

WAKE COUNTY

BUSINESS DEVELOPMENT GRANT AGREEMENT

Tier One Business Development Grant Special Consideration

This Business Development Grant Agreement (the “Agreement”) is made and entered into as of the ____day of _____, 2021, by and between APPLE INC., a business corporation incorporated in the state of California and authorized to transact business in the State of North Carolina (the “Company”) and WAKE COUNTY, North Carolina, a body politic and corporate and political subdivision of the State of North Carolina (the “County”). The County and Company may from time to time be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, the Local Development Act of 1925, as amended, (Article 1 of Chapter 158 of the North Carolina General Statutes) grants counties the authority to make appropriations for the purposes of aiding and encouraging the location or expansion of certain business enterprises in the county or for other purposes which the county’s governing body finds, in its discretion, will increase the population, taxable property base and business prospects of the county; and

WHEREAS, N.C. Gen. Stat. § 158-7.1(b) lists specific economic development activities which a county may undertake, which list is not exclusive; and

WHEREAS, in Spring 2018, the Company began discussions with the State of North Carolina (the “State”), and thereafter with the County, to explore the possibility of locating a research and development center in Wake County (the “Project”); and

WHEREAS, on April 19, 2021, the Board of Commissioners of the County met in closed session regarding the Company and its location possibilities and determined that (i) the Project would tend to increase the population, taxable property base and business prospects of the County, (ii) an incentive grant would encourage the Company to locate and provide jobs in the County, and (iii) it would be in the public interest to provide assistance as authorized by N.C. Gen. Stat. § 158-7.1 and approved the negotiation of a business development grant agreement for the Project; and

WHEREAS, the Company has decided to locate the Project within the County; and

WHEREAS, the Project is a Transformative Project as defined in N.C.G.S. 143B-437.51 because the Company shall hire no fewer than 3,000 new employees at average wages above 120% of the County average by December 31, 2033, and invest or cause to be invested no less than \$500,000,000 for acquisitions of tangible personal property and improvements to real estate related to the Project no later than December 31, 2033; and

WHEREAS, the Project is a Transformative Project as defined in N.C.G.S. 143B-437.51 because the Company shall maintain no fewer than 3,000 new employees at average wages above 120%

of the County average by December 31, 2043, and invest or cause to be invested no less than \$1,000,000,000 for acquisitions of tangible personal property and improvements to real estate related to the Project no later than December 31, 2043; and

WHEREAS, the Project is a Transformative Project as defined in N.C.G.S. 143B-437.51 because the Company shall maintain no fewer than 3,000 new employees at average wages above 120% of the County average by December 31, 2053, and invest or cause to be invested no less than \$1,500,000,000 for acquisitions of tangible personal property and improvements to real estate related to the Project no later than December 31, 2053; and .

WHEREAS, the State has awarded the Company a Job Development and Investment Grant (“JDIG”); and

WHEREAS, N.C. Gen. Stat. § 153A-449 authorizes the County to contract with and appropriate money to any person, association, or company in order to carry out the public purpose in which the County is authorized by law to engage; and

WHEREAS, the Board of Commissioners of the County found that the consideration that the County will receive, based on prospective tax revenues to be generated over a thirty-year period due to investment in the Project, will exceed the amount of the grant offered in this Agreement; and

WHEREAS, the Board of Commissioners of the County, following a public hearing on September 20 , 2021, approved the execution of a business development grant to the Company for the Project on the terms of this Agreement.

NOW, THEREFORE, in consideration of the reasons recited above, and the mutual covenants and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

- 1) Real Estate Improvements and Machinery, Equipment, Furniture and Fixture Acquisition. The Company shall purchase and/or make or cause to be made improvements at sites in Wake County, North Carolina chosen for the Project (the “Property”) and shall produce documentation for improvements which have been made to the Property and receipts showing proof of acquisitions of machinery, equipment, furniture and fixtures by the Company for use at the sites of the Project. The Property shall be improved in accordance with the following:
 - a) All construction undertaken, or caused to be undertaken, shall be or has been designed, constructed, and completed in accordance with applicable standards established by federal, State, local, and County regulations and laws; and
 - b) The County shall not be responsible for any aspect of the design or construction of the premises.
- 2) Performance by the Company. For purposes of this Agreement, the “Grant Year” is defined as each calendar year (January-December) the Company meets performance requirements within the time periods set forth below, which shall be measured consecutively beginning in

the first calendar year of qualification through the thirtieth (30) calendar year. The “Grant Period” shall be defined as thirty (30) consecutive calendar years to be measured from the first Grant Year. The first Grant Year shall be the first calendar year between the effective date of this Agreement and December 31, 2033 in which the Company applies for the Grant, the Company has paid or caused to be paid the ad valorem taxes for the Grant Year in question, and the Company has met the JDIG employment requirements, as set forth in Paragraph 2(b). The specified performance requirements and payment terms for the Grant are set forth in further detail as follows:

- a) Investment in Real Estate Improvements and Tangible Personal Property. The Company shall make, or cause to be made, investments for improvements to real estate and for acquisitions of tangible personal property (collectively, the “Investments”) in the County in connection with the Project totaling at least \$500,000,000 on or before December 31, 2033, totaling at least \$1,000,000,000 on or before December 31, 2043, and totaling at least \$1,500,000,000 on or before December 31, 2053.

