



## Travis County Commissioners Court Agenda Request

**Meeting Date:** March 25, 2014

**Prepared By/Phone Number:** David Walch 46663; Marvin Brice 49765

**Elected/Appointed Official/Dept. Head:** Cyd Grimes

**Commissioners Court Sponsor:** Judge Biscoe

**Agenda Language:** Approve Interlocal Agreement No. 4400001960, City of Austin for Fiscal Impact Analysis of economic development incentive projects.

- **Purchasing Recommendation and Comments:** This procurement action meets the compliance requirements as outlined by the statutes.

The City of Austin's Economic Development Department assist Travis County in conducting fiscal impact analyses of tax incentive applications submitted to Travis County for consideration. The City uses the WebLOCI local-government fiscal impact tool.

Under the terms of this Interlocal Agreement Travis County will pay the City of Austin an annual fee of \$1,000.00 to create the community profile in their software for Travis County. This fee will entitle Travis County to five analyses per year. Any additional analysis in the year will cost \$250.00 each if a project in partnership with the City and \$750 if a project that excludes the City. (The cost difference reflects additional County only data entered by City staff.)

The Interlocal Agreement has been reviewed and approved by City and County legal departments and is currently being routed internally for County signatures. Travis County will approve and execute the agreement then it will be executed by the City of Austin.

- **Contract Expenditures:** Within the last 12 months \$0.00 has been spent against this contract/requirement.

➤ **Contract-Related Information:**

Award Amount: \$1,000.00 Annual Fee  
Contract Type: Interlocal Agreement  
Contract Period: April 1, 2014 – March 31, 2015

➤ **Funding Information:**

SAP Shopping Cart #:

Funding Account(s): Funding for this fiscal impact analysis is in PBO's department budget. Per Travis County Economic Development Policy, an application fee of \$1,000 is collected when companies apply for incentives. This revenue will offset the cost of the analysis.

Comments:

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



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

March 3, 2014,

To: Cyd Grimes, Travis County Purchasing Agent

From: Leslie Browder, County Executive, Planning & Budget  
Katherine Gipson, Senior Budget Analyst

Handwritten initials "LB" and a signature, likely of Leslie Browder, are written in black ink to the right of the "From:" line.

Re: Consider and take appropriate action on an interlocal agreement with the City of Austin for fiscal impact analysis of economic development incentive projects

The City of Austin's Economic Development Department has been assisting Travis County to conduct fiscal impact analyses of the tax incentive applications submitted to the County for consideration. The City uses the WebLOCI local-government fiscal impact tool. The WebLOCI tool calculates the net fiscal impact of a new investment within a jurisdiction. The WebLOCI program was created for Georgia Tech's Enterprise Innovation Institute in the 1990s. Travis County does not own a license to the WebLOCI software but has relied on the City of Austin staff to run the fiscal impact model on the County's behalf. Travis County provides the necessary expenditure, revenue and property valuation data needed to develop an annual community profile and City staff maintain the remaining global data for the program and produce the final analysis report. The Planning and Budget Office calculates potential tax rebate amounts for inclusion in the analysis.

Under the terms of the proposed interlocal agreement, the County would pay the City of Austin an annual fee of \$1,000 to create the community profile in the software. This fee would entitle the County to five analyses per year. Any additional analyses in the year would be \$250 each if a project in partnership with the City, and \$750 if a project that excludes the City (because it would require City staff to enter new project input). County staff would continue to gather much of the input needed to establish the community profile (primarily budget information) as has been done in the past. The turnaround time required is seven business days. County staff explored obtaining similar services from the Capital Area Council of Governments (CAPCOG), but was unable to obtain competitive pricing or sufficient turnaround time for the services. Further, Georgia Tech has decided to end its support for this model and has transferred the intellectual property to a third party, the Economic Impact Group (EIG). The City of Austin's contract is now with EIG.

Funding for this fiscal impact analysis is currently in the departmental budget for the Planning & Budget Office. Per the Travis County Economic Development policy, an application fee of \$1,000 is collected when companies apply for incentives. This revenue will offset the cost of the analysis. The Planning and Budget Office recommends approval of the attached interlocal

agreement with the City of Austin. The proposed agreement has been reviewed by the County Attorney's Office, as well as by the City of Austin's Law Department.

cc: Jessica Rio, Planning and Budget Office  
Diana Ramirez, Planning and Budget Office  
Mary Etta Gerhardt, County Attorney's Office

**INTERLOCAL COOPERATION AGREEMENT**  
**BETWEEN TRAVIS COUNTY AND CITY OF AUSTIN**  
**FOR FISCAL IMPACT ANALYSIS**

This Interlocal Agreement ("Agreement") is entered into by the following parties: Travis County, a political subdivision of the State of Texas ("County"), and the City of Austin, a home-rule municipal corporation and political subdivision of the State of Texas ("City").

**RECITALS**

County and City have the authority to enter into an Interlocal Cooperation Agreement through Tex. Const. Art. 3, sec. 64 and "The Interlocal Cooperation Act," Chapter 791, TEX. GOV'T. CODE ANN., Vernon's Texas Civil Statutes.

County has the authority to provide for economic development through various programs and agreements for the County under Chapter 381, TEX. LOC. GOV'T. CODE and other statutes.

