
TO: Chairman and Trustees of the Oklahoma City Economic Development Trust

FROM: Catherine O'Connor, OCEDT Surrogate General Manager

SUBJECT: Joint Economic Development Agreement with The City of Oklahoma City and The Boeing Company, Inc. for locating their C-130 AMP Program in Oklahoma City, near 6001 S. Air Depot, \$1,496,400.

Background

The Company plans to add 550 new jobs in Oklahoma City over the next two (2) years. These jobs reflect two new business units moving to Oklahoma City and are the result of Companywide decisions on efficiencies, cost and proximity to clients or customers. The average first year wage for these new jobs is conservatively estimated to be \$90,017. After evaluating options for the location of this business unit and timing, The Boeing Company has decided to lease office space in Oklahoma City near their current facility, due to the efficiencies, cost of doing business and proximity to the client, Tinker AFB. The availability of state and local business incentives were a key part of this decision matrix. Based on the first business unit (C-130) commencing work in Oklahoma City this year and the second unit (B-1) in 2012, it was decided with staff that we should submit two separate SIP applications. This agreement is for the C-130 business unit, or 232 jobs.

Company Background

Boeing is the world's largest aerospace company and a leading manufacturer of commercial jetliners and defense, space and security systems. Boeing products and tailored services include commercial and military aircraft, satellites, weapons, electronic and defense systems, launch systems, advanced information and communication systems, and performance-based logistics and training. With corporate offices in Chicago, Boeing employs more than 159,000 people across the United States and in 70 countries.

In Oklahoma, Boeing employs approximately 945 people with nearly 800 in Oklahoma City and the remainder at Altus AFB and Vance AFB. These approximately 945 employees generate an annual statewide payroll of more than \$84M. Boeing and its employee philanthropic organization contribute more than \$240,000 annually to worthy Oklahoma causes and employees logged more than 4,000 hours of community volunteer time in support of our community. More than 5,600 Boeing retirees live in Oklahoma.

Boeing has 247 Oklahoma based-suppliers who were paid \$532M in 2009.

The two programs relocating to Oklahoma City, the C-130 Avionics Modernization Program (AMP) and the B-1 program, are led by a Boeing business unit based in St. Louis, Missouri.

The primary function of these two programs is to modernize the avionics and cockpit infrastructure of the named aircraft. Employees in these programs are predominantly “embedded software engineers” who write lines of computer code that operate the aircraft platforms and weapons delivery systems. Also, structural and avionics engineers design and develop the hardware and software as well as perform the simulation and test activity for each of the products to ensure success of the program. Avionics engineers design the avionic structures and create wiring plans. Structural engineers determine how to connect the structures via the wiring plans.

Project Background

The Greater Oklahoma City Chamber and the City have worked with the Company since the middle of February, 2010 on this recruitment. In evaluating its location options for their two new business units, the Company management met with City and Chamber staff to discuss the needs of their planned operation. Based in part upon local incentives (city and state), the company decided to locate this operation in Oklahoma City and announced the project in August of 2010.

Economic Impact

The total estimated economic impact of the C-130 unit (232 jobs) is \$103,601,629 over the first two year period (based on total project impact, including capital investment, wages, state and local taxes). The estimated local sales tax and property tax revenue is expected to be \$568,085 over the first two year period and \$289,438 annually from the third year forward. We will provide additional impact numbers with the second (B-1) application that are specific to that program, and include potential additional facilities.

Recommended SIP offer: \$1,496,400

The Greater Oklahoma City Chamber Economic Development Division recommends a local incentive package of \$1,496,400 based on the following information provided by the Company:

- Incentive based on the creation of 232 new jobs over two (2) years for the C-130 unit.
- Estimated average annual wage of \$90,017 (first year wage).
- Estimated first year additional payroll of \$14,762,788, ramping up to \$20,883,944 by the end of the second year.
- The company plans to invest \$2.8 million in new equipment and facility improvements.
- This is the latest expansion in an established pattern or continual

growth by the Company.

- There is the potential for additional future growth.
- The Company considered a number of alternative locations for these jobs. The state and local incentives were important in positioning Oklahoma City as a competitive location for this operation.

On March 22, 2011 (Item V. D.), the Oklahoma City Economic Development Trust reviewed the application of The Boeing Company for economic incentives under the Strategic Investment Program and directed staff to negotiate an economic development agreement.

Approval of the agreement outlines the job creation and private investment requirements of The Boeing Company, Inc. The City of Oklahoma City and the Oklahoma City Economic Development Trust.

Recommendation: Agreement be approved.

Attachment

**THE BOEING COMPANY
C-130 PROJECT
ECONOMIC DEVELOPMENT AGREEMENT**

By and Between

The Oklahoma City Economic Development Trust, a public trust,

and

The City of Oklahoma City, a municipal corporation,

and

The Boeing Company

Economic Development Agreement with The Boeing Company

THIS AGREEMENT made and entered into as of this ____ day of _____, 2011, by and between the Oklahoma City Economic Development Trust ("OCEDT" or "Trust"), The City of Oklahoma City ("The City"), and The Boeing Company ("Boeing").

