule of Obligations

EXHIBIT "A"
Fair Employment Policies and Practices

Please refer to following page.



EQUAL EMPLOYMENT OPPORTUNITY POLICY

DATE: August 1, 2005

TO: NATIONAL INSTRUMENTS EMPLOYEES

SUBJECT: Equal Employment Opportunity

I am committed to the goal of equal employment opportunity and affirmative action ("EEO/AA"). Enhancing and using the abilities of all individuals to their fullest extent will continue the profitable and responsible growth of our company. As we implement business processes to grow the company into a billion dollar corporation, our quest to hire should include proactive recruiting practices which are congruent with attaining this goal and include hiring from a diverse population, which values employees differences. Although we continue to make progress toward this goal through my personal commitment, there is still work to be done in this important area.

To carry out my personal commitment to EEO/AA, I have designated Mr. Mark Finger as our company's EEO/AA Officer and Ms. Ruth Maroney as EEO/AA Coordinator, and have charged them with the responsibility to develop and thereafter maintain the necessary programs, records, and reports to comply with all government regulations, and with the goals and objectives of our Equal Employment Opportunity Policy and our Affirmative Action Programs (pursuant to Executive Order 11246 and pursuant to the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Rehabilitation Act of 1973, as amended) and to report to me on our progress. Employees or applicants who wish to review our Affirmative Action Programs, or who have any questions about our Affirmative Action Programs or EEO policy, should contact the EEO Officer or the EEO Coordinator.

Our employment decisions will advance the principles of equal employment opportunity and affirmative action. To ensure this, I am directing that National Instruments will:

1. Recruit, hire, train and promote persons in all job titles, without regard to race, sex, age, religion, disability, veteran status or national origin.
2. Base decisions on employment so as to further the principle of equal employment opportunity.
3. Insure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.
4. Insure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreational programs, will be administered without regard to race, sex, age, religion, disability, veteran status or national origin.

All employees are encouraged to become actively involved in programs, which increase our ability to find qualified candidates for all job positions. Also, I encourage you to participate in community organizations that foster social and economic opportunity for all members of our community.

I am confident that you will continue to approach this responsibility with the sensitivity and human concern you have demonstrated in the past.

James J. Truchard
President and CEO

Exhibit B

Certificate of Compliance

Company: National Instruments Corporation

Reporting Year: January 1 through December 31, 20__ Year # __ of 10

1.0 Investment

- 1.1 §1.01 of the Agreement requires that after the Effective Date of this Agreement, and before December 31, 2016, the Company or its lessor, or landlord, or owner of the real property at which the Research and Development Facility is located, shall invest at least \$47,000,000 in new real property improvements.
- a. To date the City has not verified National Instruments Corporation's investment in constructing the Company's Research and Development Facility.
 - b. \$ _____ has been invested to construct National Instruments Corporation's Research and Development Facility for the reporting year ending December 31, 20__.
- 1.2 §1.01 of the Agreement requires that after the Effective Date of this Agreement and before December 31, 2016 the Company shall invest at least \$33,000,000 in the purchase and installation of business personal property at the Research and Development Facility.
- a. To date the City has not verified National Instruments Corporation's investment in Business Personal Property.
 - b. National Instruments Corporation has invested \$ _____ in Business Personal Property at the Research and Development Facility for the reporting year ending December 31, 20__.

2.0 Employment

- 2.1 §1.02(a) and 1.02(b) of the Agreement require National Instruments Corporation to create 1,000 New Full-time Jobs by December 31, 2023 and retain those New Full-time Jobs throughout the term of the Agreement. The job creation schedule is as follows:
- a. 142 New Full-time Jobs before December 31, 2015;
 - b. 236 New Full-time Jobs before December 31, 2016;
 - c. 334 New Full-time Jobs before December 31, 2017;
 - d. 435 New Full-time Jobs before December 31, 2018;
 - e. 540 New Full-time Jobs before December 31, 2019;
 - f. 649 New Full-time Jobs before December 31, 2020;
 - g. 762 New Full-time Jobs before December 31, 2021;
 - h. 879 New Full-time Jobs before December 31, 2022; and
 - i. 1000 New Full-time Jobs before December 31, 2023.
- 2.2 Number of New Full-time Jobs created and retained as of December 31, 20__ : _____
- 2.3 §1.02(c) requires that throughout the term of this Agreement, National Instruments Corporation shall provide health insurance coverage for all employees in New Full-time Jobs and their families/dependents, including same sex partners of employees in New Full-time Jobs.
- 2.4 §1.02(d) requires that each employee in a New Full-time Job must be compensated at a rate of at least \$11 per hour throughout the term of the Agreement.

Exhibit B

Certificate of Compliance

Company: National Instruments Corporation

Reporting Year: January 1 through December 31, 20 Year # of 10

2.5 Did National Instruments Corporation provide health insurance coverage and compensation of at least \$11 per hour to all employees in New Full-time Jobs during the year ended December 31, 20 as required in §1.02 of the Agreement?

Yes No

2.6 §1.02(e) of the Agreement requires that the average annual compensation, excluding health insurance and retirement benefits, of the New Full-Time Jobs created and retained shall be as follows:

<u>Year</u>	<u>Average Annual Compensation</u>
<u>2015</u>	<u>\$64,890</u>
<u>2016</u>	<u>\$66,837</u>
<u>2017</u>	<u>\$68,842</u>
<u>2018</u>	<u>\$70,907</u>
<u>2019</u>	<u>\$73,034</u>
<u>2020</u>	<u>\$75,225</u>
<u>2021</u>	<u>\$77,482</u>
<u>2022</u>	<u>\$79,807</u>
<u>2023</u>	<u>\$82,201</u>
<u>2024</u>	<u>\$82,201</u>

2.7 Did the average annual compensation, excluding health insurance and retirement benefits, of the New Full-Time Jobs created and retained during the year ended December 31, 20 equal or exceed the requirements in §1.02(e) of the Agreement?

Yes No

2.8 §1.02(g) of the Agreement requires National Instruments Corporation to retain at least 2,440 Existing full-time Jobs at its corporate headquarters throughout the term of this Agreement.

2.9 Number of Existing Jobs retained as of December 31, 20: _____

2.10 If as of December 31, 20 the number of Existing Jobs was less than 2,440, was the deficiency made up by increasing the number of New Full-time Jobs as required in §1.02(h) of the Agreement?

Yes No

2.11 §1.02(i) of the Agreement requires National Instruments Corporation to continue its local Science, Technology, Engineering and Math (STEM) outreach program efforts to at least 1,000 students per year.

2.12 Number of students who participated in the Company's STEM program activities during the year ended December 31, 20: _____

2.13 As of December 31, 20 did the number of New Full-time Jobs created and retained fall below the numbers required under §1.02 of the Agreement?

Yes No

If not, skip to Section 3.

Exhibit B

Certificate of Compliance

Company: National Instruments Corporation

Reporting Year: January 1 through December 31, 20__ Year # __ of 10

2.14 Did National Instruments Corporation create or reinstate the required number of New Full-time Jobs within 90 days after December 31, 20__ as required by §1.02(f) of the Agreement?

