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**CITY OF SAN DIEGO**  
**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

BY AND BETWEEN

**THE CITY OF SAN DIEGO,**  
A CALIFORNIA MUNICIPAL CORPORATION, AS CITY

AND

**ILLUMINA, INC.,**  
A DELAWARE CORPORATION, AS COMPANY

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**CITY OF SAN DIEGO**  
**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

THIS CITY OF SAN DIEGO ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 ("Execution Date") by and between THE CITY OF SAN DIEGO, a California municipal corporation ("City"), and ILLUMINA, INC., a Delaware corporation ("Company"). City and Company may be referred to collectively as the "Parties" and individually as a "Party."

**RECITALS**

The Parties enter into this Agreement with reference to the following circumstances:

A. The Company currently maintains its headquarters, and facilities for administration, manufacturing and sales, in the City of San Diego. The Company also operates manufacturing and sales sites in Hayward, CA; and Madison, WI; as well as at a number of sites outside of the United States.

B. The purpose of this Agreement is to provide certain incentives and guarantees to Company to create or retain certain jobs in the City of San Diego. (collectively, "Business Activities").

C. City wishes to provide Company with incentives to maintain and increase its business activities that are likely to result in substantial public benefits to the City, including the increase of Local Sales Tax and Local Use Tax revenues for the City.

D. The Company is committed to retaining its presence in the City of San Diego, and to creating or retaining a certain number of jobs in the City of San Diego.

E. City wishes to encourage Company's maintenance and growth of Business Activities because City expects that Business Activities will promote the stability and growth of City taxes and other revenues, further the City's economic development, particularly in the manufacturing sector, and promote a sound and healthy local economy.

**TERMS AND CONDITIONS**

**NOW, THEREFORE, FOR VALUABLE CONSIDERATION**, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. DEFINITIONS**

For purposes of this Agreement, and in addition to certain terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings:

- 1.1 "Benchmark Year" means the period time equal to the last four (4) calendar quarters, prior to the Execution Date of the Agreement, for which Company is

required to file a State, Local and District Sales and Use Tax Return with the California State Board of Equalization.

- 1.2 **“City’s Sales and Use Tax Contractor”** means any contractor under contract to City to perform various functions related to City’s enforcement of San Diego Municipal Code sections 32.50 through 32.59.
- 1.3 **“Company’s Taxable Products”** means all taxable personal property subject to the Bradley-Burns Uniform Local Sales and Use Tax Law (Cal. Rev. & Tax. Code §§ 7200-7212, 7221-7226).
- 1.4 **“Full-Time Equivalent Position”** means a position of employment at which an employee is expected to work no fewer than 2,080 hours during any consecutive 365-day period of time, inclusive of paid sick days or vacation days.
- 1.5 **“Governmental Rule”** means any law, statute, or San Diego Municipal Code provision, as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder.
- 1.6 **“Local Sales Taxes”** means the taxes imposed pursuant to and governed by San Diego Municipal Code sections 32.52 through 32.52.6.
- 1.7 **“Local Use Taxes”** means the taxes imposed pursuant to San Diego Municipal Code sections 32.53 through 32.53.4.
- 1.8 **“Manufacturing Job”** means a filled Full-Time Equivalent Position of employment within Company’s payroll the primary purpose of which is to assemble, evaluate, fabricate, inspect, label, package, process, repair, test, or treat, raw materials, components, finished or semi-finished parts, or other materials to otherwise add value to tangible personal property which will be sold at retail or at wholesale, or used internally to produce tangible personal property which will be ultimately sold at retail or at wholesale.
- 1.9 **“Person”** means any natural person, corporation, partnership, firm, association, trust, unincorporated organization, governmental authority or any other legal entity whether acting in an individual, fiduciary or other capacity.
- 1.10 **“Principal Place of Business”** means the place of business where sales transactions, and principal negotiations of sales transactions, occur for the purposes of the allocation of the local Bradley Burns Uniform Local Sales and Use Taxes imposed pursuant to California Revenue and Taxation Code § 7205 and as described in Regulation 1802, as promulgated by the California State Board of Equalization.
- 1.11 **“State, Local and District Sales and Use Tax Return”** means a form prescribed by the California State Board of Equalization for the calculation and reporting of

sales and use tax liabilities which result from operating a business within the State of California, as applicable.