For the purposes of this Agreement, the Company’s actual costs incurred for real estate purchases and/or leasehold acquisitions in association with the Project shall be included in the Investments calculation, provided they are incurred or improved during the Grant Period

- b) Employment. The Company shall, by December 31, 2034, employ in Wake County a minimum of 3,000 new full-time employees with an average annual wage of no less than \$187,000, which the Parties agree is at least 120% of the 2021 average annual wage for the County as determined by the North Carolina Department of Commerce’s Finance Center. Notwithstanding the foregoing, employment of the new employees shall align with JDIG’s annual incremental employment requirements for each individual Grant Year for which the Company requests a payment, as described in Paragraph 4(b), such that Company shall be deemed to have met Wake County’s employment requirement for the Grant Year if JDIG’s employment requirement is met in the Grant Year. The Company shall maintain or exceed the minimum JDIG job creation requirement for all years of the Grant Period beyond 2034. Telecommuting positions for employees residing outside of Wake County shall not be counted towards the employment requirement set forth in this section.

The Parties agree that for purposes of calculating the “annual wage” of an employee of the Company “wage” shall have the meaning it has for purposes of the North Carolina Department of Commerce’s Finance Center’s calculation of “average annual wage” and that such meaning is the gross wage subject to reporting to the Division of Employment Security of the North Carolina Department of Commerce.

The Parties agree that the term “new employee” as used in this Agreement means a full-time employee who represents a net increase in the aggregate number of employees employed by the Company in connection with the Project at any Property or facility in Wake County. A full-time employee is a person who is employed by the Company for at

least thirty-five (35) hours per week and whose wages are subject to withholding. The Company agrees to include residents of the County in recruiting for such job positions.

- c) Use. The Investments shall be made to accommodate a large-scale research and development facility and related facilities, buildings and improvements.
 - d) Payment of Taxes by Company. The County must receive confirmation from the Taxing Unit (Wake County Tax Administration) that the Company has paid, in full, the annual ad valorem taxes associated with the Property, including the Increased Assessment resulting from the Investments in the Project. In the event the Company has instituted a formal Property Tax Appeal contesting the assessment and has elected not to pay the annual ad valorem tax bill pending final disposition of the case, only the undisputed portion of the ad valorem tax bill actually paid to the County shall be counted towards the Increased Assessment.
- 3) Documentation from the Company. In connection with each request for reimbursement, the Company shall deliver to the County Manager:
- a) A performance letter in substantially the form of the attached Exhibit A (the “Performance Letter”), certifying that (1) the Company has taken the actions and met the requirements described in Section 2(a) and (b) of this Agreement as of the date of the Performance Letter, and (2) the Company qualifies for JDIG program monies for such Grant Year. If the Company does not meet all of the conditions required to be certified in the Performance Letter, the Company shall not qualify for a grant payment from Wake County for that calendar year.
 - b) Annual percentage by Grant Year of meeting Investment Benchmark period requirement,
 - c) Total Project Investments to date,
 - d) Upon the request of the County Manager, any other documentation as may be reasonably requested to confirm the facts in the Performance Letter.

To the full extent allowed by law, such requested evidence shall be kept confidential by the County and shall remain the property of the Company to be returned after the County’s review.

It is agreed that the County, through its auditors, shall have the right upon reasonable notice and during normal business hours, to inspect and audit the Company’s records pertaining to the value of the Investments made with respect to the Project. All records revealed by the Company to the County’s auditors shall remain confidential and may be used by the County only for audit purposes to the full extent allowed by law.

The Company acknowledges that it has been informed by the County that the County is required by law, upon request, to disclose “Public Records” as that term is defined by N.C.