County desires to obtain appropriate fiscal impact analysis of proposed economic development projects prior to entering into authorized agreements with third parties.

County desires to purchase, and City is able to provide, services related to fiscal information in Travis County regarding economic development agreements .

In consideration of the agreements, covenants and payments set forth in this Agreement, the sufficiency of which are acknowledged, City and County mutually agree to the terms and conditions stated in this Agreement as follows:

**AGREEMENT**

**1.0 DEFINITIONS.** In this Agreement,

- 1.01 "Agreement Funds" means all funds paid by City to County pursuant to this Agreement.
- 1.02 "Agreement Term" means the Initial Term and/or any subsequent Renewal Term(s) or any other period of time designated in writing as an Agreement Term by the Parties.
- 1.03 "City Council" means City Council of the City of Austin, Texas.
- 1.04 "City Manager" means the City Manager of the City of Austin, Texas.
- 1.05 "Commissioners Court" means the Travis County Commissioners Court.
- 1.06 "County Auditor" means Nicki Riley, the Travis County Auditor, or her successor or designee.
- 1.07 "County Purchasing Agent" or "Purchasing Agent" means Cyd Grimes, the Travis County Purchasing Agent, or her successor or designee.
- 1.08 "Days" means calendar day(s) unless otherwise specifically noted in any individual provision.
- 1.09 "Fiscal Year" means the County fiscal year, which, at the time of execution of this Agreement begins October 1 and ends on the next following September 30.

1.10 "Party" and/or "Parties" means the County and/or City.

1.11 "LOCI" means the current software program utilized by City to provide the fiscal impact analysis to be provided under this Agreement. References to LOCI in this Agreement include LOCI or any successor software program utilized by City in accordance with Section 4.01.1 of this Agreement.

## **2.0 TERM**

2.01 **Initial Term.** This Agreement shall continue in full force for the Agreement period which commences on April 1, 2014, and terminates on March 31, 2015 (Initial Term), unless terminated earlier in accordance with the terms of this Agreement.

2.02 **Renewal Term(s).** Unless sooner terminated pursuant to the terms of this Agreement, and conditioned upon approval by the City Council and the Commissioners Court of continued funding during the budget process related to any Renewal Term, and within the limits of that budgetary approval, this Agreement shall automatically renew on April 1, 2015, for an additional one-year term (or any time period designated in writing by the Parties), and on successive January 1 dates for additional one-year terms (Renewal Term(s)) until either Party provides written notice of the desire not to renew. The terms and conditions of the Agreement in any Renewal Term will remain the same as those in the previous term unless and until amended in writing pursuant to the terms of this Agreement.

## **3.0 AGREEMENT FUNDS, ADMINISTRATION AND SUPPORT**

3.01 **Agreement Funds.** The total costs of this Contract for any Contract Period shall not exceed the amount included in the County budget for this Contract for that Contract Period unless or until an increase in the County budget is approved by the Travis County Commissioners Court ("Commissioners Court").

3.02 **Annual Payments.** The Parties agree that, in consideration of performance of services and activities provided under this Agreement, County shall pay City as follows during the Initial Term and any Renewal Term, unless this Agreement is amended to change these amounts:

3.02.1 Annual Fee - \$1,000.00 – includes payment for annual development and set-up of the County's LOCI community profile and the first 5 fiscal impact analyses provided in the Initial Term and each subsequent renewal term of the Agreement.

3.02.2 For Additional Analyses during the Agreement Term on an as-needed basis:

- (a) \$250 per fiscal impact analysis if the City is also pursuing an agreement with the applicant; and
- (b) \$750 if only the County is pursuing an agreement with the applicant

Payment shall be made pursuant to all terms of this Agreement, including the provisions set forth in Attachment A, Scope of Work.

3.03 **Payments to City.** County will pay City as follows:

3.03.1 **Annual Fee.** County will pay City the Annual Fee within thirty (30) days of the execution of this Agreement by both Parties for the Initial Term. County will pay the City the Annual Fee within thirty (30) days of the beginning of each Renewal Term.

3.03.2 Additional Fiscal Impact Analyses. For Additional Analyses (beyond the first five of any Agreement Term), City shall submit to County a Request for Payment as set forth in Attachment C after those services are provided for which reimbursement is sought. County shall pay City within thirty (30) days of receipt of the complete and correct reimbursement request.

3.03.3 County Approval. The Parties expressly acknowledge and agree that County shall not be responsible for the cost of any services provided under this Agreement that are not substantially performed according to the terms of this Agreement and with County's approval, which shall not be unreasonably withheld.

3.04 **Administration**.

3.04.1 City Administration. City herein designates the Economic Development Department as the department responsible for the City's administration of this Agreement and all matters pertaining hereto. City contacts for this Agreement are:

Natalie Betts, Economic Development Department  
Address: P. O. Box 1088, Austin, Texas 78767  
Telephone No: 512/974-7833  
Email: natalie.betts@austintexas.gov

3.04.2 County Administration. County designates Travis County Planning and Budget ("PBO") as the department responsible for County's administration of this Agreement. County contact(s) for this agreement are:

County Executive, Planning and Budget Office  
P. O. Box 1748, Austin, Texas 78767  
(512) 854 - 9106

3.05 **Authorized Representatives**. City and County agree that, unless otherwise designated specifically in any provision, all communication, requests, questions or other inquiries related to this Agreement shall initially be presented by the contact set forth in Section 3.04 above.