- 1.12 **"Sales Force"** means the sum total of all positions of employment or job classifications within Company's payroll, the primary purpose of which is the sale or principal negotiations of the sale of Company's Taxable Products.
- 1.13 **"Sales Force Job"** means a Full-Time Equivalent Position of employment within Company's Sales Force.
- 1.14 **"Term"** shall mean the term of this Agreement as described in Section 3.

## 2. TAX REBATES

2.1 Eligibility Requirements. The Parties agree that the maintenance and growth of tax revenue generated by Company and received by City as a result of Company's business activities is central to this Agreement. Accordingly, to be eligible to receive the tax rebates described in this Agreement, Company shall fulfill all of the following eligibility requirements:

(1) Business Activities. Company shall maintain and increase the Business Activities that are likely to result in the increase of Local Sales Tax, and Local Use Tax revenues for the City. Such activities include, but are not limited to, the following:

(a.) Job Creation and Retention. During the Term of this Agreement, Company shall (i) create or retain all manufacturing jobs existing in the City of San Diego as of the Execution Date; and (ii) make commercially reasonable efforts to create Sales Force Jobs, or retain at least the same number of Sales Force Jobs, located in the City of San Diego as of the Execution Date.

(b.) Principal Place of Business. Company will maintain 5200 Illumina Way as its "principal place of business" within the meaning of California State Board of Equalization Regulation 1802 and will report all of its California local sales taxes to City in accordance with Regulation 1802 for the duration of any agreement, less any local sales taxes in an amount equal to those sales taxes appropriately reported to another jurisdiction in the State of California, to which Company reported sales taxes during any one calendar quarter of the Benchmark Year in any given quarter following execution of this Agreement. Company shall not take any action which could reasonably result in a reduction of Local Sales Tax or Local Use Tax to the City of San Diego, or a reduction of Local Sales Tax or Local Use Tax which City could reasonably assume would be reported to the City of San Diego, excepting therefrom any future tax revenue reported to another jurisdiction as described above.

Company will provide information, as commercially reasonable, to City, from time to time in order to implement the terms of the Agreement, including completed employment surveys, in the format of Exhibit 1, certifying the existence of Company's Manufacturing

Jobs and Sales Force Jobs in the City of San Diego as of the Execution Date within sixty (60) days after the Execution Date, and within sixty (60) days after each anniversary of the Execution Date during the Term of this Agreement.

Compliance with the above eligibility requirements shall not be required of Company to the extent that such compliance would result in the reduction of tax revenue reported as of the Execution Date to another jurisdiction in the State of California, to which Company reported sales taxes during any one calendar quarter of the Benchmark Year.

2.2 Calculation and Payment of Tax Rebates. City shall provide tax rebates to Company in the maximum aggregate amount of \$1,500,000 (one million five hundred thousand dollars) ("Rebate Cap"), so long as Company continues to comply with the eligibility requirements set forth in Section 2.1 above. The tax rebate amount shall accrue interest, until fully paid, in accordance with Section 2.3 below, and shall be subject to potential reduction in accordance with Section 4.2 below. The tax rebates shall include:

2.2.1 Local Use Tax. 100% of the Local Use Taxes paid by Company on or after January 1, 2015 in connection with the purchase of taxable tangible personal property placed into service within the City of San Diego, as long as such tax, or equivalent tax revenue, is reported and allocated to the City.

2.2.2 Sales Tax. 70% of the Local Sales Taxes, or equivalent tax revenue, paid by Company and reported to the City in excess of the Local Sales Taxes received by the City in the Benchmark Year immediately prior to the Execution Date, less any amount that should have been reported to another taxing jurisdiction to which Company reported sales taxes during any one calendar quarter of the Benchmark Year, in accordance with Regulation 1802, for any period of time during which Company maintained a physical presence in that taxing jurisdiction.

