

AMENDED ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

This Economic Development Program Agreement ("Agreement") is entered into this ____ day of August, 2011, by and between **Williamson County, Texas**, ("County"), and **Office Depot, Inc.** ("**Office Depot**") and replaces the earlier Economic Development Program Agreement dated August 2, 2011, by and between the County and Office Depot, which earlier agreement is hereby terminated.

WHEREAS, the County desires to enter into this Agreement with Office Depot in recognition of the positive economic benefits to the County through Office Depot's locating its business (the "Facility"), to Williamson County; and

WHEREAS, Office Depot will hire for the Facility 40 employees initially with 163 additional employees over the next four years; and

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 381 of the Texas Local Government Code whereby Office Depot will expend significant sums to construct and install improvements to the Facility and occupy and operate the Facility in conformance with the County and City regulations, as applicable; and

WHEREAS, the County agrees to provide performance based economic development grants to Office Depot to defray a portion of the Facility's costs;

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Office Depot agree as follows:

1. **Authority.** The County's execution of this Agreement is authorized by Chapter 381 of the Texas Local Government Code, which constitutes a valid and binding obligation of the County in the event Office Depot proceeds with the occupation of the Facility. The County acknowledges that Office Depot is acting in reliance upon the County's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to improve and occupy the Facility.
2. **Definitions.**
 - 2.1 **"Economic Incentive Payment(s)" ("EIPs")** means the amount paid by the County to Office Depot under the Program.
 - 2.2 **"Effective Date"** is the date this Agreement is executed to be effective by the County and Office Depot.
 - 2.3 **"Facility"** means location to be determined within Williamson County.
 - 2.4 **"Full Time Employee"** shall be calculated at a minimum of 25 hours/week. All hours are paid time per week. In tabulating hours, any paid leave an employee takes during the pay period, such as vacation or sick leave, may be included.

The calculation for the year ending 12/31/2011 is the total number of hours worked through 12/31/2011, divided by 13 weeks, divided by 25 hours/week equals the total number of full time employees.

For all subsequent years, the calculation is the total number of hours worked for the 12 months ending 12/31/20xx, divided by 52 weeks in a year, divided by 25 hours/week equals the total number of full time employees.

- 2.5 **“Improvements”** means the finish out of and additions to the Facility, and personal property and equipment with a minimum cost of \$3,000,000 by January 1st, 2013.
- 2.6 **“Program”** means the economic development program established by the County pursuant to Chapter 381 of the Texas Local Government Code and under the County Resolution to promote local economic development and stimulate business and commercial activity within the County.
- 2.7 **“Recapture Liability”** means the total amount of all EIP’s that are paid as result of this Agreement that is subject to recapture by the County from Office Depot in the event of an Office Depot default.
3. **Term.** This Agreement shall become enforceable upon its Effective Date and shall terminate on December 31, 2016.
4. **Rights and Obligations of Office Depot.**
- 4.1 Occupation of Facility. Office Depot will occupy the Facility on or before December 31, 2012.
- 4.2 Improvements. Office Depot agrees to construct and/or install the Improvements, or Office Depot’s landlord for the Facility will construct and/or install the Improvements on Office Depot’s behalf. Office Depot agrees to provide County with documentation showing that this obligation has been satisfied. County shall have the right to audit Office Depot’s records to verify that this obligation has been satisfied.
- 4.3 Jobs.
- 4.3.1 Initial Jobs. Office Depot agrees to hire for the Facility at least 40 full-time employees and/or contract workers no later than December 31, 2011.
- 4.3.2 Additional Jobs. Office Depot agrees that it will have the number of full-time employees and/or contract workers on the dates set forth below:

<u>Date</u>	<u>Number of full-time employees</u>
January 1, 2013	<u>161</u>
January 1, 2014	<u>203</u>

January 1, 2015
January 1, 2016

203
203

Office Depot agrees to provide to the County annual employee reports within sixty (60) days following the end of each calendar year during the term of this Agreement. County shall have the right to audit Office Depot's records to verify that this obligation has been satisfied.

4.4 Continuous operation. Office Depot agrees that it will continuously operate the Facility during the term of this Agreement, including any extensions.

5. Rights and Obligations of the County.

In consideration of Office Depot's compliance with this Agreement, the County agrees as follows:

5.1 Economic Incentive Payments ("EIP's").

5.1.1 Initial Payment. County shall, subject to Office Depot's satisfaction of its obligations set forth in Section 4 above and the other conditions set out herein, make an initial EIP to Office Depot in the amount of fifteen thousand (\$15,000) dollars. This initial EIP shall be made within sixty (60) days after Office Depot has paid its initial ad valorem tax payment.