Yes

No

2.15 Number of New Full-time Jobs created and retained as of March 31, 20__ : _____

2.16 Number of Existing full-time Jobs retained as of March 31, 20__ : _____

2.17 Did the average annual compensation, excluding health insurance and retirement benefits, of the New Full-Time Jobs created and retained as of March 31, 20__ equal or exceed the requirements in §1.02(e) of the Agreement?

Yes

No

3.0 Recruitment

3.1 §1.03 of the Agreement requires National Instruments Corporation to:

- a. make commercially reasonable efforts to work with local non-profit organizations such as the Austin Gay and Lesbian Chamber of Commerce, the Capital City African American Chamber of Commerce, the Greater Austin Asian Chamber of Commerce, the Greater Austin Hispanic 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 Research and Development Facility
- b. Make commercially reasonable efforts to recruit residents of the Austin area for its New Full-time Jobs; and
- c. Adhere to its Equal Employment Policies and Practices attached as Exhibit A to the Agreement.

3.2 Did National Instruments Corporation comply with the recruiting requirements in §1.03 of the Agreement during the year ended December 31, 20__ ?

Yes

No

4.0 Local Business Participation

4.1 §1.04(a) of the Agreement requires National Instruments Corporation to use commercially reasonable efforts to provide minority-owned, women-owned and local small businesses certified by the City's Small and Minority Business Resources Department (SMBR) an equal opportunity to participate as suppliers for materials and services purchased by the Company exclusively for use at its Research and Development Facility.

Did National Instruments Corporation comply with the local business participation requirements in §1.04(a) of the Agreement during the year ended December 31, 20__ ?

Yes

No

4.2 §1.04(b) of the Agreement requires National Instruments Corporation to:

Exhibit B

Certificate of Compliance

Company: National Instruments Corporation

Reporting Year: January 1 through December 31, 20__ Year # __ of 10

- a. Develop and submit to the City a reasonable supplier diversity policy regarding National Instruments Corporation's procurement of materials and services to be used exclusively at the Research and Development Facility within 90 days of the Effective Date of the Agreement; and
- b. Adhere to this policy for the procurement of materials and services at the Research and Development Facility with respect to any individual procurement of materials or services for which the cost is more than \$5,000.

Did National Instruments Corporation comply with the local business participation requirements in §1.04(b) of the Agreement during the year ended December 31, 20__?

Yes

No

§1.04(c) of the Agreement requires National Instruments Corporation to comply with the applicable standards and principles of Chapters 2-9A through 2-9D of the City's M/WBE Program Ordinance in the design and construction of its Research and Development Facility. With respect to any design or construction projects for the Company's Research and Development Facility, including, but not limited to, leasehold improvements, the Company, the architect and the general contractor shall meet the gender and ethnic-specific participation goals or subgoals for each year in which design or construction occurs as determined by the Director of SMBR in accordance with the M/WBE Program Ordinance and rules. Prior to advertising a bid for any portion of the design or construction work, the Company shall submit to SMBR a copy of a proposed solicitation in order for the City to determine the gender and ethnic-specific participation goals or subgoals for the project. The determination by the Director shall be based on the proposed size, type and scope of work to be undertaken by the Company and described in the bid documents, and the availability of each group of MBEs to perform elements of the work.

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

For any year in which the Company, the architect and the general contractor fail to meet each of the goals or subgoals established by the Director, the Company, 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. The Company shall submit documentation demonstrating its own and the architect's and general contractor's good faith efforts to meet the goals as is required under the following paragraph (f).

§1.04(d) of the Agreement requires National Instruments Corporation to apprise SMBR when the Company 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 the Company 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, scheduling and hosting outreach meetings, and assisting the Company, its architect, or general contractor in soliciting M/WBE firms to provide bids. The Company is not required to solicit participation during a period in which the Company is not engaged in designing and/or constructing its Research and Development Facility, but rather, the Company is required to incorporate the standards and principles of the City's M/WBE Program

Exhibit B

Certificate of Compliance

Company: National Instruments Corporation

Reporting Year: January 1 through December 31, 20__ Year # __ of 10

Ordinance including the foregoing MWBE utilization goals into its development process as and when such process exists in connection with the Research and Development Facility.

§1.04(e) of the Agreement requires National Instruments Corporation to provide monthly reports to SMBR no later than the 10th day of each month to track (i) the utilization on a percentage basis of MWBE firms in the design and construction of the New Improvements; and (ii) a summary of the Company's efforts to implement the standards and principles of the City's MWBE Program Ordinance. SMBR shall provide the forms to be used by the Company in submitting such reports.

4.3 Did National Instruments Corporation comply with the requirements in §1.04(c), 1.04(d) and §1.04(e) of the Agreement during the year ended December 31, 20__?

Yes

No

5.0 Additional Covenants

5.1 Did the Company comply with its obligations in §1.05 of the Agreement to pay new facility construction workers the higher wage of (i) prevailing wages or (ii) \$11 per hour during the year ended December 31, 20__?

Yes

No

5.2 Did National Instruments Corporation timely submit this Certificate of Compliance as is required under §1.07 of the Agreement during the year ended December 31, 20__?

Yes

No

5.3 Did National Instruments Corporation comply with the other provisions of the Agreement during the year ended December 31, 20__?

Yes

No

Exhibit B

Certificate of Compliance

Company: National Instruments Corporation

Reporting Year: January 1 through December 31, 20__ Year # __ of 10

6.0 Chapter 380 Payment Request

- 6.1 In return for National Instruments Corporation's performance of its obligations under this Agreement each year from 2015 through 2024, the City will pay annual economic development incentive payments equal to the sum of:
- a. 50% of the City property taxes levied on all personal property acquired after the Effective Date of this Agreement that is installed in National Instruments Corporation's Research and Development Facility; plus
 - b. 50% of the City property taxes levied on the increase of real property taxable valuation after the Effective Date of this Agreement for the Research and Development Facility located in Austin, Texas and improvements thereon which are owned or leased by National Instruments.

	<u>Real Property</u>	<u>Business Personal Property</u>
6.2 Property Taxes Paid (reporting year)	\$ _____	\$ _____
6.3 Reimbursement Request	\$ _____	\$ _____
6.4 Total Request	\$ _____	_____

I, the authorized representative for National Instruments Corporation hereby certify that the above information is correct and accurate pursuant to the terms of the Agreement. I further certify that National Instruments Corporation complied fully with the Chapter 380 Economic Development Agreement during the year ended December 31, 20__, including Section 1.06 regarding Compliance with City Regulations and Section 1.08 regarding Texas Government Code Chapter 2264.

