CITY OF AUSTIN / ADVANCED TECHNOLOGY DEVELOPMENT FACILITY, INC.,

CHAPTER 380

ECONOMIC DEVELOPMENT AGREEMENT

This Chapter 380 Economic Development Agreement ("Agreement") is made and entered into by and between ADVANCED TECHNOLOGY DEVELOPMENT FACILITY, INC., a Delaware corporation, its successors and assigns ("Owner") and the CITY OF AUSTIN, TEXAS, a home rule city and municipal corporation ("City"), and is effective as of 1 January 2005, ("Effective Date").

RECITALS

WHEREAS, the City has adopted Ordinance No. 040902-5, attached as Exhibit "A" ("Ordinance"), establishing and authorizing the City Manager to make economic development grants to Owner in recognition of the positive economic benefits to the City through Owner's operations to be located at 2706 Montopolis Drive, Austin, Texas (the "Facility"), which operations are anticipated to cause to be created at least 100 additional employment positions when the Facility is fully operational (the "Project"), and that will promote state and local economic development and stimulate business and commercial activity in Austin; and

WHEREAS, the Facility will be used by Owner to develop prototypes of advanced technology inventions and engage in fee-for-service activities with third parties such as wafer processing services and custom-funded research and development projects; and

WHEREAS, certain existing equipment will be transferred by SEMATECH, Inc. ("SEMATECH") to Owner, and Owner intends to invest in capital equipment at the Facility with a market value of an additional $100 million over the next five years; and

WHEREAS, Owner will maintain existing SEMATECH Employment Positions that are transferred to Owner, and will cause to be created a minimum of an additional 100 Employment Positions within the next five years; and

WHEREAS, the City desires to offer incentives to Owner that will enable Owner during the term of this Agreement to establish and maintain the Facility in Austin and will cause to be created new Employment Positions in a manner proposed by Owner;

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

1. Authority. The City's execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and the Ordinance and constitutes a valid and binding

obligation of the City. Owner's execution and performance of this Agreement constitutes a valid and binding obligation of Owner in the event Owner proceeds with the development of the Facility. The City acknowledges that Owner is acting in reliance upon the City's performance of its obligations under this Agreement in making its decision to commit substantial resources and money to renovate and update the Facilities and update the equipment and components thereof.

2. Definitions.

"Chapter 380 Payment" means the amount paid by the City to Owner under the Program pursuant to paragraph 5(a) of this Agreement.

"Effective Date" is the effective date stated above.

"Employment Positions" means regular, full-time Employment Positions within the Owner's operation and located at the ATDF Facility, including non-employee researchers. Positions that are not full-time may be aggregated to count as equivalent full-time positions.

"Facility" means an advanced technology development facility, that is co-located with SEMATECH at 2706 Montopolis Drive, Austin, Texas.

"Project" means the activities to be undertaken and performed by Owner at or in connection with the Facility.

"Program" means the economic development program for the Project established by the City pursuant to Texas Local Government Code Chapter 380 and under the Ordinance to promote local economic development and stimulate business and commercial activity within the City.

3. Term. This Agreement shall become enforceable upon full execution by the City and Owner and shall be effective as of the Effective Date stated above. This Agreement shall terminate twelve years after the Effective Date, unless extended by mutual agreement of the parties or earlier terminated under the terms of this Agreement.

4. Owner Obligations. In consideration of the City's establishment of the Program, if Owner proceeds with the Project and accepts the Chapter 380 Payments from the City pursuant to this Agreement, Owner agrees that the following performance guidelines shall be met:

   a. Facility Ownership and Control. The parties recognize that the University of Texas owns the property where the Facility is located and SEMATECH, Inc. leases the property from the University of Texas. Owner occupies the premises as a subtenant of SEMATECH, Inc. Therefore, Owner does not have full control of the Facility and shall not be found to be in default of any of the obligations of this Agreement if SEMATECH, Inc. or the University of Texas take actions related to the Facility or the premises outside of the Owner's control which render Owner unable to comply with the terms of this Agreement. In such event, the City and

Owner may terminate or renegotiate this agreement; however, ATDF shall use best efforts to obtain other lease space in the City of Austin for the Project.

b. Employment Opportunities. By January 1, 2009, at least one hundred (100) Employment Positions, in addition to the number of ATDF Employment Positions maintained by SEMATECH as of January 1, 2004, which number was 225, will have been created and added at the Facility, for a total of 325. During the term of this Agreement, Owner shall make available to the City upon reasonable request records establishing the number of employees employed at the Facility. Nothing in this Agreement shall preclude or impair Owner or SEMATECH, Inc. from employing persons for such Employment Positions on an at-will basis.

