

CITY OF AUSTIN / APPLE INC.

CHAPTER 380

ECONOMIC DEVELOPMENT AGREEMENT

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

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

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

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

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

The parties therefore agree as follows:

Article I. APPLE’s Obligations

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

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

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

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

- (a) APPLE shall create and retain the Existing Full-time Jobs and New Full-time Jobs as follows during each Employment Year:

- (i) Retain 3,100 Existing Full-time Jobs and create 300 New Full-time Jobs by December 31st of Employment Year One;
- (ii) Retain 3,100 Existing Full-time Jobs and the 300 New Full-time Jobs created in Employment Year One, and create 300 additional New Full-time Jobs, by December 31st of Employment Year Two;
- (iii) Retain 3,100 Existing Full-time Jobs and the 600 New Full-time Jobs previously created, and create 50 additional New Full-time Jobs by December 31st of Employment Year Three;
- (iv) Retain 3,100 Existing Full-time Jobs and retain a cumulative total of 650 New Full-time Jobs previously created by December 31st of Employment Year Four;
- (v) Retain 3,100 Existing Full-time Jobs and retain a cumulative total of 650 New Full-time Jobs previously created by December 31st of Employment Year Five;
- (vi) Retain 3,100 Existing Full-time Jobs and retain a cumulative total of 650 New Full-time Jobs previously created by December 31st of Employment Year Six;
- (vii) Retain 3,100 Existing Full-time Jobs and retain a cumulative total of 650 New Full-time Jobs previously created by December 31st of Employment Year Seven;
- (viii) Retain 3,100 Existing Full-time Jobs and retain a cumulative total of 650 New Full-time Jobs previously created by December 31st of Employment Year Eight;
- (ix) Retain 3,100 Existing Full-time Jobs and retain a cumulative total of 650 New Full-time Jobs previously created by December 31st of Employment Year Nine; and
- (x) Retain 3,100 Existing Full-time Jobs and the 650 New Full-time Jobs previously created and create an additional 2,985 New Full-time Jobs by December 31st of Employment Year Ten.

If there is a shortfall during any Employment Year with regard to

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

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

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

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

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

- (c) If APPLE has not satisfied the requirements and conditions described in paragraph (a) above at the end of any Employment Year, APPLE shall have a period of ninety (90) days after the end of the applicable Employment Year to correct such deficiency. The City is not required to provide notice of such

deficiency as is required under Section 3.04 and Section 3.04 does not otherwise apply to this provision. If APPLE fails to correct the deficiency within such 90-day period, APPLE shall not be entitled to receive the Chapter 380 Payment for such Employment Year.

1.03 Recruitment.

- (a) In addition to its own efforts, APPLE shall make commercially reasonable efforts to work with non-profit organizations such as the Austin Asian American Chamber of Commerce, the Austin Gay and Lesbian Chamber of Commerce, the Capital City African American Chamber of Commerce, the Greater Austin Hispanic Chamber of Commerce, the Texas Asian Chamber of Commerce, the Austin/Travis County Reentry Roundtable, Minorities for Equality in Employment Education Liberty, the Texas Department of Assistive and Rehabilitative Services (DARS), the National Society of Black Engineers, the Society of Hispanic Professional Engineers, and/or other appropriate organizations to expand its pool of diverse candidates in hiring recruitment efforts for jobs at the Americas Operations Center. APPLE shall provide documentation of its efforts if requested to do so by the City. For purposes of this paragraph (a), “commercially reasonable efforts” may be satisfied by advertising for job openings in any job listings sponsored by the specified organizations.
- (b) APPLE shall adhere to its equal employment policies and practices (attached hereto as Exhibit A).
- (c) APPLE shall make commercially reasonable efforts to recruit residents of the Austin area for its New Full-time Jobs. APPLE shall provide documentation of its efforts to the City if requested to do so by the City.
- (d) If APPLE fails to comply as provided for in paragraphs (a), (b), or (c) above, APPLE will be required to forfeit the Chapter 380 Payments scheduled to be paid pursuant to Section 2.01 for the Employment Year in which such default occurred.

1.04 Local Business Participation.

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

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

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

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

- (d) APPLE shall apprise SMBR when APPLE desires assistance from SMBR in its efforts to meet the gender and ethnic specific M/WBE utilization goals. This assistance may include providing a list of certified M/WBE firms from which APPLE may solicit or cause the architect or its general contractor to solicit participation in the design

and construction of any improvements, identifying potential scopes of work, establishing the bid packages available, scheduling and hosting outreach meetings, and assisting APPLE, its architect, or general contractor in soliciting M/WBE firms to provide bids. APPLE is not required to solicit participation during a period in which APPLE is not engaged in designing and/or constructing its Americas Operations Center, but rather, APPLE is required to incorporate the standards and principles of the City's M/WBE Program Ordinance including the foregoing M/WBE utilization goals into its development process as and when such process exists in connection with the Americas Operations Center.