WITNESSETH:

WHEREAS, The City and the Oklahoma City Economic Development Trust have determined that it is in the best interest of The City and its citizens to promote, and when deemed appropriate, fund economic development and redevelopment; and

WHEREAS, the Oklahoma City Economic Development Trust is a public trust whose sole beneficiary is The City of Oklahoma City, and which entity desires to promote and assist The City with economic and community development and redevelopment projects; and

WHEREAS, The City and OCEDT desire to promote and assist economic development and redevelopment projects, in particular those projects which involve substantial investments and the creation and retainage of jobs and employment opportunities; and

WHEREAS, The City and OCEDT wish to support redevelopment and investment in the urban core of the City by providing assistance through the creation and retainage of new jobs through the job creation incentive grants, which make possible investment, development, redevelopment, and economic growth within The City; and

WHEREAS, The City and OCEDT created a local economic development incentive program in November 2007, the Strategic Investment Program to provide job creation grants; and

WHEREAS, The Boeing Company ("Boeing"), who for purposes of this agreement, desires to locate their C-130 Avionics Modernization Program (AMP) in Oklahoma City employing up to 232 employees consisting of structural, electrical, mechanical, aviation and systems engineers along with support personnel causing at least \$2,800,000 in new capital investment for Boeing's use; and

WHEREAS, Boeing has stated that it will cause an investment of approximately \$2.8 million in capital investment toward expansion of its Oklahoma City facility and operations; and

WHEREAS, Boeing, in contemplation of certain economic incentives from the Trust, has stated its intent, through an application process as part of the Strategic Investment Program, to create up to 232 new jobs, with an estimated average annual salary of at least \$90,017, in its first year of operation, and to retain those jobs for at least one year or four quarters; and

WHEREAS, Boeing qualifies for an incentive under the Strategic Investment Program of \$1,496,400 based upon its intent to cause the capital investment of approximately \$2,800,000

and to create up to 232 new jobs for its C-130 Avionics Modernization Program business unit which will pay an annual average salary of \$90,017 during the first year of operation; and

WHEREAS, Boeing has committed to document the expenditure of at least \$2,800,000 in out of pocket expenses related to rehabilitation, refurbishing and equipping of its facility in Oklahoma City; and

WHEREAS, on March 22, 2011, the OCEDT reviewed the application of Boeing for economic incentives under the Strategic Investment Program and authorized and directed staff to negotiate an Economic Development Agreement with Boeing for subsequent Trust and City consideration and approval; and

WHEREAS, an economic development agreement incorporating certain terms and conditions and the mutual covenants of the parties has been prepared, which includes a commitment by the Trust to provide up to \$1,496,400 in job creation and retainage incentives, provided that Boeing documents a minimum capital investment of \$2,800,000 in out of pocket expenses directly related to the rehabilitation, refurbishing, and/or equipping of its facilities in Oklahoma City; and

WHEREAS, the Trust and The City deem it appropriate to approve the execution of this development agreement, providing for implementation of the Project, and

WHEREAS, the Trust and The City have determined approval of this Economic Development Agreement to be in the best interest of the City, and the health, safety, and welfare of its citizens, the State and its residents.

NOW, THEREFORE, in consideration of the promises and mutual obligations herein set forth, the parties hereby covenant and agree with each other as follows:

SECTION 1. DEFINED TERMS

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

- 1.1 Agreement. "Agreement" means this Economic Development Agreement, as the same may be amended, modified and in effect from time to time, pursuant to the terms of this Agreement.
- 1.2 Facility and Operations Expansion. "Facility and Operations Expansion" has the meaning provided in Section 2.1.
- 1.3 City. "The City" means The City of Oklahoma City, Oklahoma, a municipal corporation.

- 1.4 Full-time employee. "Full-time employee" shall mean a person employed by Boeing at their Oklahoma City Location who works and is paid for working not less than 32 hours per week.
- 1.5 Oklahoma City Location. "Boeing's Oklahoma City Location," shall mean the office building located in or near 6001 S. Air Depot, Oklahoma City, Oklahoma 73135.
- 1.6 Project Manager. "Project Manager," unless otherwise indicated, means the assigned Assistant City Manager, or his or her designee. The City shall inform Boeing of the designate by correspondence, and may change said designation from time to time.
- 1.7 Project. "Project" means the Boeing Facility and Operations Location Project described in Section 2.1.
- 1.8 Trust. "Trust," means the Oklahoma City Economic Development Trust ("OCEDT"), an Oklahoma public trust.
- 1.9 Annual Salary. "Annual Salary" means wages paid to employees as regular, overtime, vacation, sick, premium overtime, or gain share (bonus). It does not include any payroll taxes paid by the employee or employer nor does it include any retirement or health /life insurance contributions by the employee or employer.
- 1.10 Fiscal Year. "Fiscal Year" shall mean the twelve (12) month period from beginning April 1 and ending March 31.

