

**ECONOMIC DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF AUSTIN  
AND MERCK SHARP & DOHME CORP.**

This Economic Development Agreement ("Agreement") is made and entered into as of \_\_\_\_\_, 2017 (the "Effective Date") by and between Merck Sharp & Dohme Corp. (the "Company"), a foreign for-profit corporation, with its principal place of business in Kenilworth, New Jersey, authorized to do business in 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 her designee (the "City").

**RECITALS**

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 an IT Hub in Austin and make capital investments in the Desired Development Zone, and (ii) create New Full-Time Jobs at the IT Hub ((i) and (ii) together are the "Project").

The location of the Company's IT Hub 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.

**AGREEMENT**

The City and the Company agree as follows:

**I. Company's Obligations**

**1.01 Investment in the Desired Development Zone.**

- (a) The Company shall locate its IT Hub:
  - 1. At a facility in the City's Desired Development Zone, and
  - 2. Within one of the following areas identified in the Growth Concept Map (Figure 4.5) in the Imagine Austin Plan adopted by the City on June 15, 2012:
    - i. a high frequency transit corridor,
    - ii. a Transit Oriented Development (TOD),
    - iii. a Regional Center,

- iv. a Town Center, or
  - v. a Neighborhood Center;
  - vi. and / or within ½ mile of a rail or bus stop that is accessible by safe pedestrian and bicycle routes.
- (b) The Company shall create and utilize a program to encourage employees to use alternative transportation modes through Transportation Demand Management strategies. By the earlier of 180 days after the Effective Date of this Agreement, or December 31, 2017, the Company shall submit a description of this program to the Economic Development Department for review and approval. The Company will demonstrate its continued implementation of the program to the City annually throughout the term of this Agreement. The Company's program shall:
- 1. Be accessible and available to all employees at every level;
  - 2. Include outreach to employees about the program;
  - 3. Provide information to employees about all available alternative transportation options;
  - 4. Lower the cost of alternative transportation commuting compared to single occupancy vehicle commuting; and
  - 5. Include specific strategies such as facilitating carpooling, allowing flextime work schedules, and subsidizing transit costs for employees, or other strategies of equal or greater level of effectiveness.
- (c) The Company shall ensure that:
- 1. After the Effective Date of this Agreement, and before December 31, 2020, the Company or its landlord, or owner of the real property at which the IT Hub is located, has invested at least Twenty Million, Five Hundred Thirty Two Thousand and No/100 Dollars (\$20,532,000) in leasehold improvements (which amount includes construction labor costs); and
  - 2. After the Effective Date of this Agreement and before December 31, 2023, the Company has invested at least Eight Million, One Hundred Ninety Thousand and No/100 Dollars (\$8,190,000) in the purchase and installation of business personal property to be used at the IT Hub to support the operations of the IT Hub.
- (d) The Company's investment in leasehold improvements and business personal property shall be made according to the following schedule:
- 1. \$4,602,000 in leasehold improvements (including construction labor costs) plus \$1,765,000 in business personal property, or cumulative investment of \$6,367,000 by December 31, 2017;

2. An additional \$635,000 investment in business personal property, or cumulative investment of \$7,002,000 by December 31, 2018;
  3. An additional \$220,000 investment in business personal property, or cumulative investment of \$7,222,000 by December 31, 2019;
  4. An additional \$15,930,000 investment in leasehold improvements (including construction labor costs) plus an additional \$4,305,000 investment in business personal property, or cumulative investment of \$27,457,000 by December 31, 2020;
  5. An additional \$225,000 investment in business personal property, or cumulative investment of \$27,682,000 by December 31, 2021;
  6. An additional \$500,000 investment in business personal property, or cumulative investment of \$28,182,000 by December 31, 2022; and
  7. An additional \$540,000 investment in business personal property, or cumulative investment of \$28,722,000 by December 31, 2023.
- (e) The Company shall use commercially reasonable efforts to achieve LEED certification silver or above for the IT Hub.

1.02 Creation and Retention of New Full-Time Jobs. The Company shall create at least 600 New Full-Time Jobs (as hereafter defined) located at the Company's IT Hub by December 31, 2023. A "New Full-Time Job" is a new, full-time job that is created after the Effective Date of this Agreement as the result of the improvements to, and operation of, the IT Hub and that is performed at the IT HUB by an employee of the Company or an Affiliate. Performance at the IT HUB shall mean (i) actual physical presence by the employee at the IT HUB; and/or (ii) participation in the Company's alternative transportation modes described in subsection 1.01(b) above. Full-time jobs will be counted as New Full-Time Jobs for the purposes of this Agreement only if they are above the total number of full-time jobs at the Company's operations in Austin at the time this Agreement is executed (the "Existing Jobs Threshold"), which is zero employees. For purposes of this Agreement, "Affiliate" means, with respect to Company, any person or entity that controls, is controlled by, or is under common control with, Company. For purposes of this definition, "control" means (i) to possess, directly or indirectly, the power to direct the management or policies of an entity, whether through ownership of voting securities, by contract relating to voting rights or corporate governance, or (ii) to own, directly or indirectly, fifty percent (50%) or more of the outstanding voting securities or other ownership interest of such entity.

- (a) The Company shall create and retain the New Full-Time Jobs as follows:
1. 119 New Full-time Jobs before December 31, 2017;
  2. 246 cumulative New Full-time Jobs before December 31, 2018;
  3. 290 cumulative New Full-time Jobs before December 31, 2019;
  4. 341 cumulative New Full-time Jobs before December 31, 2020;
  5. 392 cumulative New Full-time Jobs before December 31, 2021;
  6. 492 cumulative New Full-time Jobs before December 31, 2022; and
  7. 600 cumulative New Full-time Jobs before December 31, 2023.

(b) Following December 31, 2023, the Company shall maintain the required New Full-Time Jobs as of December 31<sup>st</sup> of each subsequent year for the remaining term of this Agreement.

(c) Employee Compensation:

1. The Company shall ensure that all of its full-time employees and contract employees working at the IT Hub are paid no less than the City Living Wage, which is currently \$13.50 per hour, or as may be subsequently amended annually by the City.
2. The average annual compensation, excluding health insurance, long-term incentives and retirement benefits, for all New Full-time Jobs shall not be less than the following amounts:

| <u>Year</u> | <u>Average Annual Compensation</u> |
|-------------|------------------------------------|
| 2017        | \$84,570                           |
| 2018        | \$84,270                           |
| 2019        | \$84,078                           |
| 2020        | \$84,472                           |
| 2021        | \$84,764                           |
| 2022        | \$84,738                           |
| 2023        | \$84,637                           |
| 2024        | \$84,637                           |
| 2025        | \$84,637                           |
| 2026        | \$84,637                           |

If the average annual compensation for all individuals in New Full-time Jobs is less than the amount required in this Section 1.02(c) for the then-applicable year, the Company shall not be entitled to receive the Chapter 380 Payment for that year.

(d) If the Company has not satisfied the requirements and conditions described in Sections 1.02(a) and (b) by December 31<sup>st</sup> of the applicable year:

1. The Company shall have ninety (90) days after the end of the applicable 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.
2. The Company shall have an additional ninety (90) days after December 31, 2017 to correct any deficiency in complying with the requirements and conditions in Section 1.02(a)1. 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.

3. The Company shall not be entitled to receive the Chapter 380 payment for the applicable year unless:
- i. the Company has corrected the deficiency within the cure period specified in Subsection 1.02 (d)(1) or (2) above, and
  - ii. at the end of the cure period specified in Subsection 1.02 (d)(1) or (2) above, employee compensation meets the requirements in Section 1.02(c).
- (e) Throughout the term of this Agreement, the Company shall provide health insurance benefits to all employees in New Full-time Jobs.
- (f) Throughout the term of this Agreement, the Company shall extend the same coverage options (with the same level of coverage under those options) for health, vision and dental coverage to employees' eligible domestic partners and their dependents, as it provides to employees' eligible spouses and their dependents.
- (g) If the Company fails to comply with the requirements in Subsections 1.02(c) and (e) for two consecutive years, then 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) Local Non-profit Organizations. In addition to its own efforts, the Company shall make commercially reasonable efforts to work with local non-profit organizations such as, but not limited to, the Austin Gay and Lesbian Chamber of Commerce, the Austin/Travis County Reentry Roundtable, the Greater Austin Black Chamber of Commerce, the Greater Austin Asian Chamber of Commerce, the Greater Austin Hispanic Chamber of Commerce, Minorities for Equality in Employment Education Liberty & Justice (MEEELJ), the Texas Department of Assistive and Rehabilitative Services (DARS), Travis County Criminal Justice Planning Department and/or other appropriate organizations to expand its pool of diverse candidates in hiring recruitment efforts for jobs at the IT Hub. The Company shall provide documentation of its efforts to the City upon request.
- (b) Residents of Austin Area. The Company shall make commercially reasonable efforts to recruit residents of the Austin area for its New Full-time Jobs. Reasonable efforts include annual participation in the City of Austin Career Expo. 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 shall not be entitled to the Chapter 380 Payment scheduled to be paid pursuant to Section 2.01 for the year in which such default occurred.