Signature: _____

Printed Name: _____

Title (Chief Financial Officer or equivalent): _____

Date: _____

Exhibit C

Schedule of Obligations

Company: National Instruments Corporation

	<i>Company's Obligations</i>	<i>TCAD Obligations</i>	<i>City's Obligations</i>
2013 - 2014	<ul style="list-style-type: none"> • Submit scopes of work to SMBR prior to requesting bids so that SMBR can set project specific participation goals • Comply with all Article 1 terms and requirements in Agreement • Within 90 days of Effective Date submit supplier diversity policy • Submit monthly reports, by the 10th of each month, to track local business participation under Section 1.04 • Work with TCAD to identify and/or set up accounts to hold real property and business personal property investment 	<ul style="list-style-type: none"> • Establish baseline value of real property 	<ul style="list-style-type: none"> • Within 10 business days of receiving scopes of work, determine project specific goals • Review and approve Company's supplier diversity policy or inform company of required changes
Year 1, 2015	<ul style="list-style-type: none"> • Submit scopes of work to SMBR prior to requesting bids so that SMBR can set project specific participation goals • Comply with all Article 1 terms and requirements in Agreement • Submit monthly reports, by the 10th of each month, to track local business participation under Section 1.04 	<ul style="list-style-type: none"> • On January 1, appraise Year 1 value of applicable accounts 	<ul style="list-style-type: none"> • Within 10 business days of receiving scopes of work, determine project specific goals. • Within 30 days of receipt of December 2014 monthly report, confirm Company compliance with Section 1.04 • Budget anticipated Year 1 payment

Exhibit C

Schedule of Obligations

Company: National Instruments Corporation

	<i>Company's Obligations</i>	<i>TCAD Obligations</i>	<i>City's Obligations</i>
Year 2, 2016	<ul style="list-style-type: none"> • Submit scopes of work to SMBR prior to requesting bids so that SMBR can set project specific participation goals • Comply with all Article 1 terms and requirements in Agreement • Submit monthly reports, by the 10th of each month, to track local business participation under Section 1.04 • By March 31 deliver Certificate of Compliance for performance during Year 1 • Meet with City and third party reviewer and provide evidence to demonstrate compliance with the Agreement during Year 1 	<ul style="list-style-type: none"> • On January 1, appraise Year 2 value of applicable accounts 	<ul style="list-style-type: none"> • Within 10 business days of receiving scopes of work, determine project specific goals • Within 30 days of receipt of December 2015 monthly report, confirm Company compliance with Section 1.04 • Budget anticipated Year 2 payment • Conduct review of Company's Year 1 compliance and if compliance is demonstrated and verified, make Chapter 380 payment by October 31
Year 3, 2017	<ul style="list-style-type: none"> • Submit scopes of work to SMBR prior to requesting bids so that SMBR can set project specific participation goals • Comply with all Article 1 terms and requirements in Agreement • Submit monthly reports, by the 10th of each month, to track local business participation under Section 1.04 • By March 31 deliver Certificate of Compliance for performance during Year 2 • Meet with City and third party reviewer and provide evidence to demonstrate compliance with the Agreement during Year 2 	<ul style="list-style-type: none"> • On January 1, appraise Year 3 value of applicable accounts 	<ul style="list-style-type: none"> • Within 10 business days of receiving scopes of work, determine project specific goals • Within 30 days of receipt of December 2016 monthly report, confirm Company compliance with Section 1.04 • Budget anticipated Year 3 payment • Conduct review of Company's Year 2 compliance and if compliance is demonstrated and verified, make Chapter 380 payment by October 31

Exhibit C

Schedule of Obligations

Company: National Instruments Corporation

	<i>Company's Obligations</i>	<i>TCAD Obligations</i>	<i>City's Obligations</i>
Year 4, 2018	<ul style="list-style-type: none"> • Submit scopes of work to SMBR prior to requesting bids so that SMBR can set project specific participation goals • Comply with all Article 1 terms and requirements in Agreement • Submit monthly reports, by the 10th of each month, to track local business participation under Section 1.04 • By March 31 deliver Certificate of Compliance for performance during Year 3 • Meet with City and third party reviewer and provide evidence to demonstrate compliance with the Agreement during Year 3 	<ul style="list-style-type: none"> • On January 1, appraise Year 4 value of applicable accounts 	<ul style="list-style-type: none"> • Within 10 business days of receiving scopes of work, determine project specific goals • Within 30 days of receipt of December 2017 monthly report, confirm Company compliance with Section 1.04 • Budget anticipated Year 4 payment • Conduct review of Company's Year 3 compliance and if compliance is demonstrated and verified, make Chapter 380 payment by October 31
Year 5, 2019	<ul style="list-style-type: none"> • Submit scopes of work to SMBR prior to requesting bids so that SMBR can set project specific participation goals • Comply with all Article 1 terms and requirements in Agreement • Submit monthly reports, by the 10th of each month, to track local business participation under Section 1.04 • By March 31 deliver Certificate of Compliance for performance during Year 4 • Meet with City and third party reviewer and provide evidence to demonstrate compliance with the Agreement during Year 4 	<ul style="list-style-type: none"> • On January 1, appraise Year 5 value of applicable accounts 	<ul style="list-style-type: none"> • Within 10 business days of receiving scopes of work, determine project specific goals • Within 30 days of receipt of December 2018 monthly report, confirm Company compliance with Section 1.04 • Budget anticipated Year 5 payment • Conduct review of Company's Year 4 compliance and if compliance is demonstrated and verified, make Chapter 380 payment by October 31

Exhibit C

Schedule of Obligations

Company: National Instruments Corporation

	<i>Company's Obligations</i>	<i>TCAD Obligations</i>	<i>City's Obligations</i>
Year 6, 2020	<ul style="list-style-type: none"> • Submit scopes of work to SMBR prior to requesting bids so that SMBR can set project specific participation goals • Comply with all Article 1 terms and requirements in Agreement • Submit monthly reports, by the 10th of each month, to track local business participation under Section 1.04 • By March 31 deliver Certificate of Compliance for performance during Year 5 • Meet with City and third party reviewer and provide evidence to demonstrate compliance with the Agreement during Year 5 	<ul style="list-style-type: none"> • On January 1, appraise Year 6 value of applicable accounts 	<ul style="list-style-type: none"> • Within 10 business days of receiving scopes of work, determine project specific goals • Within 30 days of receipt of December 2019 monthly report, confirm Company compliance with Section 1.04 • Budget anticipated Year 6 payment • Conduct review of Company's Year 5 compliance and if compliance is demonstrated and verified, make Chapter 380 payment by October 31
Year 7, 2021	<ul style="list-style-type: none"> • Submit scopes of work to SMBR prior to requesting bids so that SMBR can set project specific participation goals • Comply with all Article 1 terms and requirements in Agreement • Submit monthly reports, by the 10th of each month, to track local business participation under Section 1.04 • By March 31 deliver Certificate of Compliance for performance during Year 6 • Meet with City and third party reviewer and provide evidence to demonstrate compliance with the Agreement during Year 6 	<ul style="list-style-type: none"> • On January 1, appraise Year 7 value of applicable accounts 	<ul style="list-style-type: none"> • Within 10 business days of receiving scopes of work, determine project specific goals • Within 30 days of receipt of December 2020 monthly report, confirm Company compliance with Section 1.04 • Budget anticipated Year 7 payment • Conduct review of Company's Year 6 compliance and if compliance is demonstrated and verified, make Chapter 380 payment by October 31