2.3 Timing of Rebate Payment. Subject to the provisions of this Section 2.3, City shall pay the tax rebates to Company, in an amount not to exceed the Rebate Cap, in a single lump sum payment. Before making this lump sum payment, City must confirm that Company has earned the entirety of the tax rebates. Company must submit a written request for the lump sum payment, together with a copy of any supporting documentation, including the documentation described in Section 2.4 below and any other documentation reasonably requested by City. Company's written request for the lump sum payment may be submitted at any time during the Term. The amount of the tax rebates shall accrue three percent (3%) interest, compounded annually. The interest shall accrue only on any portion of the tax rebate amount that Company has earned within any fiscal year (July 1 through June 30), and the interest shall begin accruing on July 1 of the fiscal year immediately following the fiscal year in which the Company has earned the applicable portion of the tax rebate amount.

- 2.4 Verification of Tax Revenue. No tax rebate payment will be made by City to Company until City has verified receipt of taxes paid to the California State Board of Equalization ("BOE"). City shall have at least six (6) months following the receipt of the documentation from Company to verify the allocation and receipt of local taxes. City will make commercially reasonable efforts to verify its receipt of local taxes using City staff, the City's Sales and Use Tax Contractor, and other resources as deemed necessary and appropriate by City.
- 2.5 Documentation of Taxes Paid. The documentation required by City from Company prior to payment of tax rebates pursuant to Section 2.3 includes the State, Local and District Sales and Use Tax Return, copies of any receipts, cancelled checks, and similar documents provided to the BOE or relevant documents provided by the BOE.
- 2.6 Reduction of Tax Rebate Amount. The amount of any tax rebate payable to Company pursuant to Section 2.3 shall be reduced by the amount by which any Local Sales Taxes or Local Use Taxes are reallocated from the City by the BOE if such reallocation reduces the basis upon which the tax rebate would otherwise be paid.
- 2.7 Overpaid Tax Rebate. The amount of any tax rebates paid pursuant Section 2.3 shall be returned by Company to City in an amount equal to any Local Sales Taxes or Local Use Taxes that are reallocated from the City by the BOE if such reallocation reduces the basis upon which the tax rebates would otherwise be paid.

### 3. **AGREEMENT TERM**

The Term of this Agreement shall be the sooner of either i) ten (10) years, commencing on the Execution Date and expiring at 11:59 p.m. Pacific Time on the last day of the Term; or ii) the date upon which City provides payment to Company in the amount of the Rebate Cap pursuant to Section 2.3. If City owes any outstanding payment obligation as of the date of expiration of the Term, and provided that Company has submitted a timely request for payment in accordance with Section 2.3 above, City's payment obligation shall survive the expiration of the Term for a period of two (2) years. If the Term expires in accordance with Section 3 (ii), Company will use commercially reasonable efforts, consistent with the development and growth of its businesses, to continue to comply with all obligations identified in Section 2.1 of this Agreement (with the exception of the reporting requirements under section 2.1, which shall expire), which shall remain in full force and effect for a total of ten (10) years commencing on the Execution Date.

### 4. **LACK OF COMPLIANCE BY COMPANY**

- 4.1 Lack of Compliance. Company shall be deemed to be not in full compliance with the tax rebate eligibility requirements set forth in Section 2.1 above if any of the following occurs:

4.1.1 During the Term of this Agreement, Company fails to create or retain

Manufacturing Jobs existing in the City of San Diego as of the Execution Date.

4.1.2 During the term of the Agreement, Company fails to maintain 5200 Illumina Way as its "Principal Place of Business" as described in Section 2.1 above.

4.2 Consequences. If Company fails to comply with the eligibility requirements at any time, beyond any cure period (if applicable), or fails to comply with any other material provision of this Agreement at any time, beyond any cure period (if applicable), then the following adjustments shall be made to the tax rebate:

4.2.1 A Manufacturing Job not retained shall result in the reduction of the Rebate Cap by \$15,000 per lost Manufacturing Job.