Gen. Stat. §132-1. Notwithstanding the immediately preceding sentence, the County acknowledges that some or all of the information made available by the Company to the County pursuant to this Agreement may be exempt from disclosure as a “Public Record” pursuant to N.C. Gen. Stat. §§ 132-1.2 and/or 132-6(d), and that all such information may be proprietary. Some or all of the information made available to the County pursuant to this Agreement may be designated by the Company as confidential and as a trade secret at the time of disclosure to the County. The County, to the fullest extent allowed by state law, will hold such designated information as confidential. The County shall, if it receives a request for disclosure of any such information, notify the Company of such request so that the Company may defend any claims or disputes arising from efforts of others to cause such trade secrets to be disclosed as a Public Record, and the County shall refrain from making any such disclosures unless or until it (i) receives the Company’s written permission to do so; or (ii) is compelled to do so by the final order of a court of competent jurisdiction. The Company shall have the right to direct any litigation of such dispute and shall indemnify the County for any legal fees and expenses incurred by the County in opposing such request for disclosure. The Company acknowledges that the County has met the disclosure requirements set forth in N.C. Gen. Stat. § 132-1.11(b).

4) Payment of Grant.

- a) Upon the terms and conditions herein, the County agrees to partially reimburse the Company for the Investments that the Company makes or causes to be made in the Project in order to provide an incentive to the Company to make or cause such Investments and create such jobs within the County. A cash grant will be paid to the Company in an amount equal to a percentage of the additional County property tax revenue attributable to the value of the Investments as assessed by the County Taxing Unit (“Assessed Value”) as more specifically set forth in Section 4(c). Investments exempt from County property tax(es) shall not count towards Investments for the purpose of this Section.
- b) Once the Company has met the performance requirements set forth in Section 2 of this Agreement for the Grant Year in question and the Company has submitted the required documentation under Section 3, the Company shall be eligible to receive the grant payments described in this Agreement. The exact date of payments during each Grant Year shall be at the discretion of the County, but in any event shall be made during the period from January 1st through March 31st that immediately follow the County’s receipt of the Company’s Performance Letter.
- c) The amount of the grant payments to be paid by the County to the Company shall be fifty percent (50%) of the additional County property tax revenue attributable to the Assessed Value of the Investments as defined in 2(a) of this Agreement as of January 1 of the preceding calendar year, as verified by the County Manager. In no event shall the grant amount paid by the County in any Grant Year exceed the amount of ad valorem taxes actually paid in the preceding year for Investments in connection with the Project. The Parties agree that any payment of ad valorem tax made before January 6 following the due date of the tax shall be deemed to have been paid in the year the tax was due.

- d) Taking into consideration the amount and duration of the Company's Investment, the County shall make grant payments as defined in Subsection (c) over a period of thirty (30) years, contingent upon the Company meeting Investment Benchmarks as set forth herein:
- i. Investment Benchmark One. For the first ten (10) consecutive years of the Grant Period, the Grant shall be fifty percent (50%) of the additional County property tax revenue attributable to the Assessed Value of the Investments as defined in 2(a) of this Agreement as of January 1 of the preceding calendar year, as verified by the County Manager.
 - ii. Investment Benchmark Two. For the second ten (10) consecutive years of the Grant Period, the Grant shall be fifty percent (50%) of the additional County property tax revenue attributable to the Assessed Value of the Investments as defined in 2(a) of this Agreement as of January 1 of the preceding calendar year, as verified by the County Manager. The Assessed Value of the Investments counted towards Investment Benchmark One shall not be counted towards the Assessed Value of the Investments as defined in 2(a) of this Agreement for Investment Benchmark Two, the intent being to award the grant based on additional Investments only.
 - iii. Investment Benchmark Three. For the third ten (10) consecutive years of the Grant Period, the Grant shall be fifty percent (50%) of the additional County property tax revenue attributable to the Assessed Value of the Investments as defined in 2(a) of this Agreement as of January 1 of the preceding calendar year, as verified by the County Manager. The Assessed Value of the Investments counted towards Investment Benchmark One and Investment Benchmark Two shall not be counted towards the Assessed Value of the Investments as defined in 2(a) of this Agreement for Investment Benchmark Three, the intent being to award the grant based on additional Investments only.

Grant payments are to be made directly to the Company and mailed directly to the address below, or at such other address as shall be provided by the Company to the County in writing:

Apple Inc.
One Apple Park Way, MS: 29-2TX
Cupertino, CA 95014
Attn: Corporate Tax Department

- e) As a material condition of receiving the Grant, the Company must submit the Performance Letter required by Section 3 by April 30 of the year following the calendar year for which the Grant is requested. **Failure to submit the Performance Letter by April 30 shall disqualify the Company from receiving the Grant for the previous calendar year, and the County shall have no obligation to the Company for any reimbursement based on performance or payment in the previous calendar year.** The April 30 deadline may be extended for cause only with the advance consent of the Board of Commissioners.