Exhibit C

Schedule of Obligations

Company: National Instruments Corporation

	<i>Company's Obligations</i>	<i>TCAD Obligations</i>	<i>City's Obligations</i>
Year 8, 2022	<ul style="list-style-type: none"> • Submit scopes of work to SMBR prior to requesting bids so that SMBR can set project specific participation goals • Comply with all Article 1 terms and requirements in Agreement • Submit monthly reports, by the 10th of each month, to track local business participation under Section 1.04 • By March 31 deliver Certificate of Compliance for performance during Year 7 • Meet with City and third party reviewer and provide evidence to demonstrate compliance with the Agreement during Year 7 	<ul style="list-style-type: none"> • On January 1, appraise Year 8 value of applicable accounts 	<ul style="list-style-type: none"> • Within 10 business days of receiving scopes of work, determine project specific goals • Within 30 days of receipt of December 2021 monthly report, confirm Company compliance with Section 1.04 • Budget anticipated Year 8 payment • Conduct review of Company's Year 7 compliance and if compliance is demonstrated and verified, make Chapter 380 payment by October 31
Year 9, 2023	<ul style="list-style-type: none"> • Submit scopes of work to SMBR prior to requesting bids so that SMBR can set project specific participation goals • Comply with all Article 1 terms and requirements in Agreement • Submit monthly reports, by the 10th of each month, to track local business participation under Section 1.04 • By March 31 deliver Certificate of Compliance for performance during Year 8 • Meet with City and third party reviewer and provide evidence to demonstrate compliance with the Agreement during Year 8 	<ul style="list-style-type: none"> • On January 1, appraise Year 9 value of applicable accounts 	<ul style="list-style-type: none"> • Within 10 business days of receiving scopes of work, determine project specific goals • Within 30 days of receipt of December 2022 monthly report, confirm Company compliance with Section 1.04 • Budget anticipated Year 9 payment • Conduct review of Company's Year 8 compliance and if compliance is demonstrated and verified, make Chapter 380 payment by October 31

Exhibit C
Schedule of Obligations
Company: National Instruments Corporation

	<i>Company's Obligations</i>	<i>TCAD Obligations</i>	<i>City's Obligations</i>
Year 10, 2024	<ul style="list-style-type: none"> • Submit scopes of work to SMBR prior to requesting bids so that SMBR can set project specific participation goals • Comply with all Article 1 terms and requirements in Agreement • Submit monthly reports, by the 10th of each month, to track local business participation under Section 1.04 • By March 31 deliver Certificate of Compliance for performance during Year 9 • Meet with City and third party reviewer and provide evidence to demonstrate compliance with the Agreement during Year 9 	<ul style="list-style-type: none"> • On January 1, appraise Year 10 value of applicable accounts 	<ul style="list-style-type: none"> • Within 10 business days of receiving scopes of work, determine project specific goals • Within 30 days of receipt of December 2023 monthly report, confirm Company compliance with Section 1.04 • Budget anticipated Year 10 payment • Conduct review of Company's Year 9 compliance and if compliance is demonstrated and verified, make Chapter 380 payment by October 31
2025	<ul style="list-style-type: none"> • By March 31 deliver Certificate of Compliance for performance during Year 10 • Meet with City and third party reviewer and provide evidence to demonstrate compliance with the Agreement during Year 10 		<ul style="list-style-type: none"> • Within 30 days of receipt of December 2024 monthly report, confirm Company compliance with Section 1.04 • Conduct review of Company's Year 10 compliance and if compliance is demonstrated and verified, make Chapter 380 payment by October 31

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.

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EQUAL EMPLOYMENT OPPORTUNITY POLICY

DATE: August 1, 2005

TO: NATIONAL INSTRUMENTS EMPLOYEES

SUBJECT: Equal Employment Opportunity

I am committed to the goal of equal employment opportunity and affirmative action ("EEO/AA"). Enhancing and using the abilities of all individuals to their fullest extent will continue the profitable and responsible growth of our company. As we implement business processes to grow the company into a billion dollar corporation, our quest to hire should include proactive recruiting practices which are congruent with attaining this goal and include hiring from a diverse population, which values employees differences. Although we continue to make progress toward this goal through my personal commitment, there is still work to be done in this important area.

To carry out my personal commitment to EEO/AA, I have designated Mr. Mark Finger as our company's EEO/AA Officer and Ms. Ruth Maroney as EEO/AA Coordinator, and have charged them with the responsibility to develop and thereafter maintain the necessary programs, records, and reports to comply with all government regulations, and with the goals and objectives of our Equal Employment Opportunity Policy and our Affirmative Action Programs (pursuant to Executive Order 11246 and pursuant to the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Rehabilitation Act of 1973, as amended) and to report to me on our progress. Employees or applicants who wish to review our Affirmative Action Programs, or who have any questions about our Affirmative Action Programs or EEO policy, should contact the EEO Officer or the EEO Coordinator.

Our employment decisions will advance the principles of equal employment opportunity and affirmative action. To ensure this, I am directing that National Instruments will:

1. Recruit, hire, train and promote persons in all job titles, without regard to race, sex, age, religion, disability, veteran status or national origin.
2. Base decisions on employment so as to further the principle of equal employment opportunity.
3. Insure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.
4. Insure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreational programs, will be administered without regard to race, sex, age, religion, disability, veteran status or national origin.

All employees are encouraged to become actively involved in programs, which increase our ability to find qualified candidates for all job positions. Also, I encourage you to participate in community organizations that foster social and economic opportunity for all members of our community.

I am confident that you will continue to approach this responsibility with the sensitivity and human concern you have demonstrated in the past.

James J. Truchard
President and CEO

ATTACHMENT F

COUNTY ECONOMIC DEVELOPMENT POLICY

CHAPTER 28

**TRAVIS COUNTY ECONOMIC DEVELOPMENT INCENTIVES POLICY,
GUIDELINES AND CRITERIA**

28.001 AUTHORIZATION

(a) **General.** The Travis County Commissioners Court is authorized to develop and administer a program to stimulate business and commercial activity in Travis County pursuant to LOCAL GOVERNMENT CODE, Chapter 381 [specifically, Sections 381.004(b) and 381.004(g)], and other applicable statutes.

(b) **Purpose.** The purpose of this Policy includes the following:

(i) to encourage economic stimulation and prosperity by attracting new businesses to the County;

(ii) to enhance the County tax base by attracting new businesses that will make significant investments in new construction;

(iii) to assist with workforce development in the County by attracting companies that offer significant numbers of new jobs and/or training to current residents who are unemployed or under-employed;

(iv) to encourage diversity of the County's economy by attracting businesses that will contribute to the economy by broadening the scope of business and industry within the County; and

(v) to attract significant new businesses that also help promote the growth of other new businesses needed to provide supporting services or supplies, particularly small companies.

28.002 DEFINITIONS

(a) "Agreement," or "Incentive Agreement" means a contractual agreement between a property owner and/or lessee (and lessor) and an eligible jurisdiction granting or pertaining to an Incentive under this Policy, including any contract entered into under this Policy.