3.06 **Insurance**. City and County acknowledge and agree that each Party is self-insured and will maintain such coverage at a level sufficient to cover the needs of City and County, respectively, pursuant to applicable generally accepted business standards. Each Party shall require all subcontractors providing services under this Agreement to have standard insurance coverage as stated in their solicitation documents or actual existing agreements .

3.07 **Current Revenue Funds**. County shall provide payment for services under this Agreement from current revenue funds available and set aside for this purpose. City is providing services under this Agreement necessary for the performance of County governmental functions. The payment is in an amount that fairly compensates City for the services or functions performed under this Agreement.

3.08 **Prior Debts**. Neither Party shall be liable for costs incurred or performances rendered by the other Party before or after the Agreement Term.

**4.0 SCOPE OF AGREEMENT**

4.01 **Services and Activities**.

4.01.1 City. City agrees to secure the necessary LOCI software license and other necessary agreements with the Economic Impact Group ("EIG"), or their successor in interest, to provide analysis of economic development proposals according to Attachment A, "Scope of Work" and all other terms and provisions contained in this Agreement. The City has the sole discretion to choose whichever software or vendor is used by the City for the provision of this service. If the City elects not to continue its license agreement with EIG, the City shall provide the County with sixty days prior notice of its intent to change or cease using such software and/or provider and to provide information related to the new software/provider which City intends to use. County shall have the option to terminate this Agreement within that sixty day notice period and shall pay any funds due and owing to the City if the Agreement is terminated.

4.01.2 County. County agrees to provide all necessary expenditure, revenue and property valuation data needed for the Community profile as set forth in this Agreement or mutually agreed to by the Parties.

4.02 **Entire Agreement.**

4.02.1 Inclusive Agreement. 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.

4.02.2 Attachments. The attachments enumerated and denominated below are hereby made a part of this Agreement, and constitute promised performance by the Parties in accordance with the terms of this Agreement.

- 4.02.2.1 Attachment A, Scope of Work
- 4.02.2.3 Attachment B, Sample LOCI Community Profile Data Report
- 4.02.2.4 Attachment C, Request for Payment

4.03 **Forms - W-9 Taxpayer Identification Form.** City shall provide 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 and its rules and regulations, and a statement of entity status in a form satisfactory to County, and with immediate notice of any changes to said forms throughout the term of this Agreement. City understands that this W-9 form must be provided to the County Purchasing Agent before any Agreement Funds are payable.

4.04 **Subcontract(s).**

4.04.1 City Responsibility. City is wholly responsible to County for the performance under this Agreement, whether such performance is provided directly by City or indirectly by any subcontractor, and shall monitor both financial and programmatic performance and maintain pertinent records concerning Subcontractor(s) that shall be available for inspection by County. City shall ensure that its Subcontractors comply with all applicable terms of this Agreement (including terms related to records and reports) as if the performance rendered by the Subcontractor was being rendered by City. City shall inspect all Subcontractors' work and shall be responsible for ensuring that it is completed in a good and workmanlike manner pursuant to the terms of this Agreement, but the City does not guarantee or warrant the services of the vendor.

4.04.2 Copies. City shall provide County with copies of any subcontract under which Agreement services are provided upon written request by County. Subcontracts shall include provisions ensuring that:



Subcontractors will receive no duplicate payments from other sources or under other contracts for services/participants provided under this Agreement; that Subcontractor will cooperate with any County inquiries related to Agreement services; that Subcontractor agrees to comply with all laws and terms of this Agreement; and that City is solely responsible for payment.

4.04.3 **Limitations.** This Agreement sets out the agreements and obligations between County and City only, and does not obligate County in any way to any of City's Subcontractors, nor to any other third party. This Agreement creates no third party beneficiary rights as between County and any of City's subcontractors.

## **5.0 RETENTION AND ACCESSIBILITY OF REPORTS AND RECORDS**

5.01 **City Retention.** Unless otherwise specified herein, City shall maintain all records and documentation for all expenditures pertaining to this Agreement in a readily available state and location for three (3) years from after the end of any Agreement period, or until resolution of any conflict to the satisfaction of the Parties, whichever occurs later.

5.02 **County Access.** Subject to applicable laws, City shall give the County, or any of its duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by City pertaining to this Agreement at reasonable times and for reasonable periods. These rights to access shall continue as long as the records are retained by City.

5.03 **Confidentiality of Records.** Each Party agrees to keep confidential at all times all information that identifies clients and personnel and any other information in accordance with the applicable Federal, State and local laws, rules and regulations and applicable professional ethical standards.

## **6.0 AUDIT**

6.01 **County Audit.** Except as otherwise provided herein, County has the right to conduct a financial and compliance audit of the performance of this Agreement on an annual basis. City agrees to permit County or its authorized representative, or any authorized representative of any other governmental agency with a direct interest in services provided under this Agreement, to audit the public records that relate to this Agreement and to obtain and make available for inspection, audit and/or reproduction any documents, materials, or information necessary to facilitate such audit.