SECTION 2.

SCOPE OF FACILITY AND OPERATIONS EXPANSION

2.1 Scope of the Project.

The Boeing Facility and Operations Location Project shall be comprised of the following:

- a) Boeing will provide the City and Trust with documentation supporting a minimum capital investment of \$2,800,000 in out of pocket expenses related to rehabilitation, refurbishing and/or equipping its facility in Oklahoma City.
- b) Boeing will endeavor to hire an additional 232 new employees at its Oklahoma City facility for its C-130 Avionics Modernization Program (AMP) and in order to receive the job related economic incentives, must retain those jobs for at least 4 consecutive calendar quarters, as more specifically describes in section 3.1.

The 232 new employees required by this Agreement are in addition to any employees currently employed by Boeing in Oklahoma.

- c) By the first year of operation following the commencement of the new operating unit in the Oklahoma City Office, the average annual wage paid by Boeing will be \$90,017, in addition to paying a substantial portion of the employee's health insurance premiums and other employee benefits.
- d) Boeing will endeavor to invest at least \$2.8 million dollars toward tenant improvements and equipment necessary to conduct business at its Oklahoma City Location.

SECTION 3.

OBLIGATIONS OF BOEING - JOB CREATION AND DEVELOPMENT OF THE OKLAHOMA CITY LOCATION AND OPERATIONS

3.1 Creation of Jobs.

In addition to the capital investment to be incurred by Boeing for the rehabilitation, refurbishing, development and/or equipping of the Oklahoma City Location, and in order to receive the job incentives provided under this Agreement, Boeing will commit to creating up to 232 new full-time jobs in Oklahoma City, and with an average annual salary of \$90,017, exclusive of health insurance and other employee related benefits, and maintain those jobs and salaries for a period of 12 consecutive months (or 4 consecutive calendar quarters) as verified by records submitted to the Trust in accordance with this agreement, which may include, but is not limited to reports submitted to the State of Oklahoma Quality Jobs Program and the Oklahoma Employment Security Commission. The job creation and retention incentive to be paid under this agreement is set forth in Section 4.1 below. For purposes of the Full-Time Position creation date, it is the intent of the parties to utilize April 1, 2011 as the start date for this position creation.

3.2 Acquisition, Construction, Development and/or Equipping of the Oklahoma City Location.

Boeing has stated that it will cause the capital investment of approximately \$2.8 million dollars for the rehabilitation, refurbishing and/or equipping of the Oklahoma City Location which amount includes a minimum pledge of \$2,800,000 to be spent in connection with the Oklahoma City Location, necessary to employ an additional 232 employees. In order to qualify for the payment of any job creation incentive to be paid under this Agreement, Boeing acknowledges and agrees that it must first make and document a capital investment in the Oklahoma City Location in the minimum expenditure of \$2,800,000. Only purchases and expenditures made on or after September 1, 2010, which meet the above capital investment criteria, may be utilized to support Boeing's Minimum Capital Investment threshold.

SECTION 4.
TRUST – OBLIGATION FOR REIMBURSEMENT RELATED TO EXPANSION OF
BOEING'S OKLAHOMA CITY FACILITIES AND OPERATIONS

4.1 Obligation of Trust.

In exchange for the completed obligations of Boeing as set forth in Section 3 above, the Oklahoma City Economic Development Trust, on behalf of its sole beneficiary, The City of Oklahoma City, will reimburse Boeing, up to a maximum amount of \$1,496,400, for documented out-of-pocket expenditures related to the capital investment in its Oklahoma City facility and operations. However, the reimbursement for the documented out-of-pocket capital investment will be in the form of job creation incentives paid on an annual basis in accordance with the process set forth in this Section 4. The Trust agrees to reimburse Boeing, at the end of each fiscal year, the amounts as provided below per new employee per year, based on the average number of full-time employees or employee equivalents, meeting the minimum required annual average salary and health insurance benefits criteria, as established herein, hired and employed by Boeing at the Oklahoma City Location during the preceding 12-month fiscal year period.

Year 1	\$1,750
Year 2	\$1,500
Year 3	\$1,250
Year 4	\$1,000
Year 5	\$1,000
Year 6	\$1,000
Year 7	\$1,000

The total amount of job creation incentive to be paid each fiscal year (until the maximum of incentive of \$1,496,400 is attained) will be determined under the following criteria and guidelines:

- a. The average number of full-time employees or full time employee equivalents, for the preceding fiscal year will be determined by averaging the monthly totals of full-time employees, earning an average annual salary required herein, and retained by Boeing for each month during the preceding year. The parties agree that in order for the employee to be counted in the monthly totals for averaging the employee must: 1) be considered a full time employee 2) be paid a minimum average annual salary, and 3) receive health insurance benefits substantially paid by Boeing, all as defined herein. The numbers will come from reports acceptable to the Project Manager, but may include documents submitted by Boeing to the Oklahoma Quality Jobs Program and the Oklahoma Employment Security Commission.
- b. The parties agree that in order to qualify for the job incentive the average salary, exclusive of any employment benefits, including the required health insurance benefits, to be paid by Boeing must be paid a minimum average annual salary of \$90,017.