5) Remedies for Company's Failure to Meet Obligations. In order to ensure that the public benefits from this incentive will be secured, it is a requirement that all or part of this economic development incentive will be forfeited if the Company does not fulfill its obligations under N.C.G.S. Ch 158 *et seq*, this Agreement, or both. Therefore, the parties agree to each of the following provisions:

- a) This Agreement and the expenditure of County funds under this Agreement is expressly contingent upon the Company achieving the performance requirements during each "Grant Year" and over the "Grant Period" as defined herein.
- b) If the Company fails to qualify for the Grant during Investment Benchmark One by failing to satisfy the provisions set forth in Section 2 of this Agreement, no Grant shall be paid by the County and there shall be no recapture. However, once the first Grant Year is triggered during Investment Benchmark One and the Company fails to qualify for the Grant in any subsequent year of the Investment Benchmark One Period, the County shall be entitled to a 20% recapture of any Grant paid in the preceding Grant Year.
- c) In the event that Company fails to qualify for the Grant during any Grant Year included in the Investment Benchmark Two or Three, by failing to meet the base Investment requirement or the employment requirements for that particular Investment Benchmark period, the County shall be entitled to recapture from the Company an amount equaling 20% of the total Grant paid to Company during the preceding Grant Year.

The Company shall tender any sums demanded by the County pursuant to this Section in cash within sixty (60) days of demand by the County.

- 6) State and Local Incentives. This Agreement is expressly contingent on the Company's ability to qualify for funds from the State of North Carolina's part of the JDIG program. Company shall not qualify for County Grant payments in any years of the Grant Period in the event that in such year the Company does not qualify for the JDIG program monies. This contingency only applies in those years when funds are available to the Company from the JDIG program.
- 7) Amendments to Agreement. This Agreement may be modified or amended only with the mutual written consent of the Parties.
- 8) Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their heirs and successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.
- 9) Entire Agreement. This Agreement contains the entire agreement of the Parties and there are no other representations, inducements, or other provisions other than those expressed in this writing. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. All changes, additions, or deletions to this Agreement must be in writing and signed by all Parties.

It is specifically understood and agreed that the Company will be subject to applicable County ordinances, policies, procedures, and other regulations.

- 10) Laws of North Carolina to Control This Agreement. The Parties agree that this Agreement is to be controlled by the laws of the State of North Carolina.
- 11) Jurisdiction and Venue. Any controversy or claim arising out of this Agreement shall be settled by an action initiated in the appropriate division of the General Court of Justice in Wake County, North Carolina.
- 12) Termination. Except as otherwise provided herein, this Agreement shall terminate on December 31st of the last year in which the County makes grant payments to the Company under this Agreement.
- 13) Assignment. With the consent of the County which shall not be unreasonably withheld provided that the Investment and Employment objectives of this Grant can be met by the Assignee, the Company may assign all or part of its rights, benefits, and/or obligations under this Agreement to one or more Affiliates designated by the Company; provided that no such assignments shall relieve the Company of its obligations or Company specific performance requirements under this Agreement which are a condition of County Grant Funding. For the purpose of this section, an Affiliate means the Company or any other entity that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

ATTEST:

WAKE COUNTY

David Ellis
County Clerk

By: _____
Matthew M. Calabria
Chair, Board of Commissions

Approved as to Form:

Scott Warren
Wake County Attorney

APPLE INC.

By: _____
Name: _____
Its: _____

Exhibit A

[Apple Inc. Corporation Letterhead]

[date]

County Manager
Wake County
P. O. Box 550
Raleigh, NC 27602

Business Development Grant Agreement dated [],: Performance Letter

Dear Sir/Madam:

Section 3 of the Business Development Grant Agreement between Wake County and Apple Inc. dated [], 2021 (the “Agreement”) requires the Company to deliver a Performance Letter to the County Manager in connection with each request for reimbursement for the Investments that the Company makes or causes to be made in the Project described in the Agreement.

(Terms used in this letter have the meanings that such terms have in the Agreement.) The Company hereby certifies that:

- 1) The Company made or caused to be made investments for improvements to real estate and for acquisitions of tangible personal property in the County in connection with the Project on or before December 31, 20XX in accordance with Section 2(a) of the Agreement;
- 2) The Company has paid in full its ad valorem taxes to the County for tax year;
- 3) As of December 31, [20], the Company employed [] new employees, in accordance with Section 2(b) of the Agreement;
- 4) As of December 31, [20], the Company employed [] total employees;
- 5) The Investments for which this request is made have been completed;
- 6) The Company qualifies for a JDIG payment for the Grant Year.

The Company respectfully requests reimbursement in the amount of \$_____, the amount determined by the County Tax Administrator in accordance with Section 4 of the Agreement.

Sincerely yours,

[name] [title]