## **7.0 INDEPENDENT ENTITY AND ACKNOWLEDGEMENT OF RESPONSIBILITIES**

7.01 **Independent Entities.** The Parties expressly acknowledge and agree that City and County are independent entities and each assumes all the rights, obligations, and liabilities applicable to it as an independent entity. No employee of the City shall be considered an employee, agent, or representative of the County or gain any rights against the County pursuant to the County's personnel policies. No employee of the County shall be considered an employee, agent, or representative of the City or gain any rights against the City pursuant to the City's personnel policies. The relationship of County and City under this Agreement is not and shall not be construed or interpreted to be a joint enterprise or joint venture. 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 or which shall hold itself out to be binding on the other Party.

7.02 **Responsibilities.** City shall not be liable for any claims, damages or attorney fees arising from any negligence or unlawful acts of the County or its employees in relation to this Agreement. County shall not be liable for any claims, damages or attorney fees arising from any negligence or unlawful acts of City or its employees in relation to this Agreement. City and County acknowledge that each entity is otherwise responsible for any claims or

losses from personal injury or death or property damages that were caused by the acts or omissions of that entity, its agents, employees, or representatives in the performance of the services and activities under this Agreement; and that each entity will be responsible for the handling of the portion of any claim which is based solely on the assertion that a policy of that entity is illegal or unenforceable in any way.

7.03 **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 City or County, the Party against whom the claim or other action is made 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. Such notice shall include 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 Section 11.0 of this Agreement. Except as otherwise directed, the Party against whom the claim has been made shall furnish to County copies of all pertinent papers received by that Party with respect to these claims or actions.

## 8.0 TERMINATION

8.01 **Termination**. Unless otherwise specified herein, either Party shall have the right to terminate this Agreement, in whole or in part, at any time before the date of termination for the following reasons:

8.01.1 During the budget planning and adoption process, Commissioners Court or City Council, respectively, fails to provide funding for the Agreement during the next Agreement period;

8.01.2 Either Party has failed to comply with any term or condition of this Agreement.

8.01.3 Either Party is unable to conform to changes required by federal, state or local laws or regulations.

8.02 **Mutual Termination**. Either Party has the right to terminate this Agreement, in whole or in part, when both Parties agree that the continuation of the activities funded under this Agreement would not produce beneficial results commensurate with the further expenditure of funds; provided that both Parties agree, in writing, upon the termination conditions, including the effective date of the termination and, in the case of partial termination, the portion of the Agreement to be terminated.

8.03 **Termination Procedure**. At least thirty (30) days prior to the effective date of termination, the Party seeking termination shall notify the other Party in writing of the reasons for termination, the effective date of termination, and, in the case of a partial termination, the portion of the Agreement to be terminated. The other Party may avoid termination if that Party corrects the cause(s) for termination to the satisfaction of the termination Party prior to the effective date of termination.

8.04 **Rights Surviving Termination**. If either Party terminates this Agreement in whole or in part, City has the right to receive payment for all purchases and/or services provided before the date of termination and not previously paid. Neither Party shall be responsible to the other Party for expenses or costs incurred after the effective date of the termination of this Agreement. Nothing in any of these provisions relating to termination shall prevent or prohibit either Party from taking any other action provided for under the terms of this Agreement or allowed by law.

## 9.0 MISCELLANEOUS PROVISIONS

9.01 **Compliance With Applicable Law.** City and County shall each provide, or contract to provide, all services and activities under this Agreement in compliance with the Constitutions of the United States and Texas and with all applicable federal, state and local orders, ordinances, laws, regulations, rules, policies and certifications governing any activities undertaken during the performance of this Agreement including, but not limited to: Title VI of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504 (29 U.S.C., Section 794), the provisions of the Americans With Disabilities Act of 1990, Public Law 101-336 [S.933], Chapter 73, Texas Administrative Code, Section 85.113 (relating to workplace and confidentiality guidelines regarding AIDS and HIV), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Neither City nor County shall discriminate against any employee, applicant for employment, or Client based on race, religion, color, sex, national origin, age or handicapped condition.

9.02 **Non-Waiver.** No payment, act or omission by either Party may constitute or be construed as a waiver of any breach or default of the other Party which then exists or may subsequently exist. The failure of either Party to exercise any right or privilege granted in this Agreement shall not be construed as a waiver of that right or privilege.

9.03 **Reservation of Rights and Remedies.** All rights of the Parties under this Agreement are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to either Party under it. Any right or remedy in 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 in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

9.04 **Binding Agreement.** This Agreement shall be binding upon the successors, assigns, administrators, and legal representatives of the Parties to this Agreement.

9.05 **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 Travis County, Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate Courts of Travis County, Texas.

9.06 **Severability.** If any portion of this Agreement is ruled invalid by a court of competent jurisdiction, the remainder of it shall remain valid and binding, and shall continue to have full force and effect and shall in no way be impaired or invalidated by that holding.

### 9.07 **Interpretational Guidelines**

9.07.1 **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 or City has declared a holiday for its employees, these days shall be omitted from the computation.

9.07.2 **Number 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.

9.07.3 **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.