(b) "Applicant" means an authorized representative of a legal business entity who requests in writing the consideration of a proposal for Incentives under this Policy.

(c) "Commissioners Court" means the Travis County Commissioners Court.

(d) "Competitively-Sited Project" means a project where the Applicant has completed a written evaluation for assistance by a governmental entity in another location in which expansion,

relocation or new operations (the project being proposed for Travis County Incentives) are actively being considered by the Applicant.

(e) "Economically Disadvantaged" means a Travis County resident who meets one of the following requirements:

(i) Has a verified income of 200% or less of the current Federal Poverty Guidelines;
or

(ii) Meets two or more of the criteria under the definition of "economically disadvantaged" under TEXAS GOVERNMENT CODE, Section 2303.402(2)(c)(1) – (9) (with documented evidence of such eligibility).

(f) "Eligible Project" means a proposed development which qualifies for Incentives under this Policy by meeting the requirements set forth in Section 28.004(a).

(g) "Eligible Property" means all property (real and business personal) subject to assessment by the Travis Central Appraisal District (TCAD) for the determination of ad valorem taxes that is the subject of any Agreement under this Policy. Eligible Property will be limited to:

(i) real property on which the facility is located (entire approved site as set forth in the Agreement);

(ii) the new construction improvements on the site; and

(iii) new business personal property placed within a facility within the same year the new facility is counted as new construction by TCAD or as agreed to in a specific phasing provision in the Agreement.

In no event shall the Incentive granted in any one year exceed the total ad valorem tax revenue received/due Travis County from the company's cumulative new construction as certified by TCAD. To be eligible and subject to receive Grant Incentives, property, both real and business personal, must also be owned by the Applicant seeking the tax incentive over the entire term of the Agreement; and taxes on that property must be paid by the Applicant seeking the tax incentive. In the case of a project that includes a leasehold interest in real estate that has been approved by the Commissioners Court pursuant to this Policy, the company may retain eligibility for incentives as long as the County is provided a copy of the lease agreement that indicates the obligation of the company to pay all ad valorem taxes (either directly or indirectly) and the company agrees to provide the County with a copy of the cancelled check indicating payment of those ad valorem taxes each year in which incentives are requested.

(h) "Employee" means a person:

(i) whose employment is permanent, full-time and non-seasonal; and

(ii) who is employed by the Applicant for Incentive for a minimum of 1,750 hours per year; and

(iii) whose employment is reflected in the Applicant's report filed with the TWC on December 31 of each year, or reflected in other acceptable company generated and certified payroll report or other documentation of employment deemed adequate by County.

It is understood that, in order to receive Incentives based on employment numbers, Applicant must also provide documentation that required health insurance benefits [see Section 28.004(a)(v)] are provided.

(i) "Grant Incentives" means the grant funds paid by County as a result of performance of obligations under an Agreement, the amount of which is based on a percentage of specified ad valorem taxes paid on certain Eligible Property pursuant to that Agreement entered into under this Policy as authorized by TEXAS LOCAL GOVERNMENT CODE, Chapter 381, and other applicable laws, rules, regulations and policies.

(j) "Incentive(s)" means the benefit granted under an Agreement entered into pursuant to this Policy and applicable statutes, including and Grant Incentive.

(k) "Investment" means the capital investment made by the Applicant in new construction and new taxable business personal property as indicated in documentation rendered to TCAD annually. Rendition to TCAD is required by County in order to receive Incentives under this Policy. Applicant will provide a copy of that rendition to County with its reporting information. The Investment total will not include payroll, cost of goods sold, or any other investment not directly related to Eligible Property, as determined by County.

(l) "PBO" means Travis County Planning and Budget Office.

(m) "Taxable Value of Eligible Property" means the certified appraised value of Eligible Property, as finally determined by TCAD.

(n) "TCAD" means Travis Central Appraisal District.

(o) "TCEQ" means the Texas Commission on Environmental Quality.

(p) "TWC" means the Texas Workforce Commission.

28.003 AUTHORIZED FACILITIES

(a) **Preferred Facilities.** In considering an application for Incentives under this Policy, preference will be given to an Applicant if it seeks to locate any of the following within Travis County:

(i) **Convergence Technology Facility**, defined as a company engaged in research and development activities, computer and other electronic systems and hardware design or testing, software development, testing, or publishing, wireless telecommunications, or related product manufacturing.

(ii) **Creative Media Facility**, defined as a company engaged in the creation, development, production and distribution of musical works, motion pictures, television and other forms of video programming and content, video games, advertising and informational content.

(iii) **Green Industries**, defined as companies engaged in clean energy and resource conservation. "Clean energy" includes research and development, headquarters or manufacturing projects that involve any type of energy efficiency, energy storage, energy resource conservation, renewable energy or alternative fuel technology. "Resource conservation" includes companies involved in the research, development and manufacturing of products focused on improved efficiency and availability of natural resources including clean air and water.

- (iv) Corporate/Professional Headquarters, defined as the main office from which a regional, national or international organization is managed. Typical functions that occur in these types of offices include executive decision-making and strategy, sales and marketing, human resources, financial operations, advanced information technology operations, consulting and training. The chief executive officer for the region for which this location serves as a headquarters must be based at the location.
- (v) Healthcare and Life Sciences Facility, defined as companies in the fields of healthcare, biotechnology, pharmaceuticals, biomedical technologies, life systems technologies, environmental, biomedical devices, and organizations and institutions that devote the majority of their efforts in the various stages of research, development, testing, technology transfer, commercialization or manufacturing.
- (vi) Regional Live Entertainment or Fine Arts Facility, defined as buildings and structures, including fixed machinery and equipment, used as a venue for live entertainment or the display of fine arts through the admission of the general public where a substantial percentage of users reside at least 100 miles from any part of the County.
- (vii) Research and Development Facility, defined as buildings and structures, including fixed machinery and equipment, used or to be used primarily for research or experimentation to improve or develop new tangible goods or materials, the production processes of such, or current technology in biomedicine, electronics or pre-commercial emerging industries.
- (viii) Economically Disadvantaged Job Provision. A business that will provide substantial opportunities for employment for Economically Disadvantaged individuals.
- (ix) Other. Other businesses approved by the Commissioners Court that will provide substantial opportunities to enhance or diversify the County's economy.
- (b) Retail Developments. Developments which are primarily for retail may be reviewed on a case-by-case basis to determine eligibility for Incentive, but will not be considered as preferred development proposals.
- (c) Leased Facilities. Existing leased facilities will only be eligible for Incentives under this Policy if:
- (i) the minimum investment requirement [Section 28.004(a)(i)] is met for new construction by the renovation or building of facilities or addition of business personal property, which are certified by TCAD as new construction; and
 - (ii) the company shows proof of: obligation of company in the leasehold agreement to pay all ad valorem taxes (either directly or indirectly); payment by the company of the ad valorem property taxes related to such new construction and/or eligible business personal property; and
 - (iii) the amount of the Incentive is based only on business personal property or real property improvements certified as new construction by TCAD.

If the above conditions are met and leased property will be utilized for new construction that is granted a tax Incentive, the Agreement will be executed with both the lessor (owner) and lessee

of the land on which the facility is located provided that the term of the lease is equal to or exceeds the term of the Agreement.