If, after January 1, 2009, Owner maintains at least 85 but less than 100 additional Employment Positions during any year for which Owner is entitled to Chapter 380 Payments under this Agreement, then, as a penalty, annual rebates of City taxes due to Owner as Chapter 380 Payments shall be reduced as follows:

> The City shall pay a percentage of the total Ad Valorem Tax (based on the incremental real property tax, and the business personal property tax, as defined in 5.a below) calculated as follows:
>
> The product of a fraction having a numerator being the actual number of additional Employment Positions for that year and a denominator being 100, times the Ad Valorem Tax as defined in Sections 5.a below. As an example, should Owner maintain 90 Employment Positions in any year after 2008, the amount of the Chapter 380 payment for that year would be 90% (90/100) of the Ad Valorem Tax, instead of the full 100% had 100 Employment Positions been maintained.

The number of Employment Positions must be maintained by Owner for the entire calendar year to qualify for Chapter 380 Payments. If, after January 1, 2009, the number of Employment Positions maintained by Owner falls below 85, then Owner shall have a period of 60 days to reestablish a minimum of 85 Employment Positions. If after such 60 day period Owner has not reestablished 85 Employment Positions at the Facility, then such event shall be cause for automatic termination of this Agreement under Section 4.g, in which case the provisions of Section 8 do not apply.

If Owner elects not to proceed with the Project prior to January 1, 2009, Owner shall reimburse City for all Chapter 380 payments paid by City, in accordance with Section 13, "Termination."

c. Investment. Owner will invest or cause to be invested with an initial market value of at least $100,000,000 in additional capital equipment or capital improvements at the Facility.

d. Compliance with City Regulations. For the construction or remodeling of the Facility which is the subject of this Agreement, and any future facilities in the City's planning jurisdiction during the term of this Agreement, Owner will comply with all City Code regulations, including water quality regulations in effect at the time any site plan application is filed , unless Owner has negotiated an agreement with the City to comply with overall impervious cover limits and provide the currently required water quality controls. This means Owner will not assert possible Chapter 245 rights to avoid compliance with water quality regulations for any future development within Austin's planning jurisdiction during the term of this agreement.

e. Purchase Within the City. Owner shall use commercially reasonable efforts to purchase business supplies, office equipment, materials, and other items related to the Facility and its operation within the City of Austin's full purpose city limits, in order for the City to receive sales tax revenue from such purchases; provided however Owner may in its sole discretion select vendors, suppliers and contractors based on business considerations, program needs, scientific criteria, and industry standards, and Owner may in its sole discretion make purchasing decisions in accordance with these considerations. During the term of this Agreement, Owner shall make available to the City upon reasonable request records verifying such purchases.

f. Certificate of Compliance. At the time that Owner delivers to City the annual Ad Valorem Revenue Notice required under Section 5 below, Owner shall also deliver to City a Certificate of Compliance, under which Owner warrants to the City that it is in full compliance with each of its obligations under this Agreement. City has the right to inspect the Facility and pertinent records of Owner to verify compliance. Inspections shall be preceded by at least three working days written notice submitted by facsimile, email or other written medium to the Facility.

g. Failure to Meet Obligations. In the event that Owner fails to fulfill its obligations under the performance guidelines in paragraphs 4(b), (c), (e) and (f) above, such event shall be cause for automatic termination of this Agreement, and City shall not be required to pay, and Owner shall not be entitled to, any further payments under this Agreement.

5. City Obligations.

a. City Chapter 380 Payments to Owner. The City will pay Owner as follows:

For a period of ten (10) years beginning on January 1, 2006, the City shall annually pay to the Owner a Chapter 380 Payment equal to one hundred percent (100%) of the Ad Valorem Tax paid on business personal property located at the

Facility, owned or leased by Owner and used in Owner's business, for each tax year in the manner and at the times set forth below.