9.08 **Immunity or Defense.** It is expressly understood and agreed by all Parties that neither the

execution of this Agreement, nor any conduct of any representative of City or County relating to this Agreement, shall be considered to waive, nor shall it be deemed to have waived, any immunity or defense that would otherwise be available to that entity against claims arising in the exercise of its governmental powers and functions, nor shall it be considered a waiver of sovereign immunity to suit. It is understood and agreed that a decisions by one Party to waive immunity or to compensate a claim for which immunity would have been a defense and would have operated to prevent payment does not operate as a waiver or decision to compensate by the other Party; nor will such action by one Party operate to incur any expense or charge to the other Party.

9. 09 **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 or expiration or where those provisions remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

9. 10 **County Public Purpose.** By execution of this Agreement, the Commissioners Court hereby finds that the needs to be addressed by the services to be provided under the terms of this Agreement and specifically set forth in the attached Work Statements constitute a significant public concern impacting members of the population which the County serves. The Commissioners Court further finds that the provision of services to be provided by City pursuant to this Agreement will further the public purpose of addressing those health and human services issues, problems and needs identified in this Agreement for identified individuals.

## 10.0 AMENDMENTS

10.01 **Written Amendments.** 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 all Parties.

10.02 **Acknowledgements as to Amendment.** It is acknowledged by the Parties that no officer, agent, employee or representative of either Party has any authority to change the terms of this Agreement unless expressly granted that authority by the governing entity of that Party under a specific provision of this Agreement or by separate action of that governing entity.

10.03 **Submission of Amendment.** Each Party shall submit all requests for alterations, additions or deletions of the terms of this Agreement or any attachment to it to the contact person set forth in Section 3.03. County Purchasing Agent, with a copy to the County Executive for consideration. Such requests for changes shall be submitted by each Party for written approval by the governing entity or authorized representative.

## 11.0 NOTICES

11.01 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 11.0 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.

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

Cyd Grimes, Purchasing Agent  
P. O. Box 1748  
Austin, Texas 78767

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

County Executive, Planning and Budget Office  
P. O. Box 1748  
Austin, Texas 78767

and

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

11.03 **City Address.** The address of the City for all purposes under this Agreement and for all notices hereunder shall be as follows:

Marc Ott, City Manager (or his successor in office)  
P. O. Box 1088  
Austin, Texas 78767

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

Natalie Betts  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767

and

City Attorney  
301 West Second Street, Fourth Floor  
Austin, Texas 78701

11.04 **Change of Address.** Each Party may change the address for notice to it by giving written notice of the change in compliance with this Section 11.0.

## 12.0 LEGAL AUTHORITY

12.01. **Legal Authority to Enter Agreement.** Each Party guarantees that the Party possesses the legal authority to enter into this Agreement, receive funds authorized by this Agreement, and to perform the services that Party has obligated itself to perform under this Agreement.

12.02 **Signors.** The person or persons signing this Agreement on behalf of each Party, or representing themselves as signing this Agreement on behalf of either Party, do hereby warrant and guarantee that he, she or they have been duly authorized by that Party to sign this Agreement on behalf of the Party and to bind the Party validly and legally to all terms, performances, and provisions in this Agreement.

## 13.0 PROHIBITIONS

13.01 **Conflict of Interest.** In performing duties under this Agreement, City employees shall comply with the conflict of interest requirements and ethics provisions set forth in the Austin City Code, Article 4 (a copy of which has been provided to County). Both Parties shall comply with the conflict of interest provisions in Chapter 171 of the Texas Local Government Code and other applicable laws.

13.02 **Solicitation.** Both Parties warrant 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 that Party to secure business. For breach or violation of this warranty, the non-breaching Party shall have the right to terminate this Agreement without liability, or, in its discretion, to, as applicable, add or to or deduct from the Agreement price for consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

13.03 **Gratuities.** Either Party may cancel this Agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the other Party or any agent or representative to any 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 pursuant to this provision, the canceling Party shall be entitled, in addition to any other rights and remedies, to recover from the other Party a sum equal in amount to the cost incurred by the offending Party in providing such gratuities. Neither Party's employees, officers and agents shall solicit nor accept gratuities, favors or anything of monetary value from Subcontractors or potential Subcontractors.

13.04 **Nepotism.** City and County agree that they will comply with TEX. GOVERNMENT CODE ANN., Ch. 573, by ensuring that no officer, employee or member of the governing body of that Party shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person.

#### **14.0 ASSIGNABILITY**

14.01 No Party may assign any of the rights or duties created by this Agreement without the prior written approval of the other Parties. It is acknowledged by City that no officer, agency, employee or representative of County has any authority to grant such assignment unless expressly granted that authority by the Commissioners Court.

#### **15.0 FORCE MAJEURE.**

15.01 Neither Party shall be financially liable to the other Party for delays or failures to perform under the Agreement where such failure is 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 five (5) 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. Each Party agrees that breach of this provision entitles non-breaching Party to reduce or stop payments or services or immediately terminate this Agreement.

EXECUTED in duplicate originals this the \_\_ day of \_\_\_\_, 201\_\_.