- c. The parties agree that the threshold for the average number of full-time employees at the time of this agreement for the C-130 AMP Project is zero full-time employees in the Oklahoma City Location, who also receive healthcare benefits in addition to an annual salary or pay. (The threshold level is determined from the number of existing employees located in the State of Oklahoma.)
- d. Within 60 days following the end of the fiscal year Boeing is expected to submit an application for payment of the job-creation incentive to the City Manager and/or Project Manager. The application shall contain supporting details and documentation for the amount of the job-creation incentive being claimed. The documentation and information supplied should be sufficient to allow a reasonable person to ascertain with reasonable certainty the average number of full-time positions/employees, benefit enhanced, hired and retained by Boeing at the Oklahoma City Location on a monthly basis during the applicable preceding fiscal year.
- e. A full time position/employee (or full-time equivalent position) shall be a benefit enhanced salaried or hourly paid position that is filled for a minimum of 1,664 hours during the preceding fiscal year. (Minimum hours are determined by multiplying 32 hours per week x 52 weeks).
- f. Based upon the documentation supplied and/or requested, the Project Manager shall determine and verify the average number of full-time, benefit enhanced employees/positions retained and filled by Boeing during the preceding fiscal year. The determination shall be made within thirty (30) days after receipt of the application and supporting documentation from Boeing. The Project Manager shall inform Boeing of his or her determination.
- g. If there is a disagreement between the average number of full-time, benefit enhanced jobs claimed by Boeing in the application and the determination made by the Project Manager, the Project Manager shall meet and confer with Boeing's designated agent or agents and attempt to resolve the disagreement. However, the Project Manager shall have the final determination as to the average number of full-time positions filled and retained by Boeing or its Oklahoma City based affiliates and designees at the Oklahoma City location during the preceding fiscal year. The Project Manager shall not be unreasonable in making said determination and shall base said determination upon the documents required or requested under this Agreement. Provided as Attachment A to this Agreement is a spreadsheet detailing how the Project Manager will calculate the amount of annual reimbursement to Boeing.
- h. The amount of job-creation incentive to be paid will be determined by the average number of full-time, benefit enhanced positions for the preceding fiscal year, as determined by the Project Manager. The difference from that calculation is then multiplied by the amount as provided in Section 4.1 above to determine the amount of job-creation incentive to be paid to Boeing under this Agreement for the preceding fiscal year. The job-creation incentive should be paid within thirty (30) days after the determination has been made by the Project Manager.

- i. Part-time or temporary employees will not be included in the calculation.
- j. For purposes of this Agreement the initial job creation incentive for the preceding fiscal year shall be determined 30 days after receipt of documentation required in Section 5. Subsequent fiscal years incentives will be paid and based on the same timeframe.
- k. Nothing herein shall require Boeing to retain or employ any particular person or employee for any length of time, nor is any provision of this Agreement in anyway intended to interfere with Boeing's employment processes or procedures. The goal is determine the average number of new full-time positions, as defined herein, which are filled and retained during the preceding fiscal year, so that the total number of quality new jobs created under this Agreement can be determined.
- l. The reimbursement of the job creation incentive, as outlined herein, is conditioned upon the obligation that Boeing documents the minimum expenditure of \$1,496,400 in out-of-pocket capital investment expenditures as required by Sections 3.2 and 5.1. If said documentation is provided, the Trust will be obligated to pay the qualified job creation incentives, on a fiscal year basis until a maximum of \$1,496,400 in job creation incentives have been paid. Upon payment of \$1,496,400 in job creation incentives, the Trust's obligation to pay incentives shall end.
- m. Unless otherwise agreed in writing between the parties, Boeing will have seven (7) years after the execution of this Agreement to earn the job creation incentives provided by this Agreement. If Boeing fails to create and retain an adequate number of qualified employees, earning the minimum required annual salary, within the first seven (7) fiscal years after opening, the Trusts obligation to pay any job creation incentive shall cease.

SECTION 5. SUBMITTAL OF VERIFYING DOCUMENTS

5.1 Documentation for Verification of Minimum Out-of Pocket Expenditures Related to Expansion of Local Oklahoma City Facility and Operations.

Boeing is obligated to provide the Trust/City (Project Manager) with documentation supporting a minimum expenditure of \$2,800,000 in out-of-pocket expenses related to the rehabilitation, refurbishing, development, and/or equipping of its Oklahoma City facility and operations. This documentation shall be provided to the Project Manager no later than 30 days after the end of the fiscal year for which Boeing first request a job creation incentive.