(d) Findings. An agreement cannot be entered into unless the Commissioners Court finds: that the terms of the Agreement and the Property subject to the Agreement meet the applicable guidelines and criteria set forth in this Policy; and that the development of the Project will result in substantial immediate and long-term financial benefit to Travis County and significant financial benefit to other taxing entities within Travis County.

(e) Commissioners Court Ownership. Property that is owned or leased by a person who is a member of the Commissioners Court (or staff of such member) is excluded from receiving Incentives under this Policy.

28.004 BASE INCENTIVE

(a) Eligible Project. To be eligible for consideration for the base Incentive a project must meet the following criteria:

(i) Investment. Include additions of investment in new construction of Eligible Property, as certified by TCAD, which totals at least twenty-five million dollars (as shown by the Applicant's annual tax rendition, a copy of which will be provided to County) by January 1 of the tax year that will commence immediately following the year in which the construction period defined in the Agreement is completed or the year in which the Incentive begins;

(ii) Job Transfer. Not solely or primarily have the effect of transferring employment from one part of the County to another;

(iii) New Job Creation. Provide additional full-time, non-seasonal jobs for at least 100 Employees within the time period or periods set forth in the Agreement, with additional Incentive available for more than 100 new jobs [(see Section 28.004(a)(iii)];

(iv) Competitively Siting. Be competitively-sited;

(v) Benefits. Have a human resources benefits policy:

(A) meeting all applicable state and federal requirements, including provision of health benefits at a level which, as determined by the Commissioners Court, meet or exceed the requirements of the Patient Protection and Affordable Care Act in effect as of the date of the adoption of this Policy; and

(B) including the Applicant's offering group coverage or contribution to health benefits in a dollar amount that provides meaningful opportunity for all workers to purchase coverage for all Employees and Employee family members ("all" Employees and Employee family members defined to include same sex/domestic partners).

(vi) Location. An Eligible Project must be located in a Travis County Regional Activity Center located in an area:

- identified in a comprehensive plan (a plan adopted, or to be adopted, by the Commissioners Court for the long-range development of the

unincorporated area of the County which is used to coordinate and guide County programs);

- a Conservation Development that conforms to the provisions of the County Conservation Development Order (Travis County Code, Chapter 82, Subchapter A);

- areas consistent with the City of Austin Growth Concept Map;

or

- in another targeted area specifically identified by Travis County for economic development preference at the time this Policy is approved or at any time this Policy is in effect.

A specific Regional Activity Center, Conservation Development, or other area described above must be identified in the Agreement approved by the Commissioners Court and cannot be added to the Agreement at a later date.

(vii) Equal Employment Opportunity Policy. Provide County with a copy of the Applicant's equal employment opportunity policy. If the Applicant does not have a written equal employment policy at the time of application, Applicant may provide County with a written plan for adoption of such policy, to be completed and provided to the County prior to any Agreement being executed. NO Agreement will be entered into until the copy of the policy is provided to County;

(viii) Cash-Positive Evaluation. Have been evaluated using an economic development software program (currently, webLOCI, but subject to change at County's discretion) which calculates the benefits and costs to the County from Incentive deals, including the payments and the cost of County services, with such evaluation having a cash-positive result; and

(ix) Salary Requirements. Provide salaries to all Employees, including contract Employees and employees hired by contractors for construction of the Company's facilities related to the incentive Agreement, at an hourly wage that equals or exceeds the County's established minimum wage.

(x) Construction Requirements. Meet specified County requirements related to wages and safety conditions for employees hired by contractors for construction of the Company's facilities related to the incentive Agreement.

A proposal which meets the above criteria will be considered an Eligible Project. This establishes initial eligibility but does not ensure the granting of Incentives by Travis County.

(b) Base Incentive Amount. An Eligible Project may receive a base Incentive of up to 45% of ad valorem taxes on new value of Eligible Property if the Applicant shows a minimum investment as set forth in Section 28.004(a)(i), with the percentage determined as follows:

Investment Amount	Base Incentive Percentage
\$25 Million to \$100 Million	up to 25%
\$101 Million to \$200 Million	up to 33.5%
More than \$200 Million	up to 45%

28.005 ABOVE BASE INCENTIVE.

(a) **Maximum Incentive.** No Incentive will be granted that exceeds eighty percent (80%), regardless of the total above-base requirements that an Applicant may fulfill. Additional Incentives above the base may be considered as set forth in this Section 28.005.

(b) **Jobs.**

(i) **Additional Incentive.** An additional Incentive of up to fifteen percent (15%) may be granted based on Employee jobs created as follows:

Number of Jobs	Additional Incentive Percentage
100 – 150	up to 6%
151 – 200	up to 10%
201 +	up to 15%

(ii) **Advertising.** To qualify for additional Incentive for jobs created, Applicant must advertise jobs and provide documentation of such on public job boards (i.e., Workforce Solutions) and other resources as identified by County.

(c) **Residency.** An additional Incentive of 5% may be granted of the Company fills at least 50% of its new positions for the project with Travis County residents. For purposes of this requirement, "residency" will be defined as having a permanent address within Travis County and not having worked for the Company prior to the Effective Date of the Agreement.

(d) **Leadership in Energy and Environmental Design (LEED) Certification.**

(i) **Additional Incentive.** An additional Incentive of up to five percent (5%) may be given for Leadership in Energy and Environmental Design (LEED) certification.

(ii) **Level of Certification.** If the owner or lessee of a new commercial facility or an existing facility to be adapted or renovated has registered with the U. S. Green Building Council (USGBC) seeking LEED Certification, then PBO may recommend approval of an additional Incentive based upon the level of certification obtained after completion of construction as follows:

LEED Certification Level	Additional Incentive Percentage
Basic	up to 2%
Silver	up to 3
Gold	up to 4%
Platinum	up to 5%

(iii) **Registration.** Applicant must be registered with USGBC seeking LEED Certification prior to submitting its application for additional LEED Incentive to the County. The additional Incentive for LEED shall not commence until construction of the project is completed and LEED Certification is obtained by the Applicant and acceptable documentation provided to County of that certification.

(e) **Economically Disadvantaged Hiring/Training.** An additional Incentive of up to ten percent (10%) for training and/or hiring of Economically Disadvantaged residents may be granted as follows:

(i) Option A – Needs Based Scholarships.

(A) Scholarship. Applicant may pursue additional Incentive under this subsection 28.005(e) by providing needs based scholarships covering at least 50% of the full tuition cost of a degree or certification (with "tuition" being defined to include all required fees, books and actual tuition costs) to Economically Disadvantaged individuals.

(B) Number. Scholarships under this subsection must be provided to a number of Economically Disadvantaged individuals equal to at least ten percent (10%) of the Eligible Project's total employment annually. For example, if Applicant will have 200 full time Employees, Applicant would have to fund 20 scholarships.

(C) Administration. The administration of the needs based scholarship must be provided through an institute of higher education, an independent school district, or a workforce training program approved by Travis County. Verification of the funding for and the distribution of the needs based scholarship shall be provided by the educational or workforce training program administering the program.