1.04 City Certified Minority- and Women-Owned and Local Small Business Participation.

- (a) GENERAL. The Company shall comply with the applicable standards and principles of Chapters 2-9A (Construction), 2-9B (Professional Services), 2-9C (Nonprofessional Services) and 2-9D (Commodities) of the City Code and Program Rules for M/WBEs ("**M/WBE Program**") in the purchase of commodities at its IT Hub by its employees at the IT Hub, and design and construction of its IT Hub (including leasehold improvements), in effect at the time of the solicitation for the particular scope of work or commodity purchase is to be completed. It is the Company's responsibility to contact the City's Small and Minority Business Resources Department ("**SMBR**") to ensure the Company is complying with the current and applicable ordinances and rules.
- (b) INFORMATIONAL MEETING. Prior to the Company expending money subject to the requirements of this Section 1.04, or no less than ninety (90) days from the Effective Date, the local representatives of each party will meet to discuss the requirements for compliance with the M/WBE Program and the City will advise the Company of all available resources to assist with compliance.
- (c) SUPPLIES/NONPROFESSIONAL SERVICES. In an effort to further stimulate and positively impact the local economy, the Company shall provide minority-owned, women-owned and local small businesses certified by the City an equal opportunity to participate as suppliers for materials and nonprofessional services (excluding professional services defined by Chapter 2254 of the Texas Government Code, construction and construction related expenditures which is subject to subsection 1.04(d) below) purchased by the Company exclusively for use at its IT Hub. 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 prior to procuring supplies. Prior to advertising a bid for commodities exceeding the threshold amount described in subsection 1.04(c)2 below, the Company shall submit to SMBR a copy of a proposed solicitation for a single purchase or anticipated cumulative purchases to be made. SMBR shall supply an availability list of certified minority-owned, women-owned businesses within seven (7) business days upon receipt of the request. The Company shall perform good faith efforts as described in subsection 1.04(f) below and report to SMBR firm selection with appropriate documentation of good faith efforts.
1. SUPPLIER DIVERSITY POLICY. Within ninety (90) days after the Effective Date, the Company shall submit to the City a reasonable supplier diversity policy, which will not conflict with the M/WBE Program, regarding the Company's procurement of materials and services to be used exclusively at the IT Hub which may be reasonably modified from time to time by the Company, provided the policy and all modifications are approved by SMBR.
2. PROCUREMENT THRESHOLD AMOUNT. The Company agrees to adhere to this policy for the procurement of materials and services for which the cost is more than the purchasing authority established for the City Manager on an annual basis pursuant to Article VII (Finance) § 15 (Purchase Procedure) of the City Charter, 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. The City Manager's purchasing authority is \$58,000.00 for the City's fiscal year 2016-2017, and may increase or decrease per the formula in the Charter. The City shall advise the Company annually of any changes to this threshold amount, or the Company may contact the City at any time for such information.

3. EXISTING CONTRACTS. This Section 1.04 shall not apply to valid contracts the Company has in existence on the Effective Date of this Agreement for the goods, services and materials described in subsections 1.04 (c) and (d). A list of contracts in existence on the Effective Date of this Agreement is attached hereto as Exhibit C.

- (d) DESIGN AND CONSTRUCTION. The Company shall comply with the applicable standards and principles of the **M/WBE Program** in the design and construction of its IT Hub, including leasehold improvements, in effect at the time of solicitation for the particular scope of work to be completed. It is the Company's responsibility to contact SMBR to ensure the Company is complying with the current and applicable ordinances and rules.

1. With respect to any design or construction projects for the Company's IT Hub, including but not limited to leasehold improvements, the Company, the architect, engineer and the general contractor shall meet the gender and ethnic-specific participation goals or subgoals as determined by the Director of SMBR in accordance with the M/WBE Program for each year in which design or construction occurs or submit documentation demonstrating good faith efforts as further described in subsection 1.04(f) below.
2. 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 M/WBEs to perform elements of the work. The City may utilize either the cumulative M/WBE goal or the subgoals for each group of minority persons in the proposed solicitation, or set project M/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, if any, and shall notify the Company in writing of the Director's determination and provide an availability list.

- (e) OUTREACH. 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 (g) below.

- (f) GOOD FAITH EFFORTS. For any year in which the Company, or the Company's or landlord's architect, engineer or general contractor fail to meet each of the goals or subgoals established by the Director for expenditures described in subsections 1.04(c) and (d), the Company or the Company's or landlord's architect, engineer or general contractor must demonstrate good faith efforts during that year to meet the goals as described in the City's M/WBE Program Ordinance and Rules. The Company shall submit documentation demonstrating its own and the architect's, engineer's and/or general contractor's good faith efforts to meet the goals as is required under the following paragraph (i). If the Company provides documentation to SMBR evidencing its own, and it's or its landlord's, architect's, engineer's or general contractor's good faith efforts, and SMBR finds the requirements for good faith efforts was met, then the Company shall be deemed to be in compliance with this Section 1.04. Failure of the Company, it's or it's landlord's architect, engineer or general contractor to perform this obligation of using good faith efforts to meet the goals as described in the City's M/WBE Program Ordinance 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 and shown on Exhibit C.
- (g) 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 established for the purchase of commodities and supplies procured by and for the IT Hub, and design and construction of improvements. 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 IT Hub, but rather, the Company is required to incorporate the standards and principles of the City's M/WBE Program including the M/WBE utilization goals established by the Director into its development process as and when such process exists in connection with the IT Hub.
- (h) MONTHLY REPORTS. The Company shall provide monthly reports to SMBR no later than the 10<sup>th</sup> day of each month to track (i) the utilization on a percentage basis of M/WBE firms in the design and construction of the improvements; (ii) the utilization on a percentage basis of M/WBE firms in the purchase of commodities and/or supplies by and for the IT Hub; and (iii) a summary of the Company's efforts to implement the standards and principles of the City's M/WBE Program. SMBR shall provide the forms to be used by the Company in submitting such reports.
- (i) Within thirty (30) days of receipt of the Company's final monthly report (as is required under paragraph (i) above for the preceding year, January 1st through December 31<sup>st</sup> (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 landlord, architect,



engineer or general contractor), has not complied with the obligations of this Section 1.04 to use good faith efforts to meet the goals as described in the City's M/WBE Program Ordinance and Rules, the Company will forfeit the next anticipated Chapter 380 Payment. For example, if the Company (or its landlord, architect, engineer or general contractor) fails to comply with such 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 such obligations for two years, the Company will be required to forfeit two Chapter 380 Payments, and so on.

- (j) NON-COMPLIANCE. Failure to comply with this Section 1.04 shall be considered a breach of this Agreement. Should SMBR determine that the Company has failed to satisfy its obligation under this section 1.04 the Company will forfeit the next anticipated Chapter 380 Payment as described in paragraph (i). With respect to any individual procurement of materials or services for which the cost is less than the amount established in subsection 1.04(c)(2) above, the Company is encouraged, but not required, to adhere to the requirements of this section 1.04. The Company shall maintain and provide documentation of meeting the goals or performing good faith efforts to comply with this paragraph to SMBR as part of its monthly reports required under subsection 1.04(h) above.

#### 1.05 Construction Worker Requirements.

- (a) The Company agrees to pay and shall require its landlord, contractors and subcontractors to pay workers retained for any construction on the Project described in section 1.01 (Investment in the Desired Development Zone), or as may otherwise be amended and increased by the City, including remodeling and leasehold improvements, the higher wage of:
  - 1. Prevailing wages, as defined by the City (see subsection (b) below and the following documents, attached as Exhibit D: Sec. 00830 and Sample 00830BC and 00830HH Wage Determinations); or
  - 2. City of Austin Minimum Wage, currently \$13.50 per hour, or as may be subsequently amended annually by the City.
- (b) Prevailing Wage Rates Defined. The City has adopted prevailing wage rates by ordinance as the wage specified by the Department of Labor (DOL) published wage determination for a particular construction trade in Travis County (Davis Bacon Wage Rates), as may be amended by DOL, or as may subsequently be adopted by the City as the result of a City wage survey conducted according to DOL established methodology, or the City's minimum wage, whichever hourly rate is higher.
- (c) Company's Responsibilities. Prior to commencement of and during construction of the IT Hub or construction of any leasehold improvements, in order to comply with this section 1.05 (Construction Worker Requirements), it is the Company's responsibility to:
  - 1. Contact the City's Capital Contracting Office (CCO), or successor department, and obtain the current prevailing wage rates in effect for Building

Construction Type (BC) and Heavy Highway Construction (HH) for the construction workers performing work on the particular scope of work to be completed for all or part of the Project described in section 1.01;