5.2 Documentation for Verification of New Job Creation.

The documentation required Section 4.1(b) above, shall contain information allowing a reasonable person to ascertain with reasonable certainty the average number of full-time, benefit enhanced positions/employees filled and retained by Boeing at its Oklahoma City Location on a monthly basis during the preceding fiscal year. The Trust reserves the right to request additional information that may be necessary for the Trust to reasonably ascertain the average number of full-time positions filled and retained by Boeing. That documentation shall include the documentation submitted to the State of Oklahoma Quality Jobs Program, and any other reasonable documentation requested by the Project Manager necessary for the Trust/City to reasonably ascertain that average number for the preceding fiscal year. Additional documentation may include the Employer's Quarterly Contribution Reports filed by Boeing with the Oklahoma Employment Security Commission (redacted to delete employee social security numbers and/or other confidential information).

SECTION 6. MAXIMUM LOCAL INCENTIVE

The total amount of all economic development (job creation) incentives to be paid to Boeing by the Trust shall not exceed \$1,496,400.

SECTION 7. FINANCING AND APPROPRIATION REQUIREMENTS

7.1 Appropriation Requirements.

All or a portions of the payments promised hereunder, by the Trust, may be financed or funded by monies received from The City, a municipal corporation. Financing or funds received from The City will be subject to annual appropriation and encumbrances of revenues by the City Council of The City, as mandated by Okla. Const. Art. 10, § 26, and the Oklahoma Municipal Budget Act, 11 O.S. §§ 17-201, et seq. However, under no circumstances does or shall The City incur any financial obligation to Boeing under this Agreement. The City is simply a beneficiary of the Trust, and the Trust remains solely responsible for all financial obligations hereunder.

7.2 Cooperation by Boeing in Financing Options Available to The City and the Trust.

The Trust and/or The City may desire to finance or fund the financial obligations required under this Agreement with the proceeds from the issuance of bonds, or other financing instruments, including, but not limited to, bonds authorized by Article 10, § 35 of the Oklahoma Constitution and 62 O.S. § 801, et seq. In the event the Trust or The City decides to finance the incentives contemplated by this Agreement through the issuance of bonds or other financing instruments, Boeing agrees to cooperate and assist the Trust/City in any reasonable manner, which includes the submission of documentation or other support required to qualify this Economic Development Agreement for funding or financing under any financing mechanisms available to the Trust or City under the laws of the State of Oklahoma.

**SECTION 8.
NOTICES AND DEMANDS**

A notice, demand or other communication under this Agreement by either party to the other will be sufficiently given or delivered if dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and:

in the case of Boeing, is addressed (or delivered personally) to:

The Boeing Company
c/o Brian Laxton, D&GS Accounting
6001 S. Air Depot
Oklahoma City, OK 73135

in the case of the Trust, is addressed (or delivered personally) to:

James D. Couch, General Manager
200 North Walker, 3rd Floor
Oklahoma City, OK 73102

with copy to:

City Clerk for the City of Oklahoma City (Trust Secretary)
200 N. Walker, 2nd Floor
Oklahoma City, Oklahoma 73102

in the case of The City, is addressed (or delivered personally):

James D. Couch, City Manager
200 North Walker, 3rd Floor
Oklahoma City, OK 73102

with copy to:

City Clerk for the City of Oklahoma City
200 N. Walker, 2nd Floor
Oklahoma City, Oklahoma 73102

at such other address with respect to either such party as that party may from time to time designate in writing and forward to the other as provided in this Section.

SECTION 9

PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

9.1 Representations as to Project.

Boeing represents and agrees that their undertakings pursuant to the Agreement, are, and will be used, for the purpose of enhancing its Oklahoma City based facilities and operations, and development of new and additional job opportunities within the urban core of The City and not for speculation in land holding. Boeing further recognizes:

- a) The importance of the development of the office buildings and job enhancements to the general welfare of the community;
- b) The fact that a transfer of the ownership or stock in Boeing or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such stock or with respect to the identity of the parties in control of Boeing or the degree thereof, is for practical purposes a transfer or disposition of the property then owned by Boeing,

therefore, the qualifications and identity of Boeing, and its stockholders, or partners, whether general or limited, are of particular concern to the community and the Trust. Boeing further recognizes that it is because of such qualifications and identity that the Trust is entering into this Agreement with Boeing, and, in so doing, is further willing to accept and rely on the obligations of Boeing for the faithful performance of all undertakings and covenants hereby by it to be performed without requiring in addition a surety bond or similar undertaking for such performance of all undertakings and covenants in this Agreement.

9.2 Prohibition Against Transfer of Property and Assignment of Agreement.

For the foregoing reasons, Boeing represents and agrees for itself and its successors and assigns that:

- a) Except only: by way of security for, and only for (i) the purpose of obtaining financing necessary to enable Boeing or any successor in interest to the Oklahoma City Location, or any part thereof, to perform its obligations with respect to its obligations under this Agreement, and (ii) any other purpose authorized by this Agreement;

Boeing (except as so authorized) has not made or created, and that it will not, prior to the proper completion of its obligations under this Agreement, as certified by the Trust, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement, or any part thereof, or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the Trust.