TRAVIS COUNTY

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

APPROVALS:

Approved as to Form: \_\_\_\_\_ Date: \_\_\_\_\_  
Assistant County Attorney

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_  
Cyd Grimes, Purchasing Agent

Funds Verified By: \_\_\_\_\_ Date: \_\_\_\_\_  
Nicki Riley, County Auditor

CITY OF AUSTIN

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Marc Ott, City Manager

Approved as to Form: \_\_\_\_\_ Date: \_\_\_\_\_  
Assistant City Attorney

**Attachment A – Work Scope of Work**

1.0 Purpose. The purpose of this Agreement is for City to provide County with critical fiscal impact analysis of data provided relevant to proposals for receipt of incentives ("Proposal") under the Travis County Economic Development Policy ("Policy").

2.0 Confidentiality Agreement. In order to facilitate the review of the Proposals, County ("County") may grant City access to certain information related to the Proposal which is currently under consideration for economic development incentives by County, subject to the terms and conditions of this Section 2.0 of Attachment A, Scope of Work ("Confidentiality Agreement"). By signing this Agreement, City also agrees to the terms of the following Confidentiality Agreement:

CONFIDENTIALITY AGREEMENT

I. Definitions.

A. Confidential Information. For purposes of this Confidentiality Agreement, "Confidential Information" shall mean any information relating to the Proposal and disclosed in the course of County's cooperation with City in connection with the analysis by City, which is or should be reasonably understood to be confidential or proprietary to County and/or the company making the Proposal ("Company"). Confidential Information shall include information pertaining to pending County and/or Company operations that is not available to the public, as well as information restricted or protected by copyright, patent, trademark, trade secret, or other intellectual property rights. Confidential Information shall include internal memoranda; records; maps; engineering or other technical research results, studies or reports; specifications, trade secrets, and other information of a confidential nature, whether or not in writing. Confidential Information shall include any information described above regardless of whether the information is stored on magnetic media, orally communicated, or otherwise obtained, received, transmitted, processed, stored, archived or maintained.

B. City. For purposes of this Confidentiality Agreement, "City" shall include City, City's employees, officers, agents and representatives.

C. Exclusions. Confidential Information shall not include information: (a) already lawfully known to the receiving party or that is or becomes part of the public domain through no fault of the City; (b) disclosed in published materials; (c) generally known to the public or that is already known to the receiving party prior to the date of this Confidentiality Agreement and not subject to a confidentiality provision; (d) lawfully obtained from any third party; or (e) required to be made available for disclosure or release by order of a government agency, legislative body or a court of competent jurisdiction, or under the Texas Public Information Act or any applicable Texas or federal or local law.

II. Obligations. City agrees to preserve the confidentiality of all Confidential Information that is provided by County in connection with the analysis provided under this Agreement, and shall not, without the prior written consent of County, disclose, duplicate or make available to any person, or use for its own or any other person's benefit, other than as necessary for the purpose of furthering the analysis, the Confidential Information, in whole or in part, except as required by law. City shall exercise a commercially reasonable level of care to safeguard the Confidential Information against improper disclosure or use. City may disclose Confidential Information to its responsible employees with a bona fide need to know but only to the extent necessary to perform the analysis as required by County provided that such persons receiving the Confidential Information have been instructed and agreed to the terms of this Confidentiality



Agreement. The terms of this Confidentiality Agreement shall apply beginning with the receipt of any Confidential Information by City and continue throughout the analysis, during the formulation of any response to County's questions and during any other associated tasks or functions related to the analysis as defined by County; and for a period of ten (10) years after the last date that Confidential Information is received by City.

III. Acknowledgement/Agreement. By his/her signature to the Agreement to which this Confidentiality Agreement is attached, the individual(s) granted access to any Confidential Information in connection with any analysis by City (including all of City's employees, agents or representatives) agrees, to the extent permitted by law, to comply with the terms and conditions of this Confidentiality Agreement for the duration of the analysis and in perpetuity thereafter unless and until such information is made public by County and/or Company. City agrees that this Confidentiality Agreement applies to City, City's employees, representatives, officers or agents; and that, if any individual outside City's employ is in need of receiving Confidential Information provided under his Agreement, that will first receive County's written consent to such disclosure subject to signature of a duplicate Confidentiality Agreement by such recipient. The sole purpose for which City may disclose Confidential Information to its officers, representatives, employees and agents shall be limited to fulfillment of the agreement with County for study of such information. City agrees to maintain the confidentiality of the Confidential Information, including instructing its officers, employees, representatives and agents regarding the obligations of the City under this Agreement and to take all other reasonable precautions to prevent disclosure of the Confidential Information.

IV. Non-Waiver. By granting the City access to the Confidential Information pursuant to this Agreement, neither County nor any representatives of County waives or otherwise relinquishes any right of non-disclosure or other privilege available to it under the Texas Public Information Act or other applicable statute, law or regulation.

3.0 County Obligation. County will provide City with information from the application received from any proposal for receipt of benefits under the Policy, and will provide City any additional information received in a timely manner prior to the completion of the analysis. County will provide yearly budget information as necessary to complete the Community Profile.

#### 4.0 City Obligations.

4.01 Payment of the Annual Fee by County reflects the reasonable cost of the following during any Agreement Term:

4.01.1 Provision of all demographic information necessary to complete the LOCI Community Profile portion of the fiscal impact analysis and keep all information updated on a yearly basis.