With respect to each Chapter 380 Payment described above, Owner shall notify the City in writing of any sums paid by Owner to the County tax collector in the form of city ad valorem taxes on the personal property eligible for Chapter 380 incentives during the term of this Agreement (the "Ad Valorem Revenue Notice"). The Chapter 380 Payments with respect to the Ad Valorem Revenues shall be based on the amount stated in the Ad Valorem Revenue Notice, which shall be verified by the City. Chapter 380 Payments shall be paid to Owner by the City on an annual basis for the preceding year, on or before October 30th following the tax year for which they were paid. For example, the first Chapter 380 Payment shall be based on taxes paid for the year 2005, and shall be paid on or before October 30, 2006, and the last Chapter 380 Payment shall be based on taxes paid for the year 2014, and shall be paid on or before October 30, 2015.

b. Payment Amount. The total direct Chapter 380 Payments under this Agreement to be paid to Owner is estimated at $6,331,250, to be paid out of City funds as set out herein.

c. Austin Energy Austin Energy, the City of Austin Electric Utility, will provide up to $1,000,000 for energy infrastructure and efficiency improvements. Austin Energy will provide the incentives in three stages:

1). Austin Energy will provide $700,000 up front contingent upon 10 million additional annual kWh within the 5 year period.

2). Austin Energy will provide an additional $150,000 if Owner achieves a total of 17.5 million annual kWh within the 5 year period.

3). Austin Energy will provide an additional $150,000 if Owner achieves a total of 25 million annual kWh within the 5 year period.

If Owner does not achieve an additional 10 million kWh within five years, the $700,000 incentive must be fully reimbursed.

Owner shall be required to receive approval from Austin Energy prior to making any energy infrastructure or efficiency improvements. Failure to receive prior approval will result in no reimbursement by Austin Energy for those improvements. Approval will not be unreasonably withheld and Owner will not be obligated to make efficiency improvements as a priority over energy infrastructure improvements.

Owner will purchase a portion of its energy from the Green Choice Program, in accordance with the terms of the Agreement for the Green Choice Program, Exhibit A attached to Ordinance No. 040902-5 and subject to price and availability of energy under the Green Choice Program.

d. Payments Subject to Future Appropriation. This Agreement shall not be construed as a commitment, issue or obligation of any specific taxes or tax revenues for payment to Owner. All payments made by the City under this Agreement are subject to the City's appropriation of funds for such payments to be paid in the budget year for which they are made. The payments to be made to Owner, if paid, shall be made solely from annual appropriations from the general funds of the City or from such other funds of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event the City does not appropriate funds in any fiscal year for payments due under this Agreement, the City shall not be liable to Owner for such payments, and the Owner, in its sole discretion, shall have the right but not the obligation to rescind this Agreement To the extent there is a conflict between this paragraph 5.d and any other language or covenant in this Agreement, this paragraph 5.d shall control.

6. Mutual Assistance. City and Owner will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law or taxes or assessments attributable to the Facility.

7. Representations and Warranties. The City represents and warrants to Owner that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Owner represents and warrants to City that it has the requisite authority to enter into this Agreement.

8. Default. If either the City or Owner should default in the performance of any obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default.

9. Attorney's Fees. In the event any legal action or proceeding is commenced between the City and Owner to enforce provisions of this Agreement and recover damages for breach, the prevailing party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, unless prohibited by law.

10. Entire Agreement. This Agreement contains the entire agreement between the parties. This Agreement may only be amended, altered or revoked by written instrument signed by the City and Owner.

11. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

12. Assignment. Except as provided, Owner may not assign all or part of its rights and obligations to a third party without prior written approval of the City, which approval shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary, Owner may assign all or part of its rights and obligations without the prior consent of the City to any party affiliated with Owner by reason of controlling, being controlled by, or being under common control, with Owner, or to a third party lender advancing funds for the acquisition, construction or operation of the Facility.

13. Termination. In the event Owner elects not to proceed with the Project as contemplated by this Agreement, Owner shall notify the City in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect, with the exception of reimbursements, if any, that may be due to the City under Section 4 above.

14. Notice. Any notice and or statement required and permitted to be delivered shall be deemed delivered by actual delivery, facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

Owner:

Advanced Technology Development Facility, Inc.
c/o Robert E. Falstad
General Counsel and Secretary
SEMATECH, Inc.
2706 Montopolis Drive
Austin, Texas 78741
re: Economic Development Agreement

City:

City Manager
301 West 2nd Street
Austin, Texas 78701
(P.O. Box 1088, Austin, Texas 78767)
Ph: (512) 974-2200

with copies to:

Director, Economic Growth and Redevelopment Services
301 West 2nd Street
Austin, Texas 78701
Ph: (512) 974-7820

City Attorney
301 West 2nd Street
Austin, Texas 78701
(P.O. Box 1546, Austin, Texas 78767)
Ph: (512) 974-2268

Fx: (512) 974-2912

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

15. Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

16. Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in the State courts of Travis County, Texas.

17. Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties of this Agreement that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

18. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

19. No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

20. No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with the Facility or the design, construction or operation of any portion of the Facility.

21. Exhibits. The following Exhibit "A" is attached and incorporated by reference for all purposes:

Exhibit "A": Ordinance No. 040902-5

ADVANCED TECHNOLOGY DEVELOPMENT FACILITY, INC.
a Delaware corporation

By: _____
Printed Name: Michael R. Polcari
Title: Chairman of the Board

Law Dept.
Ref 4-15-05
APPROVED
AS TO FORM

Date: April 15, 2005

CITY OF AUSTIN, TEXAS,
a home-rule city and municipal corporation

By: _____
Printed Name: Laura J.Huffman
Title: Assistant City Manager

Date: April 14, 2005

APPROVED as to form:

By: _____
Printed Name: David Allan Smith
Austin City Attorney

Date: April 14, 2005

ORDINANCE NO. 040902-5

AN ORDINANCE CREATING AN ECONOMIC DEVELOPMENT PROGRAM AND AUTHORIZING AN ECONOMIC DEVELOPMENT AGREEMENT WITH ADVANCED TECHNOLOGY DEVELOPMENT FACILITY, INC., A SUBSIDIARY OF SEMATECH INC.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Findings. The city council finds that:

(A) Sematech Inc. ("Sematech"), a non-profit corporation engaged in high technology research, has created a for-profit subsidiary named Advanced Technology Development Facility, Inc. ("ATDF") to be co-located with Sematech at 2706 Montopolis Drive, Austin, Texas.

(B) Sematech has represented to the City that ATDF will maintain existing jobs, and create at least an additional 100 permanent jobs in Austin within five years.

(C) ATDF will assume ownership of business personal property previously owned by or leased to Sematech and will purchase additional equipment. ATDF and Sematech have requested a rebate of property tax which will be owed on such equipment.

(D) ATDF will invest an additional $100 million in capital equipment at the facility over a five year period.

(E) The impact of the ATDF facility will provide economic benefits to the City, be a catalyst for economic development benefiting the entire community, promote local economic development, and stimulate business and commercial activity in the City.

(F) Chapter 380 of the Texas Local Government Code (*Miscellaneous Provisions Relating to Municipal Planning and Development*) authorizes the City to establish local economic development programs.

PART 2. An economic development program for the ATDF facility is created under Chapter 380 (*Miscellaneous Provisions Relating to Municipal Planning and Development*) of the Texas Local Government Code.

PART 3. As part of the City's economic development program, the city manager is directed and authorized to negotiate and execute a performance based economic

EXHIBIT "A"

development agreement with ATDF that includes the terms and conditions attached as Exhibit A, and incorporated as part of this ordinance.

PART 4. This ordinance takes effect on September 13, 2004.

PASSED AND APPROVED

September 2, 2004 § Will Wynn
Mayor

APPROVED: David Allan Smith
City Attorney

ATTEST: Shirley A. Brown
City Clerk

EXHIBIT A

TERMS FOR ECONOMIC DEVELOPMENT AGREEMENT FOR ADVANCED TECHNOLOGY DEVELOPMENT FACILITY, INC. ("ATDF")

1. For a period of ten years, beginning January 1, 2006 and ending December 31, 2015, City will rebate 100% of city property tax on eligible business personal property, used for technology development by ATDF and located at 2706 Montopolis Drive, Austin, Texas.

The estimated amount of city tax to be rebated is $6,331,250 over a ten year period.

2. Austin Energy will provide the ATDF facility up to $1,000,000 for energy infrastructure and efficiency improvements, conditioned on minimum energy usage requirements, and including 10% energy from Austin Energy's Green Choice program.

3. ATDF will maintain current Sematech employees and employ at least 100 additional employees at the facility on or before January 1, 2009.

4. ATDF will invest at least $100,000,000 over a five year period in business personal property at the site.

5. Other terms and conditions deemed necessary, advisable or required by the City Attorney and the City Manager, including provisions for compliance with environmental regulations.

6. This Agreement is subject to future City Council appropriations.