- b) The Trust shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such approval that:
- 1) Any proposed transferee shall have the qualifications and financial responsibility, as determined by the Trust, necessary and adequate to fulfill the obligations undertaken in this Agreement by Boeing.
 - 2) Any proposed transferee, by instrument in writing satisfactory to the Trust and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the Trust, have expressly assumed all of the obligations of Boeing under this Agreement and agreed to be subject to all the conditions and restrictions to which Boeing is subject; provided, that the fact that any transferee of, or any other successor in interest whatsoever, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Trust) relieve or except such transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the Trust of or with respect to any rights or remedies or controls with respect to this Agreement; it being the intent of this, together with other provisions of the Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in the Agreement) no transfer of, or change with respect to, ownership in the Oklahoma City Location, or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Trust of or with respect to any rights or remedies or controls provided in or resulting from this Agreement that the Trust would have had, had there been no such transfer or change.
 - 3) There shall be submitted to the Trust for review all instruments and other legal documents involved in effecting transfer; and, if approved by the Trust, its approval shall be indicated to Boeing in writing.
 - 4) Provided, that in the absence of specific written agreement by the Trust to the contrary, no such transfer or approval by the Trust thereof shall be deemed to relieve Boeing, or any other party bound in any way by this Agreement from any of its obligations with respect thereto.

Notwithstanding anything to the contrary contained herein, Boeing shall be free to transfer any portion of its Oklahoma City Location, or any part thereof, without the prior written consent of the Trust, if (i) the transferee expressly assumes all outstanding obligations of Boeing under this Agreement and documentation of such assumption is provided to the Trust in a form acceptable to the Trust.

SECTION 10 REMEDIES AND TERMINATION

10.1 In General.

Except as otherwise provided in this Agreement, (in particular, Section 10.7 below) in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

10.2 Termination by Boeing.

In the event that:

- a) Boeing shall furnish evidence satisfactory to the Trust that it has been unable, after and despite diligent efforts, to continue expansion of its Oklahoma City Location and the creation of new quality jobs on a basis and on terms that would generally be considered satisfactory within the industry, and Boeing shall, after having submitted such evidence and if so requested by the Trust, continue to make diligent efforts for a period of sixty (60) days after such request, but without success, or
- b) The Trust or its Designee shall fail to perform any of its covenants or obligations to be performed hereunder, and any such failure shall not be cured within thirty (30) days after the date of written demand by Boeing;

then this Agreement, or the relevant portion thereof, may, at the option of Boeing, be terminated by written notice thereof to the Trust. Except for any right of reimbursement owed under this agreement, neither the Trust, nor Boeing shall have any further rights against or liability to the other under this Agreement with respect to the terminated portion thereof.

10.3 Termination by Trust.

Trust may terminate this Agreement in the event that:

- a) Boeing, in violation of this Agreement, which requires, among other things, the consent of the Trust to certain transfers, assignments:
 - 1) Boeing (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein, without the approval of the Trust; or
 - 2) There is any change in the controlling interest with respect to the identity of the parties in control of Boeing, which has not been approved by the Trust,

and, if any default or failure referred to in this Agreement shall not be cured within ninety (90) days after the date of written demand by the Trust; then this Agreement, and any rights of Boeing, or any assignee or transferee, in this Agreement, or arising therefrom with respect to the Trust, may, at the option of the Trust, be terminated by the Trust, in which event, Boeing (or assignee or transferee) nor the Trust shall have any further rights against or liability to the other under this Agreement.

- b) The City, for any reason, fails or refuses to appropriate and budget, on a fiscal years basis, sufficient funds from available funding sources to cover the financial obligations of the Trust under this Agreement.
- c) During any two consecutive fiscal year periods, Boeing fails or is unable to document an increase in the number of full time employees qualifying for the job creation incentive, over and above the number of qualified full-time employees existing at the beginning of the two-year period. This right of termination is only available to the Trust until such time that Boeing has added 232 new full-time employees above the Baseline number of employees. The parties recognize that this conditional right of termination is important to the Trust because the Trust has determined that it is obligated to use its limited resource to promote economic development and job growth within the community. The reason for this provision is that in the event Boeing is not able to reach its intended growth the Trust desires the option to redirect the resources committed by this Agreement to another project.
- d) In the event that Boeing fails to substantially create a minimum of 25 new jobs that meet qualifying criteria within twenty-four (24) months of the executed date of this Agreement.

10.4 Forced Delay in Performance for Causes Beyond Control of Party.

For the purpose of any of the provisions of the Agreement, neither the Trust, nor Boeing as the case may be, nor any successor in interest, shall be considered in breach of, or default in,

its obligations with respect to the obligations hereunder, or progress in respect thereto, in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight, embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the parties hereunder, as the case may be, shall be extended for the period of the forced delay as reasonably determined by the Trust; provided, that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such forced delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the forced delay.

10.5 Rights and Remedies Cumulative.

The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligations under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligations beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the party.