4.01.2 Provide a fiscal impact analysis of any project set forth in an application for economic incentives submitted by Travis County to City which will include a spreadsheet detailing the costs and benefits of each proposal, with a breakdown of costs and benefits by category as defined by the LOCI software (or successor software as determined by City).

4.01.3 Provide a representative from City to be available to answer questions on the fiscal impact analysis and its underlying assumptions to the Planning and Budget Office and at relevant Commissioners Court meetings and public hearings.

4.01.4 Provide the first five fiscal impact analyses of proposals submitted by County to City.

4.02 LOCI Community Profile Data Report. City will prepare the necessary information for the accurate completion of the fiscal impact analysis to be provided to County, and will update such Report annually (or as often as is

necessary to maintain the integrity of the analysis). City will provide County with a description of the approach to creation of the Community Profile, and will work with County to ensure that the County provides all necessary data to support a profile which meets with County's needs.

4.03 County Analysis. Upon receipt of the full and complete package of information from County related to an individual Proposal, City will complete the fiscal impact analysis and provide the results to County within seven (7) days. If City cannot meet the seven-day requirement, City will notify County in writing prior to the expiration of the seven-day period with the explanation of the delay and expected completion date. City and County will negotiate an extension of this time period as deemed necessary by County, but in no event will the completion time be extended longer than fourteen (14) days. City will provide additional response to any questions by County regarding the fiscal impact analysis and assist County as necessary in interpreting and evaluating the results of the report, including attending appropriate meetings and public hearings held by Commissioners Court and/or the Planning and Budget Office.

**ATTACHMENT B**

**SAMPLE LOCI COMMUNITY PROFILE DATA REPORT**

**Community Name:** Travis County 2014

**Community Description:** Texas county government focuses primarily on the judicial system health and social service delivery law enforcement and corrections and upkeep of county maintained roads. In contrast to

**COMMUNITY INFORMATION**

<b>This jurisdiction is in TX</b>	<b>This profile is for a</b> County
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**TAXES**

<b>Local Sales Tax Rate:</b>	0.00 %		
<b>Non-Residential Property Tax and Assessment Rates</b>		<b>Dollars of Tax per Thousand of Assessed Value</b>	
	<b>Non-residential Assessment Rates</b>	<b>Incorporated Areas:</b>	<b>unincorporated</b>
Real Property	100.00 %	4.94	0.00
Personal Property	100.00 %	4.94	0.00
Inventory Property	100.00 %	4.94	0.00
<b>Residential Property Tax Rates and Values</b>		<b>Dollars of Tax per Thousand of Assessed Value</b>	
	<b>Net Assessed Value in the county</b>	<b>incorporated areas:</b>	<b>unincorporated</b>
Real Property	\$88,697,699,779	4.94	0.00
Personal Property	\$9,993,895,954	4.94	0.00
<b>Total property tax from commercial and industrial property:</b>			\$0

**UTILITIES**

<b>Water Supply</b>			
<b>Annual Operating Cost:</b>	\$0		
<b>Annual Quantity Sold:</b>	0.00		
<b>Per household daily consumption:</b>	0.00 gallons per day		
<b>Annual revenues:</b>	\$0		
	<b>Annual Quantity Sold (million gal. per year)</b>	<b>Number of Customers</b>	<b>Annual Revenues</b>
Residential	0.00	0	\$0
Industrial	0.00	0	\$0
Commercial	0.00	0	\$0
<b>Wastewater Treatment</b>			
<b>Annual Operating Cost:</b>	\$0		
<b>Annual Quantity Treated:</b>	0.00		
<b>Per household daily consumption:</b>	0.00 gallons per day		
<b>Annual revenues:</b>	\$0		
	<b>Annual Quantity Treated (million gal. per year)</b>	<b>Number of Customers</b>	<b>Annual Revenues</b>
Residential	0.00	0	\$0
Industrial	0.00	0	\$0
Commercial	0.00	0	\$0

**Community Name:** Travis County 2014  
**Community Description:** Texas county government focuses primarily on the judicial system health and social service delivery

**UTILITIES (continued):**

**Solid Waste Disposal**

**Annual Operating Cost:** \$0  
**Annual Quantity Disposed:** 0.00 Tons  
**Annual revenues:** \$0 **Per household daily consumption:** 0.00 Pounds per day

	Annual Disposal (tons)	Number of Customers	Annual Revenues
Residential	0.00	0	\$0
Industrial	0.00	0	\$0
Commercial	0.00	0	\$0

**Electric Power Production**

**Annual Operating Cost:** \$0  
**Annual Quantity Sold:** 0.00 Megawatt-hours  
**Annual revenues:** \$0 **Per household daily consumption:** 0.00 Kilowatt-hours per day

	Annual Quantity Sold (Megawatt-hours)	Number of Customers	Annual Revenues
Residential	0.00	0	\$0
Industrial	0.00	0	\$0
Commercial	0.00	0	\$0

**Other Utility 1**

**Annual Operating Cost:** \$0 **Per household daily consumption:** 0.00  
**Annual Quantity Sold:** 0.00 **Annual revenues:** \$0

	Annual quantity sold in millions of	Number of Customers	Annual Revenues
Residential	0.00	0	\$0
Industrial	0.00	0	\$0
Commercial	0.00	0	\$0