2. Maintain certified weekly payrolls on-site for every contractor and subcontractor performing work on the Project. Certified weekly payrolls must contain the name, address and occupation of each worker employed by the Company, its landlord, its contractor or subcontractor, and the actual per diem wages paid to each worker;
  3. Employee Certification. The Company and its contractor or subcontractor shall identify in writing the classification agreed to by each worker, and pay no less than the specified prevailing wage rate or City of Austin Minimum Wage. A form designating the worker's classification and wage rate shall be signed by each worker, and if work performed by the worker is different than the rate or trade classification agreed upon, the worker shall be paid for the work completed no less than the minimum prevailing wage rate for that specified trade or City of Austin Minimum Wage, whichever is higher.
  4. Payroll Deduction Authorization Form. The Company or its contractor or subcontractor shall prepare for each worker's signature a payroll deduction authorization form identifying all payroll deductions **excluding** those required by law, such as federal income taxes, Medicare and Social Security.
  5. A statement of Compliance shall be signed and dated by the party responsible for supervising the payment of persons employed or contracted by the Company or its landlord, contractor or subcontractor, and identify the name of the signatory party and title, name of project, payroll period and name of contractor or subcontractor. The statement shall attest that the payroll complies with the terms of this Agreement and the applicable provisions of title 29 of the Code of Federal Regulations (Labor).
  6. Designate and advise the City of a single point of contact responsible for monitoring and enforcing the Company's construction process.
  7. Erect and maintain a wage rate postings board in English and Spanish (form posting available from the City) displaying the wage rate per worker classification that may be working on the site, placed in a conspicuous place at the Project site accessible for all workers to view.
  8. Coordinate with city staff or its authorized representatives.
- (d) The Company shall allow CCO staff or other staff designated by the City Manager, or third party representatives retained by the City to:
1. Access the Project site,
  2. Audit documents related to construction worker wages paid to determine wage compliance,
  3. Interview workers,

4. Conduct on-site observations related to wage compliance, and
  5. Review all construction-related certified payroll reports on-site once a month or as requested by the City.
- (e) Wage Rate Infraction. The City shall notify the Company of any wage rate issues identified by the City or complaints received by the City. The ninety-day opportunity to cure of Section 3.04 (Event of Default) shall not apply to individual wage rate infractions in this section 1.05. Depending on the severity of the infraction, the Company shall or require its landlord, contractors or subcontractors to correct and remediate any wage rate issues identified within the timeframe specified in the notice provided by the City, not to exceed thirty days. The parties may agree to shorten or extend the time period for the Company, its landlord, its contractor or subcontractor to comply depending on the type and severity of the wage rate infraction, and the City's consent to extend the time period for compliance will not be unreasonably withheld.
- (f) The Company shall make commercially reasonable efforts to ensure that all construction workers working on the IT Hub are provided workers' compensation insurance and OSHA 10-hour safety training.
- 1.06 Compliance with City Regulations. For the construction of leasehold improvements to the Company's IT Hub, 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 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 vested rights defined in Chapter 245 of the Texas Local Government Code 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, 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, 2018 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. However if the right to cure as described in subsection 1.02(d)(2) is exercised, Company shall submit its first Certificate of Compliance no later than June 30, 2018.
- (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 as of that date.
- (c) The City, and/or its representative(s), including third-parties contracted by the City, has the right to inspect, at City's sole expense, all relevant records of the Company as are reasonably necessary to verify compliance with all requirements of this Agreement for the calendar year in which such request is made or the preceding year. Inspections shall be preceded by at least two weeks' notice in writing to the Company and shall be conducted during normal business hours.

- 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 (120<sup>th</sup>) day after the Company is convicted 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 Property Tax Protests. If the Company or an Affiliate protests the value of the property comprising the Project, and the property tax valuation is reduced as a result of a successful property tax protest, then the Project shall be re-evaluated to determine whether it is still revenue-positive for the City. If it is determined that the Project is no longer revenue-positive for the City, then the City Manager shall present the Austin City Council with a recommendation for adjusting the amount of the incentive commensurate with the reduction in property tax valuation.

## **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 as follows:
- (a) Subject to Section 3.02 (Payments Subject to Future Appropriations), the City's total obligation to the Company under this Agreement shall not exceed Eight Hundred Fifty Six Thousand and No/100 Dollars (\$856,000).
  - (b) For the Company's obligations performed during calendar years 2017 through 2026, the City shall pay the Company \$200 for each New Full-Time Job created and retained as of December 31<sup>st</sup> of the applicable year if the Company has complied with all of its obligations under this Agreement. Timing of payments shall be the same as the period specified in Section 2.02 below.
- 2.02 Provided the Company has demonstrated compliance with the terms of this Agreement and the cure period in subsection 1.02(d)(2) is not exercised, the City's first payment shall be made on or before October 31, 2018 for the Company's performance for the year ending December 31, 2017. If the cure period in subsection 1.02(d)(2) is exercised the City's first payment shall be made on or before January 31, 2019. Provided the

Company has demonstrated compliance with the terms of this Agreement, the City's remaining payments shall be made on October 31, 2019 and thereafter as may be required under this Agreement. The City's final payment shall be in consideration for the Company's performance during the year ending December 31, 2026, provided the Company has demonstrated compliance with the terms of this Agreement.

### **III. General Terms**

- 3.01 Term. 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, 2026 and the City shall make its final payment to the Company under this Agreement on or before October 31, 2027.
- 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 either 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 3.02 and any other language or covenant in this Agreement, this Section 3.02 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. Except as otherwise provided in 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 IT Hub. Company’s obligations under this Agreement may also be fulfilled by an Affiliate without a formal written assignment. The Company shall use best efforts to notify the City of any pending assignments when an assignment under this section is imminent and immediately upon completion or closing of such an assignment.
- 3.08 Termination.
- (a) Termination by the Company for convenience. In the event the Company elects not to proceed with, or to cease, 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 without penalty or claim for refunds or credits, and of no further force or effect. Termination shall not affect amounts due Company as of the termination date.
  - (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. Termination shall not affect amounts due Company as of the termination date.
- 3.9 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY HEREUNDER WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY OF LIABILITY FOR ANY INDIRECT, INCIDENTAL,

CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER OR NOT REASONABLY FORESEEABLE. In no event will the Company's aggregate liability under this Agreement exceed the total amount of Chapter 380 payments made by the City under this Agreement.

- 3.10 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:*

Merck Sharp & Dohme Corp.  
Attn: Marc Sylvestre, Director, IT Strategy and Execution  
3070 Route 22  
Mail Room 1161A  
Branchburg, New Jersey 08876  
Phone: (908) 243.6267  
Fax: (908) 823.3079  
Re: Economic Development Agreement

*with copies to:*

Attn: Office of the Secretary  
Merck Sharp & Dohme Corp.  
2000 Galloping Hill Road  
Kenilworth, NJ 08889  
Fax: (908) 735-1224

Attn: Assistant General Counsel, Corporate Transactions  
Merck Sharp & Dohme Corp.  
2000 Galloping Hill Road  
Kenilworth, NJ 08889  
Fax: (908) 735-1224

*To the City:*

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

*with copies to:*

City of Austin  
Attn: Director, Economic Development Department  
301 West 2<sup>nd</sup> Street  
Austin, Texas 78701  
Phone: (512) 974-7802  
Fax: (512) 974-7825

City of Austin  
Attn: City Attorney, Law Department  
301 West 2<sup>nd</sup> 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.

- 3.11 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.
- 3.12 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.
- 3.13 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.
- 3.14 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.
- 3.15 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 3.16 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 IT Hub or the design, construction or operation of any portion thereof.
- 3.17 Public and Confidential Information. This Agreement, and all records, electronic mail or correspondence, reports or any other documents, provided to the City and its representatives to verify compliance with this Agreement, and not specified as proprietary, financial or trade secret by the Company, shall be considered public information, shall be available for public inspection, and may be posted on the City's website without further advance notice to the Company. Other information provided by or on behalf of the Company under or pursuant to this Agreement that the Company considers as proprietary, financial or trade secret shall be maintained as confidential to the extent allowed by law and City, to the extent possible and in the same manner the



City protects its own information, will protect the information against unauthorized access or disclosure, except as provided for by the Texas Public Information Act. It is the Company's responsibility to clearly mark and advise the City in advance of information it considers proprietary, financial, trade secret and specify what it considers to be protected from disclosure. If proprietary, financial or trade secret information is requested under the Texas Public Information Act, the City shall follow the requirements set out in the Act and under the Texas Attorney General's procedures for such requests. The Company shall be responsible for defending the confidentiality of such information at its sole cost and in accordance with the Act. City does not intend to come into possession of Company's proprietary information or to assemble, collect or maintain personal information in the course of verifying compliance with this Agreement, but to the extent it may, then any such information shall not be used for any other purpose.

- 3.18 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.

**Merck Sharp & Dohme Corp.**  
a foreign, for-profit corporation

By: \_\_\_\_\_  
[ ]  
[ ]

Date: \_\_\_\_\_, 2017

**CITY OF AUSTIN,**  
a home-rule municipal corporation

By: \_\_\_\_\_  
Elaine Hart  
Interim City Manager

Date: \_\_\_\_\_, 2017

Approved as to form:

\_\_\_\_\_  
C. Crosby, Assistant City Attorney

**EXHIBITS:**

- Exhibit "A": Equal Employment Policies and Practices
- Exhibit "B": Certificate of Compliance
- Exhibit "C": Existing Contracts
- Exhibit "D": Sec. 00830  
Sample 00830BC and Sample 00830HH Wage  
Determinations



EXHIBIT "A"  
Fair Employment Policies and Practices

Please refer to following page.

## Addendum B

### Merck & Co., Inc.

#### Diversity Practices

We are committed to evolving Global Diversity & Inclusion to create a fully integrated ecosystem where diversity and inclusion permeate our day-to-day operations and decisions, and one where business performance is exponentially enhanced by the power of inclusion.

We employ people of varied sexual orientation, gender expression, veteran and disability status, and ethnic, cultural and faith backgrounds to help us better understand the unique needs of global patients and to create a strong competitive advantage in the marketplace. This, in turn, delivers intrinsic, long-term value to society and to our shareholders.

