

**FIRST AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF AUSTIN AND MERCK SHARP AND DOHME CORP.**

This First Amendment to the Economic Development Agreement (Amendment) is entered into this 31st day of July, 2018, by and between the City of Austin, a home-rule municipal corporation situated in Hays, Travis and Williamson counties acting by and through its duly authorized City Manager or his designee ("City") and Merck Sharp and Dohme Corp. ("Company").

RECITALS

1. The City and Company entered into an Economic Development Agreement effective June 30, 2017 ("Agreement"); and
2. The City Council approved Ordinance No. 20170413-041 authorizing an economic development program for the Company for up to ten years; and
3. City Council authorized the City Manager to negotiate and execute an economic development with the Company; and
4. The City and the Company desire to amend the Agreement; and
5. The proposed amendments herein do not grant any additional benefits to the Company.

NOW, THEREFORE, the Parties for and in consideration of the covenants and agreements described in this Amendment, the sufficiency of which is acknowledged, agree to the following amendments to the Agreement:

- A. Section 1.01(c) is deleted in its entirety and replaced with the following:

"The Company shall ensure that:

1. After the Effective Date of this Agreement, and before December 31, 2022, 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, 2025, 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."

- B. Section 1.01(d) is deleted in its entirety and replaced with the following:

"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, 2019;

2. An additional \$635,000 investment in business personal property, or cumulative investment of \$7,002,000 by December 31, 2020;
 3. An additional \$220,000 investment in business personal property, or cumulative investment of \$7,222,000 by December 31, 2021;
 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, 2022;
 5. An additional \$225,000 investment in business personal property, or cumulative investment of \$27,682,000 by December 31, 2023;
 6. An additional \$500,000 investment in business personal property, or cumulative investment of \$28,182,000 by December 31, 2024; and
 7. An additional \$540,000 investment in business personal property, or cumulative investment of \$28,722,000 by December 31, 2025.”
- C. The first sentence of Section 1.02 is deleted and replaced with the following:
“The Company shall create at least 600 New Full-Time Jobs (as hereafter defined) located at the Company’s IT Hub by December 31, 2025.”
- D. Section 1.02(a) is deleted in its entirety and replaced with the following:
“The Company shall create and retain the New Full-Time Jobs as follows:
1. 119 New Full-time Jobs before December 31, 2019;
 2. 246 cumulative New Full-time Jobs before December 31, 2020;
 3. 290 cumulative New Full-time Jobs before December 31, 2021;
 4. 341 cumulative New Full-time Jobs before December 31, 2022;
 5. 392 cumulative New Full-time Jobs before December 31, 2023;
 6. 492 cumulative New Full-time Jobs before December 31, 2024; and
 7. 600 cumulative New Full-time Jobs before December 31, 2025.”
- E. Section 1.02(b) is deleted in its entirety and replaced with the following:
“Following December 31, 2025, the Company shall maintain the required New Full-Time Jobs as of December 31st of each subsequent year for the remaining term of this Agreement.”
- F. Section 1.02(c) is deleted in its entirety and replaced with the following:
“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 \$13.84 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>
2019	\$84,570
2020	\$84,270
2021	\$84,078
2022	\$84,472
2023	\$84,764
2024	\$84,738
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."

- G. Section 1.02(d) is deleted in its entirety and replaced with the following:

"If the Company has not satisfied the requirements and conditions described in Sections 1.02(a) and (b) by December 31st 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 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) above, and
 - ii. at the end of the cure period specified in Subsection 1.02 (d)(1) above, employee compensation meets the requirements in Section 1.02(c)."

- H. Section 1.05(a)2 is deleted in its entirety and replaced with the following:

"City of Austin Minimum Wage, currently \$13.84 per hour, or as may be subsequently amended annually by the City."

- I. Section 1.07(a) is deleted in its entirety and replaced with the following:

"Beginning March 31, 2020 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."

- J. Section 2.02 is deleted in its entirety and replaced with the following:

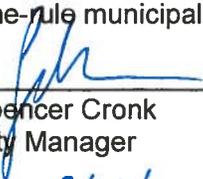
"Provided the Company has demonstrated compliance with the terms of this Agreement the City's first payment shall be made on or before October 31, 2020 for the Company's

performance for the period from the Effective Date through December 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, 2021 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"

- K. Exhibit "B" (Certificate of Compliance) is deleted and replaced with the revised Exhibit "B" attached to this Amendment.
- L. Except as expressly amended herein, all other terms and provisions of the Agreement remain the same and shall be given full force and effect.

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

CITY OF AUSTIN,
A home-rule municipal corporation

By: 

Spencer Cronk
City Manager

Date: 9/13/18

MERCK SHARP AND DOHME CORP.,
A foreign, for-profit corporation

By: 

Robert M. Davis
Executive Vice-President, Global Services and CFO

Date: 7-20-18

Approved as to form:



Allyson Evans, Assistant City Attorney

Exhibit B, as Amended

Certificate of Compliance

Company: Merck Sharp & Dohme Corp.