10.6 Party in Position of Surety with Respect to Obligations.

Boeing for itself and its successors and assigns, and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the ground of its (or their) being or having become a person in the position of a surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, any and all claims and defenses based upon extension of time, indulgence, or modification of terms of contract.

10.7 Termination by Operation.

This Agreement shall terminate one year following the date of the final payment of the job creation incentives by the Trust. The parties agree that for a period of one year following final payment of the required job incentive by the Trust that Boeing will maintain its C-130 Avionics Modernization Program (AMP) in Oklahoma City and that the Trust shall have the right to require specific performance during that one year period or may seek liquidated damages which the parties stipulate shall be \$100,000.

SECTION 11 GENERAL

11.1 Trust Representatives not Individually Liable.

No member, official, or employee of the Trust or the City shall be personally liable to Boeing, or any successor in interest, in the event of any default or breach by the Trust or for any amount which may become due to Boeing or successor on any obligations under the terms of the Agreement.

11.2 Equal Employment Opportunity.

Boeing, for itself and its successors and assigns, agrees that during this Agreement:

- a) Boeing will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Boeing will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Boeing agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Trust setting forth the provisions of this nondiscrimination clause.
- b) Boeing will, in all solicitations or advertisements for employees placed by or on behalf of Boeing, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- c) In the event of Boeing's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part.

11.3 Titles of Articles and Sections.

Any titles of the several parts and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The descriptive headings of the sections and subsections of this Agreement are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Agreement. The preamble "Whereas" clauses to this Agreement are essential elements of this Agreement.

11.4 Applicable Law, Severability and Entire Agreement.

This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma governing agreements made and fully performed in Oklahoma. If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement, or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the parties with respect to its subject matter, there being no terms, conditions, warranties or representations with respect to its subject matter other than that contained herein. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns.

11.5 Amendments to Agreement.

This Agreement may not be changed orally, but only by an agreement in writing and signed by the parties hereto. Changes in statutes and regulations relevant to the subject matter of this Agreement shall become part of the Agreement subject to the parties' right to terminate the Agreement if said statutes or regulation materially affect the responsibilities of the parties under this Agreement.

11.6 Third Parties.

Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other persons, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights express or implied, upon any other person.

11.7 No Partnership Created.

Boeing, Trust and The City expressly agree that the relationship hereby created is that of independent contractors and no other relationship is created or deemed to be created between the parties. This Agreement specifically does not create any partnership or joint venture between the parties hereto, or render any party liable for any of the debts or obligations of any other party.

11.8 Time Is of the Essence.

The parties understand and agree that time is of the essence with regard to all the terms and provisions of this Agreement.

11.9 Formalities and Authority.

The parties hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement.

11.10 Construction.

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. The rule of construction that a document is to be construed most strictly against the party who drafted the document shall not be applicable to this Agreement because all parties participated in the preparation of this Agreement. "Includes" and "including" are not limiting. References to articles, sections, and exhibits shall be to articles, sections, and exhibits of this Agreement unless otherwise indicated. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

11.11 Governing Laws, Construction and Enforcement.

This Agreement shall be construed and enforced in accordance with the laws and regulations of the State of Oklahoma, exclusive of its choice of law rules. Any litigation brought under this Agreement shall be conducted in the State of Oklahoma in State District Court in Oklahoma County or the Federal District Court for the Western District of Oklahoma. In the event of ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.

11.12 Representation of Boeing.

Boeing represents and warrants to the OCEDT and The City that Boeing is a duly organized and validly existing corporation and company, in good standing under the laws of the State of Oklahoma and that the undersigned representative has all requisite power and authority to execute and deliver this Agreement.

11.13 Compliance with Laws, Ordinances and Regulations.

Boeing, Trust and The City shall comply with all applicable existing federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the work and/or services provided by this Agreement.

11.14 Immigration Compliance.

The "Oklahoma Taxpayer and Citizen Protection Act of 2007," (Act) codified in part at 25 O.S. §§ 1312 and 1313 prohibits any public employer, including political subdivisions of the State from entering into a contract for physical performance of services within the State of Oklahoma, unless the contractor agrees to register and participate in the Status Verification System, as defined in the Act, to verify the work eligibility status of all new employees hired on or after July 1, 2008. If at any time during the term of this Agreement The City or OCEDT, in their sole discretion, determines that this Agreement must comply with the provisions of the Act,

Boeing agrees that it will complete and submit to the OCEDT an Immigration Affidavit, on a form submitted by OCEDT, stating that Boeing has registered with and will participate in the Status Verification System, as defined in the Act, to verify the work eligibility status of all new employees hired on or after July 1, 2008 to perform services on this agreement within the State of Oklahoma. Boeing agrees that it will timely complete and submit the Immigration Affidavit to OCEDT. Boeing's failure to timely complete and tender the Immigration Affidavit will be a basis for termination of the Agreement.