#### Leadership Commitment

The single most significant driver of diversity and inclusion at our company resides at the very top—with our CEO, Kenneth C. Frazier.

By driving these initiatives across every facet of the business, we continuously seek to raise the performance bar for diversity and inclusion and drive accountability among leaders, integrating both as important drivers of our sustainable competitive advantage.

#### Talent Management and Development

Building a diverse workforce and executive population, and actively promoting opportunities for people of all backgrounds across race, gender, ethnicity, culture, age, disability, religion, gender identity, gender expression, and veteran status, is indispensable to the solid business performance and outstanding patient care provided at our company.

#### Training & Development

Throughout 2015, we continued to invest in diversity-related training for our employees. Employees have access to diversity and inclusion programs, conferences, other activities, and professional development resources to ensure their and the company's ongoing success.

**Unconscious Bias Education:** Using thought leadership related to unconscious bias in the workplace, all company vice presidents and above were introduced to Unconscious Bias Education (UBE) as an enabler to identify the hidden biases we all possess and to mitigate unconscious bias in processes, practices and behaviors.

**Micro-Inequities:** We offer employees training options to reinforce our commitment to diversity and inclusion. One in particular, micro-inequities training, helps to create a more fully inclusive work environment by providing employees with an opportunity to learn about and avoid non-inclusive behaviors.

**Executive Leadership Council (ELC):** We support the ELC, an organization that provides recognition, executive seminars, peer coaching and leadership opportunities to help African American mid-career and senior-level executives with their personal and professional development.

**Simmons Leadership Forum:** We partner with Simmons to inspire and empower women executives. We recognize that developing the leadership potential of women executives and positioning them for success delivers a tangible competitive advantage for their organizations.

**Women's Sponsorship Program:** The goal of the Women's Sponsorship Program is to accelerate the movement and improve the readiness and visibility of high-potential women and women of color at our company so they can attain positions of greater leadership and responsibility. This two-year engagement between the sponsor and protégée is also intended to help build the network and personal brand of high-potential women leaders and to further their development and career.

**Women in STEMM** (Science Technology Engineering Manufacturing Marketing): We hosted two Women in STEMM conferences, one in the United States and one in Prague for our women employees. The objectives of this conference were to:

- Learn how to effectively enhance leadership skills
- Introduce tools and resources to help leadership skills support career aspirations
- Grow a network of colleagues across different divisions and functions
- Understand the value women leaders provide to the future of our company

## **Recruiting**

We partner with Hiring our Heroes, an organization that provides employment opportunities nationwide to veterans with disabilities. Through external media relations, the company is able to demonstrate that 80 percent of jobs in the private sector have a corresponding job in the military. Each branch of the military produces scientists, engineers, photographers and doctors, all of whom are aligned with our company's needs.

## **Creating a Culture of Full Inclusion for Employees with Disabilities**

In 2015, we launched the Global Disability Inclusion Council to uphold the spirit of full disability inclusion. The Council is embarking on a five-year strategy encompassing our company's leaders from Information Technology, Benefits, Compliance, Staffing, Integrated Health Management and Facilities.

In addition to the creation of the Global Disability Inclusion Council, we leverage a comprehensive strategic platform to address full disability inclusion, titled Workplace EnABLEment. This is the first enterprise-wide, customized disability inclusion strategy that addresses the entire spectrum of the employee experience with a strategic road map that includes recruiting, retention and advancement, the Just-in-Time manager training toolbox, an employee education program, communications support, community outreach, supply-chain engagement, strategic alliance support, and a measurement system to track results.

We launched a self-ID campaign designed to comply with U.S. federal regulations and to reinforce a culture of inclusion by inviting employees in the U.S. and Puerto Rico to voluntarily self-identify disability, LGBT and veteran status. The program received a strong response from employees and was featured at the ILG Conference as a best practice in self-identification.

## **Employee Business Resource Group**

The Employee Business Resource Group (EBRG) Executive Leadership Council was formed to help strengthen and diversify the global leadership pipeline, as well as to provide culturally relevant insights that drive innovation and our company's success. The Council is one part of a larger initiative to bring increased accountability, simplicity and focus to the GD&I model.

The EBRGs represent women, African Ancestry/Black, Hispanic/Latino, Asian/Pacific Islander, Native American/Native Indigenous, interfaith, LGBT, differently able, veteran, and millennial employees—our newest EBRG launched in 2015 with 1,400 active employee members worldwide.



## Exhibit B

### Certificate of Compliance

Company: Merck Sharp & Dohme Corp.

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

#### 1.0 Investment

1. §1.01 of the Agreement requires the Company to locate its IT Hub in the City of Austin's Desired Development Zone and within a high frequency transit corridor, Transit Oriented Development (TOD), Regional Center, Town Center, Neighborhood Center and/or within ½ mile of a rail or bus stop that is accessible by safe pedestrian and bicycle routes.
2. The Company's IT Hub is located within *(check all that apply)*:
  - ☐ a high frequency transit corridor,
  - ☐ a Transit Oriented Development (TOD),
  - ☐ a Regional Center,
  - ☐ a Town Center, or
  - ☐ a Neighborhood Center;
  - ☐ ½ mile of a rail or bus stop that is accessible by safe pedestrian and bicycle routes.
3. §1.01 of the Agreement requires the Company to create and utilize a program to encourage employees to use alternative transportation modes through Transportation Demand Management strategies. Did the program operate in compliance with the requirements in §1.01(b) throughout the year ended December 31, 20 ?
  - ☐ Yes
  - ☐ No
4. §1.01 of the Agreement requires that, in accordance with the schedule in §1.01(d) of the Agreement:
  - i. after the Effective Date of this Agreement, and before December 31, 2020, the Company or its lessor, or landlord, or owner of the real property at which the IT Hub is located, shall invest at least \$20,532,000 in leasehold improvements; and
  - ii. after the Effective Date of this Agreement and before December 31, 2023 the Company shall invest at least \$8,190,000 in the purchase and installation of business personal property at the IT Hub.
5. The Company's investment in leasehold improvements and business personal property shall be made according to the following schedule:
  - i. \$4,602,000 in leasehold improvements (including construction labor costs) plus \$1,765,000 in business personal property, or cumulative investment of \$6,367,000 by December 31, 2017;
  - ii. An additional \$635,000 investment in business personal property, or cumulative investment of \$7,002,000 by December 31, 2018;
  - iii. An additional \$220,000 investment in business personal property, or cumulative investment of \$7,222,000 by December 31, 2019;
  - iv. An additional \$15,930,000 investment in leasehold improvements (including construction labor costs) plus an additional \$4,305,000 investment in business personal property, or cumulative investment of \$27,457,000 by December 31, 2020;
  - v. An additional \$225,000 investment in business personal property, or cumulative investment of \$27,682,000 by December 31, 2021;

## Exhibit B

### Certificate of Compliance

Company: Merck Sharp & Dohme Corp.

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

- vi. An additional \$500,000 investment in business personal property, or cumulative investment of \$28,182,000 by December 31, 2022; and
- vii. An additional \$540,000 investment in business personal property, or cumulative investment of \$28,722,000 by December 31, 2023.
- 6. To date the City has not verified the Company's leasehold improvements investment in the IT Hub.
- 7. \$\_\_\_\_\_ has been invested in leasehold improvements of the Company's IT Hub for the reporting year ending December 31, 20.
- 8. To date the City has not verified the Company's investment in business personal property.
- 9. The Company has invested \$\_\_\_\_\_ in business personal property at the IT Hub for the reporting year ending December 31, 20.
- 10. Section 1.01(e) of the Agreement requires the Company to use commercially reasonable efforts to achieve LEED certification silver or above for the IT Hub. Has the Company achieved LEED certification silver or above for the IT Hub as of December 31, 20?  
☐ Yes ☐ No
- 11. If not, did the Company use commercially reasonable efforts to achieve LEED certification silver or above for the IT Hub during the year ended December 31, 20?  
☐ Yes ☐ No

#### (f) Employment

- 1. §1.02(a) and (b) of the Agreement require the Company to create 600 New Full-time Jobs at the IT Hub by December 31, 2023 and retain those New Full-time Jobs throughout the term of the Agreement. The job creation schedule is as follows:
  - i. 119 New Full-time Jobs before December 31, 2017;
  - ii. 246 New Full-time Jobs before December 31, 2018;
  - iii. 290 New Full-time Jobs before December 31, 2019;
  - iv. 341 New Full-time Jobs before December 31, 2020;
  - v. 392 New Full-time Jobs before December 31, 2021;
  - vi. 492 New Full-time Jobs before December 31, 2022; and
  - vii. 600 New Full-time Jobs before December 31, 2023.
- 2. Number of New Full-time Jobs created and retained as of December 31, 20 : \_\_\_\_\_
- 3. §1.02(c) requires that all full-time employees and contract employees working at the IT Hub be paid no less than the City Living Wage, which is currently \$13.50 per hour, throughout the term of the Agreement.



## Exhibit B

### Certificate of Compliance

Company: **Merck Sharp & Dohme Corp.**

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

4. Did the Company ensure that all full-time employees and contract employees working at the IT Hub during the year ended December 31, 20 were paid no less than the City Living Wage as required in §1.02(c) of the Agreement?