4.2.2 Any failure to comply with Section 2.1 above may result in the adjustment of the Rebate Cap to zero.

## 5. **DEFAULT BY CITY**

City shall be in default of this Agreement if any of the following occurs:

5.1 City fails to make any tax rebate payment required under this Agreement within ninety (90) days following written notice thereof from Company; or

5.2 City materially breaches any of its obligations under this Agreement, other than those requiring payment to Company, and fails to cure the breach within ninety (90) days following written notice thereof from Company, or if not curable within ninety (90) days, fails to commence to cure the breach within ninety (90) days and diligently pursue the cure to completion.

## 6. **GENERAL PROVISIONS**

6.1 Notice. Notice as referenced herein shall be deemed sufficiently given if made in writing and dispatched by any of the following methods to the addresses of the Parties set forth in this Section 6.1: (i) registered or certified mail, postage prepaid, return receipt requested (in which event, the notice shall be deemed delivered on the date of receipt thereof); (ii) electronic facsimile transmission, followed on the same day by delivery of a "hard" copy via first-class mail, postage prepaid or (iii) personal delivery, including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service (in which event, the notice shall be deemed delivered on the documented date of receipt).

CITY OF SAN DIEGO  
C/O Economic Development Department  
1200 Third Avenue, Suite 1400  
San Diego, CA 92101

Attn: Russ Gibbon  
619-236-6350  
(fax) 619-533-3219  
rgibbon@sandiego.gov

ILLUMINA, INC.  
5200 Illumina Way  
San Diego, CA 92122  
Attn: Leizl Jones, w/copy to Sheila Jacobs, Esq.  
858-202-4500  
ljones@illumina.com

- 6.2 Non-Discrimination Requirements. Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Company shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Company understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, or other sanctions.
- 6.3 Waivers. The failure by either Party to enforce at any time any provision or condition of this Agreement shall not be construed to be a waiver of such provision or condition contained herein or a waiver of any subsequent breach or violation of the same or any other provision or condition, nor in any way to affect the validity of this Agreement or any part hereof or the right of a Party to thereafter enforce each and every such provision or condition. A waiver under this Agreement must be in writing and state that it is a waiver. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.
- 6.4 Confidentiality. City shall keep any and all proprietary and confidential information and data provided by Company under this Agreement strictly confidential to the extent permitted by law. City will use information provided by Company pursuant to this Agreement only for purposes within the scope of this Agreement. Company shall clearly mark or otherwise identify in writing all information it considers to be proprietary and confidential at the time it is delivered to City. The confidentiality obligation under this section shall not apply to: (a) information which is already public information or which is otherwise available to the general public; (b) information received from a third party without a similar confidentiality restriction who is lawfully in possession of the information and who has the lawful right to disclose it; (c) information that is already in City's possession prior to receiving it from Company; or (d) information delivered by Company to City and not marked or otherwise identified as proprietary and confidential at the time it was delivered. Company shall



defend, at Company's expense, any legal actions or challenges seeking to obtain from City any information requested under the California Public Records Act withheld by City at Company's request. Furthermore, Company shall indemnify City and hold it harmless for any claim or liability, and defend any action brought against City, resulting from City's refusal to release information requested under the Public Records Act withheld at Company's request.