Boeing's statement in any Immigration Affidavit submitted pursuant to this section will be deemed to be incorporated into this Agreement and will be deemed to be material to the Agreement. Any intentional or material misrepresentation by Boeing in the Immigration Affidavit, or failure during the term of this Contract to comply with the Status Verification requirements, will be deemed to be a material breach of the Agreement for which the OCEDT, in its discretion, may withhold payments, and/or recover losses, expenses, and damages, and/or cancel, suspend or terminate the Agreement without liability upon the OCEDT for any losses, expenses, or damages incurred by Boeing, and will remain suspended, canceled or terminated until such time that said misrepresentation, or failure to comply, is corrected and compliance by Boeing is obtained and reinstatement approved by the OCEDT.

The Trustees of OCEDT and the City Council agree and consent that administration and compliance enforcement of this provision is hereby delegated to the Project Manager.

11.14 Counterparts.

This Agreement is executed in multiple counterparts, each of which shall constitute an original of this Agreement.

\\Apple\ft-admin\EconomicDevelopment\Boeing 2011\March 2011\Boeing EDA 05052011v4.docx

[Signatures on separate pages below]

[Signature Page for The Boeing Company]

THE BOEING COMPANY

By: Kevin Capellupo
President (or other authorized official)

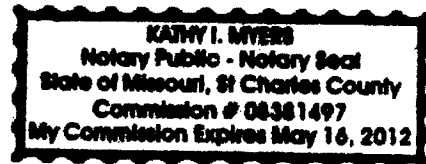
ACKNOWLEDGEMENTS

STATE OF MISSOURI,)
) ss.
COUNTY OF SAINT LOUIS)

Before me, the undersigned, a Notary Public in and for said County and State, on the 12th day of September, 2011, personally appeared Kevin Capellupo the President of The Boeing Company, to me known to be the identical person who executed the foregoing instrument and acknowledged to me that he or she executed the same as his or her free and voluntary act and deed, and as the free and voluntary act and deed of said corporation or entity for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

Notary Public # 08381497
My Commission Expires: May 16, 2012



[Signature Page for the Oklahoma City Economic Development Trust]

September 26, 2011

OKLAHOMA CITY ECONOMIC DEVELOPMENT TRUST,
a public trust

By: _____

Lateck Ripa
CHAIRMAN

ATTEST:

Maureen Berry
Secretary



REVIEWED as to form and legality.

Wiley L. Williams
Assistant Municipal Counselor

[Signature Page for The City of Oklahoma City]

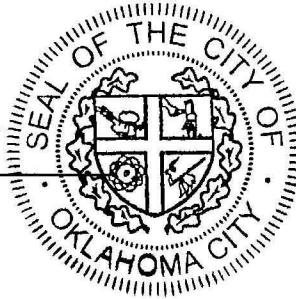
October 4, 2011

THE CITY OF OKLAHOMA CITY,
a Municipal Corporation

By: *Phil Cantu*
MAYOR

ATTEST:

Maureen Berry
City Clerk



REVIEWED as to form and legality.

Wiley L. Williams
Assistant Municipal Counselor

Attachment A

Oklahoma City Economic Development Trust Strategic Investment Program (SIP) Job Creation Reimbursement Worksheet - Example

Company Name: Boeing C-130

Maximum SIP Amount \$1,496,400

Start Date April 1, 2011

Expiration Date March 31, 2018

Year 1			
Quarter	Period	FTE	Salaries
Q1	04/11 - 6/11	102	\$2,510,475
Q2	7/11 - 9/11	145	\$3,605,063
Q3	10/11 - 12/11	185	\$4,460,813
Q4	01/12 - 3/12	225	<u>\$4,975,313</u>
			\$15,551,663
Average FTE		164	
Total Salaries		\$15,551,663	
Average Salary		\$94,827	
Per Job Payment		\$1,750	
Threshold (Yr 1)			Acceptable
Eligible Reimbursement			\$287,000
Remaining Eligible			\$1,209,400

Year 2			
Quarter	Period	FTE	Salaries
Q1	4/12 - 6/12	232	\$5,710,100
Q2	7/12 - 9/12	232	\$5,768,100
Q3	10/12 - 12/12	232	\$5,362,100
Q4	01/13 - 3/13	232	<u>\$5,710,100</u>
			\$22,550,400
Average FTE		232	
Total Salaries		\$22,550,400	
Average Salary		\$97,200	
Per Job Payment		\$1,500	
Threshold (Yr 2)			Acceptable
Eligible Reimbursement			\$348,000
Remaining Eligible			\$861,400

Year 3			
Quarter	Period	FTE	Salaries
Q1	4/13 - 6/13	232	\$5,710,100
Q2	7/13 - 9/13	232	\$5,652,100
Q3	10/13 - 12/13	232	\$5,594,100
Q4	01/14 - 3/14	232	<u>\$5,710,100</u>
			\$22,666,400
Average FTE		232	
Total Salaries		\$22,666,400	
Average Salary		\$97,700	
Per Job Payment		\$1,250	
Threshold (Yr 3)			Acceptable
Eligible Reimbursement			\$290,000
Remaining Eligible			\$571,400