☐ Yes

☐ No

5. §1.02(c) 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> |
|-------------|------------------------------------|
| 2017        | \$84,570                           |
| 2018        | \$84,270                           |
| 2019        | \$84,078                           |
| 2020        | \$84,472                           |
| 2021        | \$84,764                           |
| 2022        | \$84,738                           |
| 2023        | \$84,637                           |
| 2024        | \$84,637                           |
| 2025        | \$84,637                           |
| 2026        | \$84,637                           |

6. 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(c) of the Agreement?

☐ Yes

☐ No

7. §1.02(e) requires that throughout the term of this Agreement, the Company 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.

8. Did the Company 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 during the year ended December 31, 20 as required in §1.02(e) of the Agreement?

☐ Yes

☐ No

9. 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.

10. Did the Company create or reinstate the required number of New Full-time Jobs within 90 days after December 31, 20 as required by §1.02(d) of the Agreement?

☐ Yes

☐ No

11. Number of New Full-time Jobs created and retained as of March 31, 20 : \_\_\_\_\_

## Exhibit B

### Certificate of Compliance

Company: **Merck Sharp & Dohme Corp.**

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

12. 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(c) of the Agreement?

☐ Yes

☐ No

### 3.0 Recruitment

- 3.1 §1.03 of the Agreement requires the Company to:

- a. make commercially reasonable efforts to work with local non-profit organizations such as the Austin Gay and Lesbian Chamber of Commerce, the Greater Austin Black 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), and/or other appropriate organizations to expand its pool of diverse candidates in hiring recruitment efforts for jobs at the IT Hub.
- 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 the Company 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 the Company to comply with the applicable standards and principles of Chapters 2-9A (Construction), 2-9B (Professional Services), 2-9C (Nonprofessional Services) and 2-9D (Commodities) of the City's ordinance and Program Rules for M/WBEs ("M/WBE Program") in the purchase of commodities at its IT Hub by its employees at the IT Hub, and design and construction of its IT Hub (including leasehold improvements), in effect at the time of the solicitation for the particular scope of work or commodity purchase is to be completed. It is the Company's responsibility to contact the City's Small and Minority Business Resources Department ("SMBR") to ensure the Company is complying with the current and applicable ordinances and rules.

Did the Company comply with the 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 that prior to the Company expending money subject to the requirements of this Section 1.04, or no less than ninety (90) days from the Effective Date, the local representatives of each party will meet to discuss the requirements for compliance with the M/WBE Program and the City will advise the Company of all available resources to assist with compliance

## Exhibit B

### Certificate of Compliance

Company: Merck Sharp & Dohme Corp.

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

Did the Company comply with the requirements in §1.04(b) of the Agreement during the year ended December 31, 20 ?

☐ Yes

☐ No

- 4.3 §1.04(c) of the Agreement requires the Company, in an effort to further stimulate and positively impact the local economy, to use commercially reasonable efforts to provide minority-owned, women-owned and local small businesses certified by the City an equal opportunity to participate as suppliers for materials and services purchased by the Company exclusively for use at its IT Hub. 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 prior to procuring supplies.

1. Supplier Diversity Policy. Within ninety (90) days after the Effective Date, the Company shall submit to the City a reasonable supplier diversity policy which will not conflict with the Program regarding the Company's procurement of materials and services to be used exclusively at the IT Hub which may be reasonably modified from time to time by the Company, provided the policy and all modifications are approved by SMBR.
2. Procurement Threshold Amount. The Company agrees to adhere to this policy for the procurement of materials and services for which the cost is more than the purchasing authority established for the City Manager on an annual basis pursuant to Article VII (Finance) § 15 (Purchase Procedure) of the City Charter, 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.
3. Existing Contracts. This Section 1.04 shall not apply to valid contracts the Company has in existence on the Effective Date of this Agreement for the procurement of supplies.

Did The Company comply with the requirements in §1.04(c) of the Agreement during the year ended December 31, 20 ?

☐ Yes

☐ No

- 4.4 §1.04(d) of the Agreement requires The Company to comply with the applicable standards and principles of the **M/WBE Program** in the design and construction of its IT Hub including leasehold improvements, in effect at the time of solicitation for the particular scope of work to be completed. It is the Company's responsibility to contact SMBR to ensure the Company is complying with the current and applicable ordinances and rules.
- a. With respect to any design or construction projects for the Company's IT Hub, 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.
  - b. 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.

## Exhibit B

### Certificate of Compliance

Company: Merck Sharp & Dohme Corp.

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

Did the Company comply with the requirements in §1.04(d) of the Agreement during the year ended December 31, 20?

☐ Yes

☐ No

- 4.5 §1.04(e) of the Agreement requires the Company, in an effort to meet the gender and ethnic-specific M/WBE utilization goals, to implement an outreach program designed to solicit participation of M/WBEs. These outreach efforts should also target small businesses generally.

Did the Company comply with the requirements in §1.04(e) of the Agreement during the year ended December 31, 20?

☐ Yes

☐ No

- 4.6 §1.04(g) of the Agreement requires the Company to apprise SMBR when the Company desires assistance from SMBR in its efforts to meet the gender and ethnic specific M/WBE utilization goals established for the purchase of commodities and supplies procured by and for the IT Hub, and design and construction of improvements. 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 IT Hub, but rather, the Company is required to incorporate the standards and principles of the City's M/WBE Program including the M/WBE utilization goals established by the Director into its development process as and when such process exists in connection with the IT Hub.

Did the Company comply with the requirements in §1.04(g) of the Agreement during the year ended December 31, 20?

☐ Yes

☐ No

- 4.7 §1.04(h) of the Agreement requires the Company to provide monthly reports to SMBR no later than the 10<sup>th</sup> day of each month to track (i) the utilization on a percentage basis of M/WBE firms in the design and construction of the improvements; (ii) the utilization on a percentage basis of M/WBE firms in the purchase of commodities and/or supplies by and for the IT Hub; and (iii) a summary of the Company's efforts to implement the standards and principles of the City's M/WBE Program. SMBR shall provide the forms to be used by the Company in submitting such reports.

Did the Company comply with the requirements in §1.04(h) of the Agreement during the year ended December 31, 20?

☐ Yes

☐ No

### 5.0 Construction Worker Requirements

- 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) the City of Austin Living Wage during the year ended December 31, 20?

☐ Yes

☐ No

## Exhibit B

### Certificate of Compliance

Company: Merck Sharp & Dohme Corp.

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

- 5.2 Did the Company comply with its obligations in §1.05(c), (d) and (e) throughout the year ended December 31, 20?

☐ Yes

☐ No

- 5.3 Did the Company comply with its obligations in §1.05(f) of the Agreement to make commercially reasonable efforts to ensure that all construction workers working on the Headquarters are provided workers' compensation insurance and OSHA 10-hour safety training during the year ended December 31, 20?

☐ Yes

☐ No

#### 6.0 Additional Covenants

- 6.1 Did the Company comply with the requirement in §1.06 of the Agreement to comply with 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 during the year ended December 31, 20?

☐ Yes

☐ No

- 6.2 Did the Company timely submit this Certificate of Compliance as is required under §1.07 of the Agreement for the year ended December 31, 20?

☐ Yes

☐ No

- 6.3 Did the Company comply with their obligations in §1.08 of the Agreement regarding Chapter 2264 of the Texas Government Code during the year ended December 31, 20?

☐ Yes

☐ No

- 6.4 Did the Company protest the value of the property comprising the project during the year ended December 31, 20?

☐ Yes

☐ No

#### 7.0 Chapter 380 Payment Request

- 7.1 In return for the Company's performance of its obligations under the Agreement, the City will pay annual economic development incentive payments. The City's total obligation to the Company shall not exceed \$856,000.

- 7.2 For the Company's obligations performed each year during 2017 through 2026, the City shall pay \$200 per New Full-time Job created and retained as of December 31 of the applicable year, provided the Company has complied with all its obligations under the Agreement.

- 7.3 To date, the City has not made any economic development incentive payment to the Company.

- 7.4 Number of New Full-time Jobs from §2.2 or §2.11 above: \_\_\_\_\_

- 7.5 Total request for year 20\_\_\_\_: \_\_\_\_\_

**Exhibit B**

**Certificate of Compliance**

**Company: Merck Sharp & Dohme Corp.**

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

I, the authorized representative for the Company hereby certify that the above information is correct and accurate pursuant to the terms of the Agreement. I further certify that the Company complied fully with all terms of the Chapter 380 Economic Development Agreement during the year ended December 31, 20. I understand that providing a false statement regarding the Company's compliance or non-compliance with the terms of the agreement may subject the Company to not receive incentives or the City seeking remedies or termination of the agreement.

Signature: \_\_\_\_\_

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

Title (Chief Financial Officer or equivalent): \_\_\_\_\_

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

State of Texas  
County of Travis

This instrument was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_,  
(Date) (Name of Officer)

\_\_\_\_\_, of Merck, Sharp & Dohme Corp., a foreign, for-profit corporation, on  
(Title of Officer)

behalf of said corporation.