5.1.2 Subsequent Annual Payments. Thereafter, subject to Office Depot's satisfaction of its obligations set forth in Section 4 above and the other conditions set out herein, and subject to Office Depot not being in default of this Agreement, County shall pay a total of \$75,000.00 in five annual EIP's on or before April 1 of each year as set forth below:

<u>Date of Payments</u>	<u>Amount of Payments</u>
April 1, 2013	\$15,000
April 1, 2014	\$15,000
April 1, 2015	\$15,000
April 1, 2016	<u>\$15,000</u>
TOTAL	\$75,000.00

5.1.3 EIP's Subject to Future Appropriations. This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to Office Depot. All EIP's by the County under this Agreement are subject to the County's appropriation of funds for such payments in the budget year for which they are made. The EIP's to be made to Office Depot, if paid, shall be made solely from annual appropriations from the general funds of the County or from such other funds of the County as may be legally set

aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 381 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the County under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that the County does not appropriate funds in any fiscal year for EIP's due under this Agreement, such failure shall not be considered a default under Section 7.3, and the County shall not be liable to Office Depot for such EIP's, however, the County shall extend this Agreement for another year(s). To the extent there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

6. EIP Recapture. In the event that Office Depot is in default of this Agreement, the County may recapture and collect from Office Depot the Recapture Liability after providing Office Depot written notice and a minimum period of thirty (30) days to cure such default, and the default has not been cured within said time. In the event Office Depot does not so cure, Office Depot shall pay to the County the Recapture Liability within thirty (30) days after the County makes demand for same, subject to any and all lawful offsets, settlements, deduction, or credits to which Office Depot may be entitled. The County shall have all remedies for the collection of the Recapture Liability as provided generally in the Tax Code for the collection of delinquent property taxes.

7. Miscellaneous.

- 7.1 Mutual Assistance. The County and Office Depot will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement.
- 7.2 Representations and Warranties. The County represents and warrants to Office Depot that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Office Depot represents and warrants to the County that it has the requisite authority to enter into this Agreement.
- 7.3 Default. If either the County or Office Depot should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If the County remains in default after notice and opportunity to cure, Office Depot shall have the right to pursue any remedy at law or in equity for the County's breach. If Office Depot remains in default after notice and opportunity to cure, County shall have the right to pursue any remedy at law or in equity for Office Depot's breach, in addition to the right of EIP recapture set forth above.
- 7.4 Attorney's Fees. In the event any legal action or proceeding is commenced in a court of competent jurisdiction between the County and Office Depot to enforce provisions of this Agreement and recover damages for breach, the prevailing party

in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.

- 7.5 Entire Agreement. This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the County and Office Depot.
- 7.6 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.
- 7.7 Assignment. Office Depot may not assign all or part of its rights and obligations to a third party without the express written consent of the County provided, however, that this Agreement may be assigned by either party without the consent of the other to an affiliate or to any third party who succeeds to substantially all of its business or assets.
- 7.8 Amendment. This Agreement may be amended by the mutual written agreement of the parties.
- 7.9 Termination. In the event Office Depot elects not to lease the Facility as contemplated by this Agreement, Office Depot shall notify the County in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect.
- 7.10 Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, 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:

If to County: Judge Dan A. Gattis
710 Main Street
Georgetown, Texas

If to Office Depot:
VP – Tax
6600 North Military Trail
Boca Raton, FL 33496

Copy to:

General Counsel – Real Estate
6600 North Military Trail
Boca Raton, FL 33496

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

- 7.11 Interpretation. Each of the parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.
- 7.12 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in Williamson County, Texas.
- 7.13 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, 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 of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- 7.14 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.
- 7.15 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 7.16 Force Majeure. Except as otherwise provided herein, an equitable adjustment shall be made for delay or failure in performing if such delay or failure is caused, prevented, or restricted by conditions beyond that Party's reasonable control (a "force majeure event"). A *force majeure* event for the purposes of this Agreement shall include, but not be limited to, acts of God, fire; explosion, vandalism; storm or similar occurrences; orders or acts of military or civil authority; litigation; changes in law, rules, or regulations outside the control of the affected Party; national emergencies or insurrections; riots; acts of terrorism; or supplier failures, shortages or breach or delay. Except as otherwise expressly provided, herein, there shall be an equitable adjustment allowed for performance under this Agreement as the result of any event of *force majeure*.
- 7.17 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The County, its past, present and future officers, elected officials, employees and agents of the County, do not assume any responsibilities or liabilities to any third party in connection with the development of the Facility or the design, construction or operation of any portion of the Facility.

EXECUTED to be effective as of the ____th day of ____, 2011 (the "Effective Date").

WILLIAMSON COUNTY

By: 

Dan A. Gattis, Judge

8-19-2011

OFFICE DEPOT, INC.

By: 

Its: Sr. Vice President, Business Solutions _____

Date: 08-15-2011