- (e) APPLE shall provide monthly reports to SMBR to track (i) the utilization on a percentage basis of M/WBE firms in the design and construction of the New Improvements; and (ii) a summary of APPLE's efforts to implement the standards and principles of the City's M/WBE Program Ordinance. SMBR shall provide the forms to be used by APPLE in submitting such reports.
- (f) Within thirty (30) days of receipt of APPLE's final monthly report (as is required under paragraph (e) above for the preceding year, January 1st through December 31st (the "**SMBR Compliance Period**"), SMBR shall determine whether APPLE is in compliance with the requirements of this Section 1.04. Should SMBR determine that APPLE (or its architect or general contractor), has not complied with the obligations of this Section 1.04, APPLE will forfeit the next anticipated Chapter 380 Payment. For example, if APPLE (or its architect or general contractor) fails to comply with its obligations under Section 1.04 for one year, APPLE will be required to forfeit one Chapter 380 Payment. If APPLE fails to comply with the obligations for two years, APPLE will be required to forfeit two Chapter 380 Payments, and so on. Any finding of noncompliance by SMBR under this paragraph (f) may be appealed as an Adverse Decision as provided for under the M/WBE Ordinance at §§ 2-9(A-D)-16.

1.05 Compliance with City Regulations. For the construction of all improvements to the Americas Operations Center, and the construction or remodeling of any future APPLE facilities in the City's planning jurisdiction during the term of this Agreement, APPLE will comply with all City Code regulations, including water quality regulations in effect at the time any site plan application is filed, unless APPLE has negotiated an agreement with the City to

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

1.06 Certificate of Compliance and Inspection.

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

to APPLE.

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

Article II. City Obligations

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

- (a) For APPLE's performance pursuant to Article I during Employment Years One and each Employment Year thereafter through Employment Year Six, each annual Chapter 380 Payment will consist of:
 - (i) An amount equal to one hundred percent (100%) of the City property taxes paid by APPLE on New Machinery and Equipment for the applicable Employment Year; plus
 - (ii) An amount equal to one hundred percent (100%) of the City property taxes paid by APPLE for the applicable Employment Year on New Improvements constructed at APPLE'S Americas Operations Center after the Effective Date of this Agreement. City property taxes associated with the land and any improvements constructed prior to the Effective Date shall not

be included when calculating these Chapter 380 Payments.

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

2.02 Schedule for Chapter 380 Payments and Coordination with TCAD.

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

notification is received by the City after the City has made the applicable Chapter 380 Payment to APPLE, the subsequent Chapter 380 Payment will be reduced to reflect the property tax reduction of the prior year. If this reduction occurs during the last year of the Effective Term, APPLE must promptly refund to the City the amount reflecting the reduction in taxes for the applicable year.

- (f) A Schedule of Reports and Payments due under this Agreement is attached as Exhibit C.

Article III. General Terms

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

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

- (a) All payments or expenditures made by the City under this Agreement are subject to the City’s appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.
- (b) The payments to be made to APPLE, or other expenditures under this Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52-a of the Texas Constitution or Chapter 380 of the Texas Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.

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

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

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

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

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

3.07 Assignment. Except as provided below, APPLE may not assign all or part of its rights and obligations to a third party without prior written approval of the City, which approval shall not be unreasonably withheld or delayed.

Notwithstanding anything to the contrary, APPLE may assign all or part of its rights and obligations without the prior consent of the City to an affiliate of APPLE and to a third party lender advancing funds for the acquisition, construction or operation of APPLE's Americas Operations Center.

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

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

APPLE:

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

with a copy to:

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

CITY:

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

with copies to:

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

and to:

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

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

3.10 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute regarding its meaning or application, be interpreted fairly and reasonably and neither more strongly for nor against any party.

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

3.12 Severability. In the event any provisions of this Agreement are illegal,

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

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

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

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

3.16 Public Information. The City is committed to compliance with the Texas Public Information Act. Information provided by or on behalf of APPLE under or pursuant to this Agreement that APPLE considers as proprietary shall be maintained as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information Act, the City shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests, and APPLE shall be responsible for defending the confidentiality of such information. Other records and information provided to the City and its representatives to verify compliance with this Agreement shall be available for public inspection. Regarding the Personal Data (defined in Section 3.17) of any APPLE employee, the employment of which must be verified under this Agreement, the City does not intend to take possession of any Personal Data relating to that individual employee. The City's right to verify the existence of Full-time employees will be accomplished in a manner that does not breach any privacy policy of APPLE.

3.17 Personal Data. In the course of verifying APPLE's compliance with the requirements of this Agreement as permitted under Section 1.06 (Certificate of Compliance and Inspection), the City and the City's employees, agents, consultants and contractors assigned to perform any portion of the review and inspection may

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

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

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

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

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

[SIGNATURE PAGES FOLLOW]

APPLE INC.,
a California corporation

By: _____
Name: _____
Title: _____

Date: March __, 2012

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

By: _____
Marc A. Ott
City Manager

Date: March __, 2012