\_\_\_\_\_  
Notary Public's Signature

(Personalized Seal)

## Exhibit C





**Bidding Requirements, Contract Forms and Conditions of the Contract**  
**WAGE RATES AND PAYROLL REPORTING**  
Section 00830

---

**I. Payment**

A. Classification Definitions, Building and Heavy and Highway

Definitions for Building Construction and Heavy and Highway classifications shall conform to the current "Dictionary of Occupational Titles" as published by the U.S. Department of Labor.

B. Minimum Wages

Workers on Project shall be paid not less than wage rates, including fringe benefits, as published by the Department of Labor (DOL) or the \$13.50 minimum wage required by City of Austin Ordinance No. 20160324-015, whichever is higher. The Total Minimum Wage required can be met using any combination of cash and non-cash qualified fringe benefits provided the cash component meets or exceeds the \$13.50 minimum wage required.

Such wage rates shall be used throughout the Contract. If a classification is to be used, which is not listed in the attached wage rates, CONTRACTOR shall submit to OWNER rates and classification proposed for use, for approval, **prior** to performance of the Work.

All laborers and mechanics working upon the Work for this Project shall be paid unconditionally and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by Secretary of Labor under the Copeland Act, Title 29 CFR, Part 3) full wages accrued and when due, computed at rates not less than wage rates bound herein pertaining to type of Work being performed. When Work is of such a nature that both Building and Heavy and Highway wage scales are incorporated into contract, CONTRACTOR shall pay wage rates to mechanics or laborers performing Work in more than one classification at the rate indicated for each classification for time actually worked as determined by area practice applicable to type (Site Construction Crafts or Building Construction Crafts) of Work being performed without regards to skill. Salaried specialists (project superintendent and administrative personnel only) in the permanent employment of CONTRACTOR do not fall under any Wage Classification. A supervisor/foreman who is not exempt under 29CFR Part 541 and who spends more than a substantial amount of time (20 percent) in a given workweek as a laborer or mechanic must be paid the applicable Wage Rate for the classification of work performed for all hours engaged in such work as a laborer or mechanic.

Wage rates shall be posted by CONTRACTOR at site(s) of Work in prominent, easily accessible places where they can be seen by all workers. The following shall also be posted by the CONTRACTOR: City of Austin wage contact posters (English and Spanish), City of Austin Equal Employment Opportunity posters (English and Spanish), Workers' Compensation Notice (English and Spanish), Texas Payday Law (English and Spanish), City Rest Break Ordinance (English

and Spanish), City of Austin Non-Discrimination Statement (related to Title VI of the Civil Rights Act), and Federal Notices, as appropriate.

C. Overtime Requirements

No CONTRACTOR, Subcontractor, or Sub-subcontractor contracting for any part of contract Work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such Work, to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times their basic rate of pay for all hours in excess of forty hours in such workweek.

Overtime wages must be calculated using the Adjusted Wage Rate specified in the Wage Rate Determination or the actual basic rate of pay, whichever is higher.

**II. Apprentices**

Locally & Federally Funded Projects

The terms journeyman and apprentice apply to both union and independent workers, and are not intended to imply that these positions are union workers only.

Apprentices and Trainees will be permitted to work as such only when they are registered, individually, under a bonafide Apprenticeship or Trainee program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of Apprentices or Trainees to journeymen in any craft classification shall not be greater than the ratio permitted to CONTRACTOR as stated in the registered apprenticeship program standards. Any employee listed on a payroll at an Apprentice or Trainee wage rate, who is not registered as above, shall be paid the wage rate provided in Contract for Work employee actually performed. CONTRACTOR, Subcontractor, or Sub-subcontractor shall furnish to OWNER written evidence of registration of his program for Apprentices and Trainees as well as of the appropriate ratios and wage rates, for the area of construction **prior** to using any Apprentices or Trainees on this Contract.

**III. Withholding of Payments**

OWNER may withhold or cause to be withheld from CONTRACTOR as much of the accrued payments as necessary to pay laborers and mechanics employed by CONTRACTOR, Subcontractors, or Sub-subcontractors the amount of wages required to comply with the Contract. In the event of nonpayment of wages to laborers or mechanics working on the site of the Work of this Contract, OWNER may, after Written Notice to CONTRACTOR, take such action as may be necessary to cause suspension of any further payments or advance of funds to CONTRACTOR until such violations have ceased and until restitution has been made. Payments may also be withheld if CONTRACTOR fails to maintain weekly payroll reports or fails to provide copies in a timely manner upon request of Owner.

**IV. Payrolls**

A. CONTRACTOR shall keep records showing:

1. the name, address and occupation of each worker employed by the CONTRACTOR or subcontractor(s) in the construction of the public work.
  2. the actual per diem wages paid to each worker.
  3. Employee Certification. CONTRACTOR, all levels of Subcontractors shall identify in writing, the classification agreed to by all laborers and mechanics employed by them in the execution of the Contract, and pay not less than rates specified in the attached Wage Rate Determination(s). Contractor shall prepare a completed form for the signature of Employee and a witness shall sign the form in the presence of Employee. If work performed by worker is different than the trade classification agreed upon, the worker shall be paid for that work no less than the minimum prevailing wage for that specified trade.
  4. Payroll Deduction Authorization Form. CONTRACTOR, Subcontractor, and Subsubcontractor shall prepare for employee signature a payroll deduction authorization form to identify all payroll deductions excluding those required by statute, such as federal income taxes, medicare and social security.
- B. The record shall be open at all reasonable hours to inspection by the officers and agents of the Owner as requested. CONTRACTOR will be responsible to provide copies of records as requested by the Owner within two (2) working days. Payrolls relating to this Work shall be maintained during term of Contract and preserved for a period of three (3) years thereafter by CONTRACTOR for all laborers and mechanics working on the Work.
- C. A Statement of Compliance, a letter signed and dated by party responsible for supervising the payment of persons employed by CONTRACTOR or subcontractor shall accompany payrolls required by Owner. The Statement of Compliance letter shall identify but is not limited to:
1. name of signatory party and title,
  2. name of project, payroll period and
  3. name of CONTRACTOR or Subcontractor.
- The signed letter attests that the payroll complies with 29CFR issued by the Secretary of Labor.
- D. Federal Funding
- In the event that federal funding is used:
1. Contractor and all levels of Subcontractors shall submit weekly certified payroll reports and signed wage compliance statements to the Owner's designated office no later than seven (7) calendar days after the scheduled payday.

2. Contractors and all levels of Subcontractors shall pay all "mechanics and laborers" not less often than once per week, for work performed the previous week.
3. Submit to the Owner's designated office Standard Form 1413, Statement and Acknowledgement, from each subcontractor prior to the subcontractor performing work on the project.

**V. Noncompliance**

According to Chapter 2258 Texas Government Code Title 10A, a CONTRACTOR or subcontractor(s) who violates this section shall pay to the political subdivision on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

Confirmed Disciplinary action taken by CONTRACTOR against employees who provide information during an interview or investigation by the Owner on wages received, may result in suspension or debarment from consideration of award of City contracts.

**VI. Area Practice**

- A. Heavy and Highway Construction Rates shall be used on this Project, unless the Project consists primarily of Building Construction and Building Construction Rates are to be used.
  1. Building Construction consists generally of all aspects of construction of buildings, which are sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies, including without limitation the installation of utilities and equipment, both above and below grade level, as well as incidental demolition, grading, utilities, paving and other site work. Buildings need not be "habitable" to be classified as Building Construction and the installation of heavy machinery and/or equipment will not generally change a Building Construction project's classification.
  2. The determination of Building Construction Wage Rates includes all construction trades and work necessary to complete a building, regardless of the number of contracts involved, so long as all such contracts are closely related in purpose, time and place.
- B. For projects that involve both Building Construction and Heavy and Highway trades, the following classifications shall be used:
  1. A multiple classification shall be used if Building Construction items are more than 20% of the Heavy and Highway project cost.
  2. A multiple classification shall be used if Heavy and Highway Construction items are more than 20% of the Building Construction Project cost.
- C. Split classifications/multiple wage rate schedules: When construction work requires that an employee perform work under multiple classifications or multiple wage scales, the employer must pay that worker (at least) the

highest prevailing wage or the employer payroll records must accurately set forth the times spent performing the work of each classification and under each scale. For those projects that involve both Building Construction and Heavy and Highway trades, the Heavy and Highway wage rates may only be applied to workers when engaged in site work at least five (5) feet beyond the building.

**VII. Texas Open Records Act**

Unless covered by an exception to mandatory disclosure under the Texas Public Information Act, Chapter 552, Texas Government Code, any and all documents submitted to the City of Austin become Public Records and are, therefore, subject to public disclosure.