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

1.0 Investment

- 1.1 §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.
- 1.2 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.
- 1.3 §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
- 1.4 §1.01 of the Agreement requires that, in accordance with the schedule in §1.01(d) of the Agreement:
- a. after the Effective Date of this Agreement, and before December 31, 2022, 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
 - b. after the Effective Date of this Agreement and before December 31, 2025 the Company shall invest at least \$8,190,000 in the purchase and installation of business personal property at the IT Hub.
- 1.5 The Company's investment in leasehold improvements and business personal property shall be made according to the following schedule:
- a. \$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, 2019;
 - b. An additional \$635,000 investment in business personal property, or cumulative investment of \$7,002,000 by December 31, 2020;
 - c. An additional \$220,000 investment in business personal property, or cumulative investment of \$7,222,000 by December 31, 2021;
 - d. 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, 2022;
 - e. An additional \$225,000 investment in business personal property, or cumulative investment of \$27,682,000 by December 31, 2023;

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Certificate of Compliance

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- f. An additional \$500,000 investment in business personal property, or cumulative investment of \$28,182,000 by December 31, 2024; and
- g. An additional \$540,000 investment in business personal property, or cumulative investment of \$28,722,000 by December 31, 2025.
- 1.6 To date the City has not verified the Company's leasehold improvements investment in the IT Hub.
- 1.7 \$ _____ has been invested in leasehold improvements of the Company's IT Hub for the reporting year ending December 31, 20 .
- 1.8 To date the City has not verified the Company's investment in business personal property.
- 1.9 The Company has invested \$ _____ in business personal property at the IT Hub for the reporting year ending December 31, 20 .
- 1.10 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
- 1.11 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

2.0 Employment

- 2.1 §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, 2025 and retain those New Full-time Jobs throughout the term of the Agreement. The job creation schedule is as follows:
 - a. 119 New Full-time Jobs before December 31, 2019;
 - b. 246 New Full-time Jobs before December 31, 2020;
 - c. 290 New Full-time Jobs before December 31, 2021;
 - d. 341 New Full-time Jobs before December 31, 2022;
 - e. 392 New Full-time Jobs before December 31, 2023;
 - f. 492 New Full-time Jobs before December 31, 2024; and
 - g. 600 New Full-time Jobs before December 31, 2025.
- 2.2 Number of New Full-time Jobs created and retained as of December 31, 20 : _____
- 2.3 §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 \$13.84 per hour, throughout the term of the Agreement.

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Company: Merck Sharp & Dohme Corp.

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

2.4 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

2.5 §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>
<u>2019</u>	<u>\$84,570</u>
<u>2020</u>	<u>\$84,270</u>
<u>2021</u>	<u>\$84,078</u>
<u>2022</u>	<u>\$84,472</u>
<u>2023</u>	<u>\$84,764</u>
<u>2024</u>	<u>\$84,738</u>
<u>2025</u>	<u>\$84,637</u>
<u>2026</u>	<u>\$84,637</u>

2.6 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

2.7 §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.

2.8 Did the Company provide health insurance coverage for all employees in New Full-time Jobs during the year ended December 31, 20 as required in §1.02(e) of the Agreement?

Yes No

2.9 §1.02(f) requires that 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.

2.10 Did the Company 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 throughout the year ended December 31, 20 as required in §1.02(f) of the Agreement?

Yes No

2.11 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.

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Company: Merck Sharp & Dohme Corp.

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- 2.12 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
- 2.13 Number of New Full-time Jobs created and retained as of March 31, 20 : _____
- 2.14 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

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Company: Merck Sharp & Dohme Corp.

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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.

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.

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- 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.

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 10th day of each month to track (i) the utilization on a percentage basis of M/WBE firms in the design and construction of the 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

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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

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 during 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 Community Impact Goals

7.1 According to section 1.10 of the Agreement, Company has a history and reputation of making direct and indirect economic contributions, such as employment, workforce development, support of local businesses and local research and development. City desires Company to provide socioeconomic benefits to the community by partnering with local organizations that are focused on public health issues and concerns, as well as participate in Science, Technology, Engineering and Mathematics (STEM) programs by partnering with local entities similar to the samples described in their Business Information Form submitted to the City, as well as with local primary, secondary and post-secondary educational institutions, including Title 1 schools.

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Company: Merck Sharp & Dohme Corp.

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- 8.2 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.
- 8.3 To date, the City has not made any economic development incentive payment to the Company.
- 8.4 Number of New Full-time Jobs from §2.2 or §2.11 above: _____
- 8.5 Total request for year 20 : _____

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)