(ii) Option B – Full Time Employment.

(A) Employment. Applicant may pursue additional Incentive under this subsection 28.005(e) by providing full time employment to Employees who have been participants in any needs based scholarship program or workforce training program approved by Travis County.

(B) Number. Employment under this subsection must be provided to a number of Economically Disadvantaged individuals equal to at least ten percent (10%) of the Eligible Project's total employment annually. For example, if Applicant will have 200 full time Employees, Applicant would have to hire and retain 20 Economically Disadvantaged individuals to qualify for the additional incentive.

(C) Administration. Verification of the employment of Economically Disadvantaged Travis County residents shall be met through documentation by the Applicant that:

(1) the full time Employee has been a recipient of any qualifying based scholarship (as approved by County) within the last four years; or

(2) the full time Employee has completed a workforce training program approved by Travis County within the last four years.

(iii) Option C – Monetary Donations.

(A) Donation. Applicant may pursue additional Incentive under this subsection 28.005(e) by providing a specified monetary donation (the amount to be included in the Agreement) to a workforce training program approved by Travis County or to an established Travis County workforce training fund, if such a fund is established.

(B) Administration. Verification of the donation to the workforce training program must be provided by that program; verification of the donation to a Travis County funds will be provided by County.

(iv) Option D – Other Participation. Applicant may pursue additional Incentive under this subsection 28.005(e) by participating to the level negotiated in the Agreement in an approved Travis County program designed to enhance workforce training/hiring of Economically Disadvantaged. For example, Applicant could agree to participate by providing a specified number of internships under the County summer youth employment program.

(v) Other Requirements. If Applicant pursues additional Incentive under Option A or Option B above:

(A) Pre-Approval. Travis County, through Travis County Health, Human Services and Veterans Services, must pre-approve any proposal by the Applicant under this subsection 28.005(e) as to the educational institution, program or needs based scholarship program.

(B) Addition to Agreement. At the request of the Applicant, and at the discretion of the Commissioners Court, a training and hiring Incentive provision [as set out in this subsection 28.005(e)] may be added as an amendment to a prior Incentive Agreement approved by Commissioners Court. Additional Incentive for such added provision will only be granted effective as of the date of the fully executed amendment.

28.006 PROCESS

(a) General

(i) Initial Proposal. A company will make written application for Incentives pursuant to the applicable provisions of this Policy. PBO will review the initial application and make recommendation to the Commissioners Court regarding the proposal. The Commissioners Court will, at its sole discretion, determine whether to grant the Incentive, the level of the Incentive to be granted and the terms of the Agreement.

(ii) No Limitation. Nothing in this Policy is meant to or will be construed to limit the discretion of the Commissioners Court to decide whether to enter into a specific Agreement; or limit the discretion of the Commissioners Court to delegate to its employees the authority to determine whether the Commissioners Court should consider a particular application or request for Incentive; or create any property, contract or other legal right in any person to have the Commissioners Court consider or grant a specific application or request for Incentives.

(b) Application Package. Components of a complete application package establishing minimum qualifications for a base Incentive will include:

(i) a completed Travis County Application form (Exhibit 1 of this Policy);

(ii) a non-refundable check in the amount of \$1,000.00 payable to Travis County to reimburse the County the reasonable cost of proposal evaluation; and

(iii) a completed narrative prepared in accordance with the template provided in the County application including, but not limited to:

(A) an investment budget detailing components and costs of the Eligible Property for which Incentive is requested, including type, number, economic life and eligibility for a tax exemption granted by TCEQ, if known;

(B) a map and legal description of the property/properties, if a location or alternate locations have been identified, with the understanding that this information will be provided prior to the execution of the Agreement if not available at the time of application;

(C) a time schedule for undertaking and completing the proposed improvements;

(D) a ten-year environmental and worker safety compliance history for all facilities located within the State of Texas and owned in whole or in part by the Applicant, as defined in "Environmental and Worker Safety Qualification;

(E) an affidavit by the Applicant affirming that the application is a Competitively-Sited Project and acknowledging that documentation confirming the competitive process will be provided to County if an Incentive is granted by Travis County prior to the execution of the final Agreement; failure to provide the acceptable documentation of being a Competitively-Sited Project will result in the termination of Agreement negotiations;

(F) information pertaining to the reasons that the requested Incentive is necessary to ensure that the proposed project is built in the County (i.e., documentation supporting the assertion that "but for" an Incentive, the stated project could not be constructed in the County);

(G) copies of the report filed with the TWC for December 31 of the last complete year prior to the filing of the application documenting the current number of full time non-seasonal Employees, and full-time contract Employees , if any, at the time the application is submitted. Applicant may substitute another company-generated and certified payroll report or other documentation of employment for the previous year deemed adequate by County to provide the above information;

(H) financial and other information as the County deems appropriate for evaluating the financial capacity and other factors of the Applicant's proposal; and

(I) certification prepared by the Travis County Tax Assessor-Collector stating that all tax accounts within the County are paid on a current basis.

Additional information required for Incentives, particularly above base Incentives, may be included if the Applicant desires those proposal to be considered or may be requested on a case by case basis.

(c) **Additional Information – Leased Facility.** The Applicant will provide County, as a part of the application package, the name and address of the lessor and a copy of the proposed lease agreement, or option contract (with a final copy of the executed lease to be provided to County prior to execution of the Agreement). In the event a lease or option contract has already been executed with the owner of the site, the document should include a provision whereby Incentive Applicant may terminate

such contract or lease in the event that the County does not grant an Incentive. Leased property will only be considered for Incentives as to the Eligible Property being proposed. The lease term must extend for at least as long as the requested Incentive Agreement term and the Lease agreement must include the requirement that the Company pay the Ad Valorem taxes (either directly or indirectly) throughout the term of the Agreement.

(d) **Initial County Review by PBO.** Any current or potential owner or lessee of taxable property in the County may request an Incentive by filing a completed application (an application which includes all information set forth in this Policy and deemed necessary by County to make a full assessment of the proposal) with the County Judge, with a copy to PBO prior to any public expression of a site selection decision. The County Judge's office will notify the Commissioners Court of receipt of an application for Incentive and PBO will begin the assessment pursuant to this Policy. PBO may request additional information and clarification from the Applicant as necessary to complete the application. PBO, in consultation with the County Judge, will create an assessment of the proposal and make a best effort to respond to a completed application in a timely manner upon receiving the completed application and completing the financial analysis. The response will include notification by PBO which either:

(i) notifies the Applicant in writing that the Travis County Commissioners Court will not take up the application for consideration; or

(ii) notifies the Applicant in writing that consideration of the application will be set for consideration by the Travis County Commissioners Court.

(e) **County Assessment of Application.** Upon receipt of a completed application and completion of the necessary financial analysis, PBO shall determine whether a project meets the minimum threshold for consideration by the Travis County Commissioners Court for a base Incentive and any additional Incentive under this Policy. If PBO determines that the threshold has been met, or that the proposal warrants consideration with the possibility of waivers, PBO shall offer the application for consideration by the Travis County Commissioners Court at a regularly scheduled voting session. County will make every effort to offer the application for consideration by the Commissioners Court in a timely manner after receipt of the completed application and completion of the financial analysis.