**Wage Rates For This Project Are Attached**

**End**



Bidding Requirements, Contract Forms Conditions of the Contract  
**WAGE RATES AND PAYROLL REPORTING**  
 Section 00830BC

**WAGE RATE DETERMINATION**

**BUILDING CONSTRUCTION TYPE**

COUNTY NAME : TRAVIS

Wages based on DOL Prevailing Wage Rate General Decision:TX160323 8/26/2016 TX323 and City of Austin Ordinance #20160324-015

*DOL Rate column is for information only. The Total Minimum Wage Rate is derived from the Adjusted Wage Rate Required pursuant to City Ordinance plus the DOL Fringes and can be met using any combination of cash and non-cash qualified fringe benefits, provided the cash component is at least \$13.50/hour.*

| CLASSIFICATION   | DOL<br>RATE<br>for info<br>only | ADJUSTED<br>WAGE RATE<br>REQUIRED<br>pursuant to<br>City<br>Ordinance | DOL<br>FRINGES | TOTAL<br>MINIMUM<br>WAGE RATE<br>REQUIRED |
|--|---------------------------------|---|----------------|---|
| Asbestos Worker/Heat & Frost Insulator<br>(Duct, Pipe, and Mechanical System Insulation) | \$ 21.57                        | \$ 21.57  | \$ 10.02       | \$ 31.59                                  |
| Boilermaker  | \$ 21.14                        | \$ 21.14  | \$ 21.55       | \$ 44.69                                  |
| Bricklayer   | \$ 20.07                        | \$ 20.07  | -              | \$ 20.07                                  |
| Carpenter  | \$ 20.75                        | \$ 20.75  | \$ 7.30        | \$ 28.05                                  |
| Carpenter (Acoustical Ceiling Installation only)   | \$ 14.00                        | \$ 14.00  | -              | \$ 14.00                                  |
| Carpenter (Form Work Only)   | \$ 15.62                        | \$ 15.62  | \$ 0.05        | \$ 15.67                                  |
| Cement Mason/Concrete Finisher   | \$ 15.71                        | \$ 15.71  | -              | \$ 15.71                                  |
| Drywall Finisher/Taper   | \$ 17.06                        | \$ 17.06  | \$ 4.43        | \$ 21.49                                  |
| Drywall Hanger and Metal Stud Installer  | \$ 17.47                        | \$ 17.47  | \$ 3.45        | \$ 20.92                                  |
|  | \$ 18.00                        | \$ 18.00  | \$ 2.30        | 20.30                                     |
| Electrician (Excludes Installation of Sound and<br>Communication Systems)                | \$ 27.15                        | \$ 27.15  | \$ 7.88        | \$ 35.03                                  |
| Elevator Mechanic <5 years experience  | \$ 37.76                        | \$ 37.76  | \$ 32.25       | \$ 70.01                                  |
| Elevator Mechanic >5 years experience  | \$ 37.76                        | \$ 37.76  | \$ 33.01       | \$ 70.77                                  |
| Floor Layer (Carpet)   | \$ 21.88                        | \$ 21.88  | -              | \$ 21.88                                  |
| Glazier  | \$ 12.83                        | \$ 13.50  | -              | \$ 13.50                                  |
| HVAC Mechanic (HVAC Unit Installation Only)  | \$ 23.78                        | \$ 23.78  | \$ 6.89        | \$ 30.67                                  |
| Ironworker, Ornamental   | \$ 23.02                        | \$ 23.02  | \$ 6.35        | \$ 29.37                                  |
| Ironworker, Reinforcing  | \$ 12.27                        | \$ 13.50  | -              | \$ 13.50                                  |
| Ironworker, Structural   | \$ 20.73                        | \$ 20.73  | \$ 5.24        | \$ 25.97                                  |
| *Lead Paint or Asbestos Abatement Worker   | *                               | \$ 13.50  | -              | \$ 13.50                                  |
| Laborer, Common or General   | \$ 11.44                        | \$ 13.50  | -              | \$ 13.50                                  |
| Laborer, Mason Tender - Brick  | \$ 12.22                        | \$ 13.50  | -              | \$ 13.50                                  |
| Laborer, Mason Tender - Cement/Concrete  | \$ 11.85                        | \$ 13.50  | -              | \$ 13.50                                  |
| Laborer, Pipelayer   | \$ 12.45                        | \$ 13.50  | -              | \$ 13.50                                  |
| Laborer, Roof Tearoff  | \$ 11.28                        | \$ 13.50  | -              | \$ 13.50                                  |

|   |          |          |          |          |
|---|----------|----------|----------|----------|
| Operator, Backhoe/Excavator/Trackhoe                                  | \$ 19.43 | \$ 19.43 | \$ 3.49  | \$ 22.92 |
| Operator, Bobcat/Skid Steer/Skid Loader                               | \$ 13.00 | \$ 13.50 | \$ -     | \$ 13.50 |
| Operator, Bulldozer   | \$ 14.00 | \$ 14.00 | \$ -     | \$ 14.00 |
| Operator, Crane   | \$ 34.85 | \$ 34.85 | \$ 9.85  | \$ 44.70 |
| Operator, Drill   | \$ 14.50 | \$ 14.50 | \$ -     | \$ 14.50 |
| Operator, Forklift  | \$ 16.64 | \$ 16.64 | \$ 6.26  | \$ 22.90 |
| Operator, Grader/Blade  | \$ 19.30 | \$ 19.30 | \$ -     | \$ 19.30 |
| Operator, Loader  | \$ 14.00 | \$ 14.00 | \$ -     | \$ 14.00 |
| Operator, Mechanic  | \$ 18.75 | \$ 18.75 | \$ 5.12  | \$ 23.87 |
| Operator, Paver (Asphalt, Aggregate, and Concrete)                    | \$ 16.03 | \$ 16.03 | \$ -     | \$ 16.03 |
| Operator, Roller  | \$ 11.25 | \$ 13.50 | \$ -     | \$ 13.50 |
| Painter (Brush, Roller, and Spray, Excludes Drywall Finishing/Taping) | \$ 18.76 | \$ 18.76 | \$ 6.35  | \$ 25.11 |
| Pipefitter (Including HVAC Pipe Installation)                         | \$ 28.03 | \$ 28.03 | \$ 12.43 | \$ 40.46 |
| Plumber, Excludes HVAC Pipe Installation                              | \$ 23.57 | \$ 23.57 | \$ 6.37  | \$ 29.94 |
| Roofer  | \$ 12.00 | \$ 13.50 | \$ -     | \$ 13.50 |
| *Roofer, Metal  | \$ 14.05 | \$ 14.05 | \$ -     | \$ 14.05 |
| Sheet Metal Worker (Including HVAC Duct Installation)                 | \$ 24.38 | \$ 24.38 | \$ 13.74 | \$ 38.12 |
| Sprinkler Fitter (Fire Sprinklers)                                    | \$ 28.18 | \$ 28.18 | \$ 17.52 | \$ 45.70 |
| Tile Finisher   | \$ 11.32 | \$ 13.50 | \$ -     | \$ 13.50 |
| Tile Setter   | \$ 16.35 | \$ 16.35 | \$ -     | \$ 16.35 |
| Truck Driver, Dump Truck  | \$ 12.39 | \$ 13.50 | \$ 1.18  | \$ 14.68 |
| Truck Driver, Flatbed Truck   | \$ 19.65 | \$ 19.65 | \$ 8.57  | \$ 28.22 |
| Truck Driver, Semi-Trailer Truck                                      | \$ 12.50 | \$ 13.50 | \$ -     | \$ 13.50 |
| Truck Driver, Water Truck   | \$ 12.00 | \$ 12.50 | \$ 4.11  | \$ 17.61 |
| Waterproofer  | \$ 16.30 | \$ 16.30 | \$ 0.06  | \$ 16.36 |

**EXAMPLE ONLY**

<http://www.wdol.gov/wdol/scafiles/davisbacon/tx.html>

See below for Additional Wage Information.

Note: \*Lead Paint & Asbestos Abatement and Roofer, Metal Classifications have been added to this Prevailing Wage Rate Determination pursuant to a City of Austin Prevailing Wage Survey (trades absent from DOL).

The Wage Compliance information detailed below was excerpted from DOL General Decision TX160323 or other sources.

### 1. Additional Trade information:

Electricians\*\* - Including low voltage wiring for computers, fire/smoke alarms.

Elevator Mechanics\*\*\* - also must be paid for 7 holidays - New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

Welders - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added upon the advance approval of City of Austin Contract Administration. CONTRACTOR shall submit to City of Austin Contract Administration for review the classification, a bona fide definition of work to be performed and a proposed wage with sample payrolls conforming to area practice **prior** to the start of the job for that type of work.

### 2. Wages

The Total Wage may be met by any combination of cash wages and credible "bona fide" fringe benefits paid for by the employer. Overtime wages must be calculated using the Adjusted Wage Rate specified in the Wage Rate Determination or the actual basic rate of pay, whichever is higher.

City of Austin Ordinance No. 20160324-015 requires that construction workers are paid a Minimum Wage of at least \$13.50/hour. The cash portion of their compensation must meet or exceed this amount.

### 3. Crediting fringe benefit contributions to meet DBA/DBRA and City of Austin requirements:



The Davis-Bacon Act (and 29 CFR 5.23), list fringe benefits to be considered. Examples are:

- > Life Insurance
- > Health Insurance
- > Pension
- > Vacation
- > Holidays
- > Sick Leave

Note: The use of a truck is not a fringe benefit; a Thanksgiving turkey or Christmas bonus is not a fringe benefit. No credit may be taken for any benefit required by federal, state, or local law such as: workers compensation, unemployment compensation; or social security contributions.

Contributions to fringe benefit plans must be made regularly, e.g. daily, weekly, etc. They must be more frequent than quarterly. (see 29 CFR 5.5 (a)(1)(I)) A periodic bonus may not be counted as a fringe benefit.

#### 4. Annualization of Benefit Costs

If a firm provides an electrician with \$200 per month medical insurance, to calculate allowable fringe benefit credit contributions per hour, the formula ( [\$200 x 12 months] divided by 2080 hours = \$1.15 per hour ) should be used.