**Other Utility 2**

**Annual Operating Cost:** \$0 **Per household daily consumption:** 0.00  
**Annual Quantity Sold:** 0.00 **Annual revenues:** \$0

	Annual quantity sold in millions of	Number of Customers	Annual Revenues
Residential	0.00	0	\$0
Industrial	0.00	0	\$0
Commercial	0.00	0	\$0

*\*Required for Level II if Tourism impacts included*

Community Name: Travis County 2014

**RETAIL ACTIVITY**

**How are sales taxes allocated?**

Where money is spent? No  
 A regional formula? No  
 Both? No  
 No sales taxes: Yes

Percentage of Sales Taxes Going to this Jurisdiction: 0.00 %  
 Percentage of Sales Tax Allocated by Formula: 0.00 %

	City	County	Bordering Counties	State
Effective Buying Income:	240,975,946,920	339,430,710,670	207,193,475,590	\$0
Retail Sales:	120,067,747,090	134,434,132,460	\$87,801,255,840	\$0

**GOVERNMENT INFORMATION**

**Sources of Fees, Taxes, Other Revenue**

Franchise Fees Collected	\$0
Business License/Occu Tax	\$311,272
Liquor License Revenues	\$0
Alcohol Taxes Collected	\$7,571,088
Services	\$76,386,931
Fines Collected	\$4,800,966
Revenues from Permits	\$937,936
Miscellaneous Fees Collected	\$58,928,341
<b>Total Revenue</b>	<b>148,936,534</b>

**Local Government Expenditures**

Education Operations:	\$0
Public works (roads, streets and buildings)	\$33,598,733
Recreational and library operations	\$9,007,323
Court system operations	\$244,495,561
General Government Operations:	\$163,214,952
Health System Operations:	\$0
Social Welfare Operations:	\$53,482,582
Public Safety Department Operations:	\$81,952,794
Other Costs:	\$11,495,804
<b>Total Costs</b>	<b>\$597,247,749</b>

**DEMOGRAPHIC**

**Comuting Pattern Information**

*This profile is for projects located in an incorporated area*

Percentage of new jobs in the city filled by people that live in incorporated areas: 49.400 %  
 Percentage of new jobs in the city filled by people that live in the county: 50.600 %

*This profile is for projects located in an unincorporated area*

Percentage of new jobs in the county filled by people that commute from unincorporated areas: 0.000 %  
 Percentage of new jobs in the city filled by people that live in unincorporated areas: 0.000 %

**Household and Employment Information**

Discount rate:	5.00 %
Disposable personal income percentage of total income:	70.00 %
Total number of households in the jurisdiction:	404,467
Total jobs in the jurisdiction:	660,874
Total wages and salaries in the jurisdiction:	\$45,925,294,000
State or regional average households per employee:	0.88

**Educational System Information**

Public school enrollment per new household:	0.500
Enrollment in the public school system:	86,008

Community Name: Travis County 2014

**TOURISM RELATED INFORMATION**

Lodging Excise Tax Rate (as % of lodging expenditures in excess of sales tax): 0.00 %					
	<u>Lodging</u>	<u>Recreation</u>	<u>Transportation</u>	<u>Retail</u>	<u>Service</u>
Revenue per Employee:	\$0	\$0	\$0	\$0	\$0
	<u>Lodging</u>	<u>Recreation</u>	<u>Transportation</u>		
Value Added per Dollar of Revenue:	\$ 0.0000	\$ 0.0000	\$ 0.0000		

**Community Name:** City of Bloomingdale 2011

**Community Description:**

Notes follow in this order: **General, Taxes, Retail, Government, Demographics, Economics, Tourism, Utilities**

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General:

Taxes:

Retail:

Government:

Demographics:

Economics:

Tourism:

Water:

Waste Water:

Solid Waste:

Electricity:

Other Utility 1:

Other Utility 2:



**ATTACHMENT C**  
**REQUEST FOR PAYMENT**

**CONTRACT: Fiscal Impact Analysis Interlocal Agreement with City of Austin**

**DATE:** \_\_\_\_\_

**PURCHASE ORDER NUMBER:** \_\_\_\_\_

This invoice is submitted in accordance with the terms and conditions of the above referenced agreement between the City of Austin (City) and Travis County (County). City certifies that all of the information contained in the invoice and attached report is true and accurate based on the information provided by the County and that services invoiced were provided for County pursuant to the Agreement.

**DESCRIPTION OF TASK:**

Data Analysis for: \_\_\_\_\_  
Name of Proposal /or/ Annual Fee

Date Requested: \_\_\_\_\_

Date Completed and Delivered to County: \_\_\_\_\_ (Not Applicable to Annual Fee)

Amount Requested: \$ \_\_\_\_\_

Certified By: \_\_\_\_\_ Date: \_\_\_\_\_  
CITY OF AUSTIN

**COUNTY ACCEPTANCE OF PERFORMANCE AND APPROVAL OF INVOICE**

This invoice has been reviewed and the amount of \$\_\_\_\_\_ is approved for payment. The services performed have been deemed satisfactory in accordance with the terms and conditions of this agreement.

Approved By: \_\_\_\_\_ Date: \_\_\_\_\_  
County Executive  
Planning and Budget Office