(f) **Consideration.** The Commissioners Court will consider the proposed application for any Incentive in a regularly scheduled voting session with opportunity for public comment.

28.007 LIMITATIONS

(a) **County Indebtedness.** No Incentive shall be approved or allowed if the Applicant is indebted to the County or any other local taxing jurisdiction for past due ad valorem taxes or other obligations.

(b) **Incentive on New Value.** Incentives may only be granted for the increase in taxable value of Eligible Property on or after the effective date of the Agreement granting the Incentive if the Eligible Property is listed by kind or type in the Agreement between the County and Applicant, subject to such limitations as the Commissioners Court and the TEXAS TAX CODE (and other applicable statutes) may require.

(c) **Duration.** An Incentive Agreement between Travis County and an Applicant (and, if applicable, the Applicant's lessor or lessee) shall remain in effect for up to but not more than ten (10) years.

(d) **Failure to Meet Requirements.** No Incentive shall be given for any year in which the Eligible Project fails to meet the contractually-defined minimum new investment requirements and job requirements as set forth in the Agreement, and any other requirements as specified in the Agreement.

(e) **Prior Construction or Improvements.** The County will not enter into an Incentive Agreement if it finds that an application was received after a project commenced construction or installation of improvements which are proposed to be considered for Incentive.

(f) **Non-Compete Agreements.** An Incentive will not be granted for projects whose competitive siting consists only of consideration of taxing jurisdictions that have agreed with County to forego the use of tax incentives in competing with the County for such projects.

28.008 AGREEMENT TERMS

(a) **Negotiation.** After the approval of the general concept of the initial proposal by the Commissioners Court, the County may negotiate and execute an Agreement with the owner of the facility (and/or lessee/lessor, where applicable) as required by this Policy and applicable law. Travis County will make all reasonable efforts to execute an Agreement in a timely manner upon the Court's approval to commence negotiations.

(b) **Terms.** The terms of the Agreement will include:

(i) **Annual Certification.** A requirement that the Applicant annually submit (or provide acceptable access for monitoring purposes) notarized written certification to PBO of compliance with the Agreement terms, including the following:

(A) A January Employee count for the Eligible Project which is the subject of the Agreement which corresponds to Employee counts reported in the facility Employer's Quarterly Report to TWC (or other acceptable company-generated and certified payroll report or other documentation of employment deemed adequate by County) for the quarter most recently ended at calendar year-end;

(B) A description of employment, including: the number of jobs created as a direct result of the improvements which are the subject of the Incentive Agreement; the number of Employees in other facilities located within Travis County; and the compliance with the environmental and worker safety requirements in the Agreement for the preceding calendar year, as of January 1, as required by the Agreement;

(C) A copy of the tax bill for the year for which Incentives are claimed and proof of payment; and

(D) Other reporting data and documentation necessary to confirm compliance with all terms and conditions of the Agreement and to evaluate long-term effects of the performance of the Agreement terms.

Submission of all required reporting information shall be used to determine Incentive eligibility and shall be subject to audit if requested by the Commissioners Court. Failure to submit will result in the ineligibility to receive an Incentive.

(ii) **Monitoring.** A provision requiring the Applicant to allow the County or other authorized representatives (including third-party consultant/auditor) to have access and the ability

to review and evaluate all Applicant information and data related to the performance of the Agreement on-site or as provided to County to confirm compliance and to perform other evaluation of long-term results of the Agreement.

(iii) Permits. A requirement that the owner or lessee will:

(A) obtain and maintain all required permits and other authorization from the United States Environmental Protection Agency and the TCEQ for the construction and operation of its facility and for the storage, transport and disposal of solid waste; and

(B) seek a permit from the TCEQ for all grandfathered units on the site of the facility by filing with the TCEQ, within three years of receiving the Incentive, a technically complete application for such a permit.

(iv) Competitively Sited Documentation. A requirement that the Applicant provide to PBO within one month of executing the Agreement documentation confirming the Eligible Project was in fact part of a competitively-sited process where applicable. Documentation may include, but will not be limited to:

(A) documentation (correspondence or financial information) presented to the Applicant by other taxing jurisdictions; and

(B) results of a competitive site survey conducted by Applicant (or consultant for the Applicant).

Failure to provide this documentation confirming a competitively-sited process will make any Incentive Agreement null and void or subject to a reduction in Incentive, as determined by the Commissioners Court.

(v) Recapture. A requirement for recapture of the Incentive received by Applicant for the last five (5) years of the Agreement if the Applicant fails by the termination date to fulfill the requirement for the total Investment amount and the total number of new jobs to be created.

(vi) Hiring. A statement certifying that the Applicant does not and will not knowingly employ an undocumented worker; and, if after receiving Incentives under the Agreement, the company is convicted of a violation under 8 U.S.C., Section 1324a(f), the company will repay the amount of Incentive, with interest at the rate and according to the other terms of the Agreement not later than the 120th day after the date the company is notified by County of the violation.

(vii) Commissioners Court Ownership Statement. A statement whereby the Applicant warrants that none of the Property subject to the Agreement is owned or leased by any member of the Commissioners Court (or staff of such member).

(viii) Other Terms. Other terms and conditions as required by applicable law or determined by the Commissioners Court to be necessary.

28.009 OTHER PROVISIONS

(a) Assignment. An Incentive Agreement may be assigned to a new owner or lessee of a facility with the prior written consent of the Commissioners Court, which consent will not be

unreasonably withheld. Any assignment shall provide that the assignee will irrevocably and unconditionally assume all the duties and obligations of the assignor upon the same terms and conditions as set out in the Agreement. Any assignment will be to an owner that continues the same improvements or repairs to the property (except to the extent such improvements or repairs have been completed), and continues the same use of the facility as stated in the original Agreement with the initial Applicant. No assignment will be approved if the assignor or the assignee is indebted to the County for past due ad valorem taxes or other obligations.

(b) **Amendments and Waivers.**

(i) **Agreement Changes.** Amendment of any Agreement entered into under this Policy can only be made by written instrument signed by all parties, and only so long as the terms and conditions of the amendment reflect provisions which could have been included in the original Agreement under this Policy and which meet all applicable statutory requirements. Submissions for amendments to an Agreement will be made in writing to PBO.

(ii) **Waivers of Policy Requirements.** The Commissioners Court reserves the right to waive any provision of this Policy that is not required by law upon determination that the waiver requested does not violate the purpose of the Policy and is in the best interest of the County.

(c) **Application of Policy.** Application of this Policy will be implemented as of the effective date set forth in Section 28.010; however, the Commissioners Court may consider the terms of this Policy as guidelines in evaluating proposals for Incentives submitted prior to the adoption of this Policy as desired by the Commissioners Court.

28.010 SUNSET PROVISION. The guidelines and criteria set forth in this Policy are effective November 27, 2012, and will remain in place unless earlier terminated by the Commissioners Court.