#### 5. Proper Designation of Trade

A work classification on the wage decision for each worker must be made based on the actual type of work he/she performed and each worker must be paid no less than the wage rate on the wage decision for that classification **regardless** of his or her level of skill.

#### 6. Split Classification

If a firm has employees that perform work in more than one classification, it can pay the wage rates specified for each classification ONLY if it maintains accurate time records showing the amount of time spent in each classification. If accurate time records are not maintained, these employees must be paid the highest wage rate of all the classifications of work performed by each worker. Accurate time records tracking how many hours a worker performed the work of one trade and then switched to another trade must be accounted for on a daily basis and reflected on Employer Certified Payroll accordingly.

EXAMPLE ONLY

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial

contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

EXAMPLE ONLY

# WAGE RATES AND PAYROLL REPORTING

Section 00830HH

## WAGE RATE DETERMINATION

### HEAVY AND HIGHWAY CONSTRUCTION

COUNTY NAME: TRAVIS

Wages based on DOL General Decision:TX160016 1/8/2016 TX16 and City of Austin Ordinance #20160324-015

*DOL Rate column is for information only. The Total Minimum Wage Rate is derived from the Adjusted Wage Rate Required pursuant to City Ordinance, and can be met using any combination of cash and non-cash qualified fringe benefits, provided the cash component is at least \$13.50/hour.*

| CLASSIFICATION                               | DOL<br>RATE for<br>info only | ADJUSTED<br>WAGE RATE<br>REQUIRED<br>pursuant to City<br>Ordinance | TOTAL MINIMUM<br>WAGE RATE<br>REQUIRED |
|--|------------------------------|--|--|
| Agricultural Tractor Operator                | \$ 12.69                     | \$ 13.50   | \$ 13.50                               |
| Asphalt Distributor Operator                 | \$ 15.55                     | \$ 15.55   | \$ 15.55                               |
| Asphalt Paving Machine Operator              | \$ 14.36                     | \$ 14.36   | \$ 14.36                               |
| Asphalt Raker                                | \$ 12.12                     | \$ 13.50   | \$ 13.50                               |
| Boom Truck Operator                          | \$ 18.36                     | \$ 18.36   | \$ 18.36                               |
| Broom or Sweeper Operator                    | \$ 11.04                     | \$ 13.50   | \$ 13.50                               |
| Cement Mason/Concrete Finisher               | \$ 12.56                     | \$ 13.50   | \$ 13.50                               |
| Concrete Pavement Finishing Machine Operator | \$ 15.48                     | \$ 15.48   | \$ 15.48                               |
| Crane, Hydraulic, 80 tons or less            | \$ 18.36                     | \$ 18.36   | \$ 18.36                               |
| Crane, Lattice Boom, 80 tons or less         | \$ 15.87                     | \$ 15.87   | \$ 15.87                               |
| Crane, Lattice Boom, over 80 tons            | \$ 19.38                     | \$ 19.38   | \$ 19.38                               |
| Crawler Tractor                              | \$ 15.67                     | \$ 15.67   | \$ 15.67                               |
| Directional Drilling Locator                 | \$ 11.67                     | \$ 13.50   | \$ 13.50                               |
| Directional Drilling Operator                | \$ 17.24                     | \$ 17.24   | \$ 17.24                               |
| Electrician                                  | \$ 26.35                     | \$ 26.35   | \$ 26.35                               |
| Excavator 50,000 lbs. or less                | \$ 12.88                     | \$ 13.50   | \$ 13.50                               |
| Excavator, over 50,000 lbs.                  | \$ 17.71                     | \$ 17.71   | \$ 17.71                               |
| Flagger                                      | \$ 10.15                     | \$ 13.50   | \$ 13.50                               |
| Form Builder/Form Setter - Paving & Curb     | \$ 12.94                     | \$ 13.50   | \$ 13.50                               |
| Form Builder/Form Setter - Structures        | \$ 12.87                     | \$ 13.50   | \$ 13.50                               |
| Foundation Drill Operator, Truck Mounted     | \$ 16.93                     | \$ 16.93   | \$ 16.93                               |
| Front End Loader Operator, 3CY or less       | \$ 13.04                     | \$ 13.50   | \$ 13.50                               |
| Front End Loader, over 3CY                   | \$ 13.21                     | \$ 13.50   | \$ 13.50                               |
| Laborer, Common                              | \$ 10.50                     | \$ 13.50   | \$ 13.50                               |
| Laborer, Utility                             | \$ 12.27                     | \$ 13.50   | \$ 13.50                               |
| Loader/Backhoe Operator                      | \$ 14.12                     | \$ 14.12   | \$ 14.12                               |
| Mechanic                                     | \$ 17.10                     | \$ 17.10   | \$ 17.10                               |
| Milling Machine                              | \$ 14.18                     | \$ 14.18   | \$ 14.18                               |
| Motor Grader Operator - Fine Grade           | \$ 18.51                     | \$ 18.51   | \$ 18.51                               |
| Motor Grader Operator, Rough                 | \$ 14.63                     | \$ 14.63   | \$ 14.63                               |

|  |          |          |          |
|--|----------|----------|----------|
| Painter - Structures                           | \$ 18.34 | \$ 18.34 | \$ 18.34 |
| Pavement Marking Machine Operator              | \$ 19.17 | \$ 19.17 | \$ 19.17 |
| Pipelay  | \$ 12.79 | \$ 13.50 | \$ 13.50 |
| Reclaimer/Pulverizer                           | \$ 12.88 | \$ 13.50 | \$ 13.50 |
| Reinforcing Steel Setter                       | \$ 14.00 | \$ 14.00 | \$ 14.00 |
| Roller Operator, Asphalt                       | \$ 12.78 | \$ 13.50 | \$ 13.50 |
| Roller Operator, Other                         | \$ 10.50 | \$ 13.50 | \$ 13.50 |
| Scraper Operator                               | \$ 12.27 | \$ 13.50 | \$ 13.50 |
| Servicer                                       | \$ 14.51 | \$ 14.51 | \$ 14.51 |
| Spreader Box Operator                          | \$ 14.04 | \$ 14.04 | \$ 14.04 |
| Structural Steel Worker                        | \$ 19.29 | \$ 19.29 | \$ 19.29 |
| Traffic Signal Installer/Light Pole Worker     | \$ 16.00 | \$ 16.00 | \$ 16.00 |
| Trenching Machine Operator, Heavy              | \$ 18.48 | \$ 18.48 | \$ 18.48 |
| Truck Drick Tandem Axle Semi-Trailer           | \$ 12.81 | \$ 13.50 | \$ 13.50 |
| Truck Driver, Lowboy/Float                     | \$ 15.66 | \$ 15.66 | \$ 15.66 |
| Truck Driver, Single Axle                      | \$ 11.79 | \$ 13.50 | \$ 13.50 |
| Truck Driver, Off Road Hauler                  | \$ 11.88 | \$ 13.50 | \$ 13.50 |
| Truck Driver, Single or Tandem Axle Dump Truck | \$ 11.68 | \$ 13.50 | \$ 13.50 |
| Welder   | \$ 15.97 | \$ 15.97 | \$ 15.97 |
| Work Zone Barricade Servicer                   | \$ 11.85 | \$ 13.50 | \$ 13.50 |

<http://www.wdol.gov/wdol/scafiles/davisbacon/tx.html>

The Wage Compliance information detailed below was excerpted from DOL General Decision TX160016 or other sources.

# EXAMPLE ONLY

## 1. Additional Trade information

Unlisted classifications needed for work not listed within the scope of the classifications listed may be added upon the advance approval of Contract Procurement. CONTRACTOR shall submit to City of Austin Contract Procurement the following: classification, a bona fide definition of work to be performed and a proposed wage with sample payrolls conforming to area practice **prior** to the start of the job for that type of work. Proposed trade may not be performed by any trade already listed.

## 2. Wages

The Total Minimum Wage Rate may be met by any combination of cash wages and credible "bona fide" fringe benefits paid for by the employer. Overtime must be used in computing overtime pay. wages must be calculated using the Total Minimum Wage Rate specified in the Wage Rate Determination or the actual basic rate of pay, whichever is higher.

City of Austin Ordinance No. 2016324-015 requires that construction workers are paid a minimum Wage of at least \$13.50/hour. The cash portion of their compensation must meet or exceed this amount.

## 3. Proper Designation of Trade

A work classification from the Prevailing Wage Poster for each worker must be made based on the actual type of work he/she performed on the job. In summary the work performed, not the "title" determines the correct worker classification and wage. Each worker must be paid no less than the adjusted wage rate on the wage decision for that classification **regardless** of his/her level of skill (exclusive of a bona fide apprentice currently registered in a DOL approved apprentice program - proof of individual registration must be supplied in advance to the City of Austin).

## 4. Split Classification

If a firm has employees that perform work in more than one classification, it can pay the adjusted wage rates specified for each classification **ONLY** if it maintains accurate time records showing the amount of time spent in each classification. If accurate time records are not maintained, these employees must be paid the highest adjusted wage rate of all the classifications of work performed by each worker. Accurate time records tracking how many hours a worker performed the work of one trade and then switched to another trade must be accounted for on a daily basis and reflected on Employer Certified Payroll accordingly.

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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