- 6.5 Indemnification. Company shall protect, defend, indemnify, and hold City, its officers, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Company's officers, employees, agents, contractors, invitees and guests, which arise out of or are directly or indirectly connected with this Agreement, including without limitation any claims, assessments, fines, and penalties arising from or connected with Company's failure to comply with any provision of this Agreement; provided, however, that Company's duty to indemnify and hold harmless shall not include any established liability arising from the gross negligence or willful misconduct of City, its elected officials, officers, representatives, agents and employees.
- 6.6 Local, State and Federal Laws. Company hereby agrees to carry out Business Activities in conformity with all applicable federal, state, and City laws.
- 6.7 Termination. Other provisions of this Agreement and its Effective Date notwithstanding, Company may, at its sole discretion, terminate this Agreement by providing notice in writing to City.
- 6.8 Reporting and Notification Requirements. Consistent with San Diego Municipal Code section 22.4225(a), Company, including all Company's subcontractors, sublessees, and concessionaries, as applicable, are subject to the terms of Chapter 2, Article 2, Division 42 ("Division") and all regulations and rules promulgated under this Division.
- 6.9 Successors and Assigns. This Agreement shall be binding upon the Parties' successors and assigns. Company shall not assign this Agreement or any right or obligation hereunder except that it may so assign to its immediate or ultimate parent, or to a directly related corporate or business entity, by providing notice to City. There shall be no third-party beneficiaries, nor any holders of any lien interests in, Company's rights under this Agreement.
- 6.10 Authority to Contract. Each individual executing this Agreement on behalf of another Person represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such Person in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such Person in accordance with its terms. Each Person executing this Agreement on behalf of

another Person comprising an entity and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

- 6.11 Interpretation. In this Agreement, unless a clear contrary intention appears: (a) the singular includes the plural and vice versa; (b) a reference to any Person includes such Person's successors and assigns, but in the case of a Party, only if and as such successors and assigns are allowed by this Agreement; (c) reference to any gender includes the other gender; (d) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (e) reference to any Governmental Rule; (f) reference to any Section means such Section of this Agreement, and references in any Section or definition to any clause means such clause of such Section or definition; (g) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof or thereof; (h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (i) relative to the determination of any period of time, "from" or "after" means "from and including," "to" means "to but excluding" and "through" means "through and including."
- 6.12 Titles and Headings. Titles and headings in this Agreement are inserted for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement.
- 6.13 Conflict of Interest Laws. Company is subject to all federal, state and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090 through 1099 and 81000 through 81016.
- 6.14 Entire Agreement. This Agreement (including the exhibits hereto, which are integral parts of this Agreement) supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties or their representatives. This Agreement may not be modified except by the written agreement executed and delivered by both Parties.

[remainder of this page intentionally left blank]

[signatures on following page]

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Execution Date.

ILLUMINA, INC.,  
A Delaware corporation

Date: 7/9/2014

BY: Jay Flatley  
Name: Jay Flatley  
Title: Chief Executive Officer

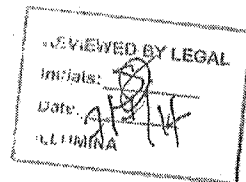
Date: \_\_\_\_\_

THE CITY OF SAN DIEGO,  
a California municipal corporation

BY: \_\_\_\_\_  
Name: Kevin Faulconer  
Title: Mayor

*Approved as to form and legality:*  
JAN I. GOLDSMITH, City Attorney

BY: \_\_\_\_\_  
Name: Daphne Z. Skogen  
Title: Deputy City Attorney



**Exhibit 1**  
**ILLUMINA, INC. – MANUFACTURING AND SALES FORCE JOBS**  
**EMPLOYMENT SURVEY**

<i><b>BUSINESS ACTIVITY INFORMATION</b></i>	
<i><b>(to be completed within sixty (60) days of the Execution Date and each anniversary of the Execution Date)</b></i>	
Business Name:	Illumina, Inc.
Employment Address:	5200 Illumina Way San Diego, CA 92122
Employment Address:	9440 Carroll Park Dr. San Diego CA 92121

Full-Time Equivalent Position Manufacturing Jobs (List Titles/Descriptions) currently filled by Company at address(s) above	Job Compensation Type (annual wages/salary)		
	Low-Wage	Middle -Wage	High -Wage
	Under \$37,500	\$37,500 - \$62,500	Over \$62,500
Manufacturing Jobs (by Job Type)			
Total Manufacturing Jobs (all types)			
Full-Time Equivalent Position Sales Force Jobs (all types)			
<b>Total Manufacturing and Sales Force Jobs</b>			

I hereby certify that Illumina, Inc. employs the job positions listed above at the locations listed above.

\_\_\_\_\_  
 Director of Human Resources (print name)

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_