

JUN 02 2015

CAPITAL EQUIPMENT ASSISTANCE AGREEMENT

☒ ACCEPTED
☐ REJECTED

This Capital Equipment Assistance Agreement ("Agreement") is entered into as of this 2nd day of JUNE, 2015 ("Effective Date"), by and between THE CITY OF SAN JOSE, a charter city ("City"), and ABB, Inc., a Delaware corporation ("Company").

RECITALS

A. On February 27, 2015, Company leased an approximately 94,170 square foot office and industrial building located at 3055 Orchard Drive in San Jose, California, to be used as its manufacturing facility ("Premises").

B. In connection with the rehabilitation of the Premises, the City is assisting Company in its acquisition of certain capital equipment to be used by Company on the Premises.

C. The Premises will be used by Company for office, industrial and manufacturing purposes. The City desires to participate in the acquisition of capital equipment to further the goals of the City's economic development strategy. The City desires to preserve and expand the number of jobs and tax revenues provided by the facilities operated by Company, and recognizes the need to renovate and improve the Premises to accomplish these ends. In order to induce Company to improve the Premises, which will bring jobs and revenue to the City, the City is providing the financial assistance in this Agreement.

D. Subject to the terms and conditions set forth in this Agreement, the City desires to reimburse Company for its acquisition of certain capital equipment to be used on the Premises, provided that if Company vacates the Premises or ceases operation of the Company within certain time periods as set forth herein, Company shall reimburse the City as more particularly described herein.

NOW, THEREFORE, the City, and Company hereby agree as follows:

1. Eligible Equipment. Company intends to acquire certain capital equipment for use by Company at the Premises ("Eligible Equipment"). The Eligible Equipment is more particularly described on EXHIBIT A attached hereto. Upon acquisition and installation of the Eligible Equipment at the Premises, Company may submit to the City a formal request for reimbursement as set forth below, attaching invoices or receipts for the Eligible Equipment, (a "Receipt for Reimbursement"), together with evidence reasonably satisfactory to the City that Company has paid for such equipment (which evidence may be receipts of payment) and such equipment has been installed at the Premises for use by Company ("Evidence of Acquisition") (which evidence may be by the inspection required in Section 3 below). The Eligible Equipment shall be used by Company at the Premises.

2. Designation for Seller's Permit. Prior to the purchase of any machinery, tools, fixtures, or equipment in excess of \$1 million, Company shall obtain a jobsite sub-permit of its seller's permit designating the Premises as the place of use. Designating the Premises as the place of use for all machinery, tools, fixtures or equipment furnished and installed as part of the project using the State of California Board of Equalization form BOE-530 (Schedule C – Detailed Allocation by Sub-outlet of Combined State and Uniform Local Sales and Use Tax).

3. City Financial Assistance. Subject to the terms and conditions set forth herein, the City shall reimburse Company up to One Hundred Thousand Dollars (\$100,000) for reimbursement of the acquisition cost of Eligible Equipment ("City Equipment Assistance"). After the Company has paid for any Eligible Equipment, Company may submit to the City a Request for Reimbursement, together with Evidence of Acquisition. Upon receipt by the City of a Request for Reimbursement for Eligible Equipment, together with Evidence of Acquisition and confirmation by the City that the Eligible Equipment has been installed or is otherwise being used at the Premises, the City shall reimburse Company for the amount of the Request for Reimbursement for Eligible Equipment. In no event shall the City be obligated to reimburse Company for Eligible Equipment in an amount in excess of \$100,000. If, on the third (3rd) anniversary of the date of issuance of the certificate of occupancy for the Premises, Company has not submitted a Request for Reimbursement(s) to the City for the aggregate total amount of the City Equipment Assistance, the City shall have no further obligation to reimburse Company under this Agreement.

4. Inspection and Approval. Prior to the disbursement of any City Equipment Assistance to Company for the acquisition of Eligible Equipment, City, and Company representatives shall inspect the Premises to confirm that the Eligible Equipment has been installed or is otherwise being used at the Premises.

5. Occupancy of Premises. Prior to the disbursement of any City Equipment Assistance by the City under this Agreement, Company shall take occupancy of the Premises ("Occupancy Condition"). Company shall submit a copy of the certificate of

occupancy for the Premises to the City as evidence of occupancy. If Company does not occupy the Premises on or before the second (2nd) anniversary of the Effective Date of this Agreement, this Agreement shall automatically terminate and the City shall not have any further obligations hereunder.

6. Failure to Occupy the Premises. The City has agreed to provide the City Equipment Assistance hereunder as an incentive to attract and retain Company in San Jose. If Company vacates or otherwise no longer occupies any portion of the Premises at the applicable times stated below in this Section 5 (collectively, "Reimbursement Event"), Company shall, within thirty (30) days thereafter, reimburse the City for the City Equipment Assistance that the City has provided, as follows:

(a) If a Reimbursement Event occurs before the first anniversary of the date of issuance of a temporary or permanent certificate of occupancy any portion of the Premises ("Certificate of Occupancy Date"), Company shall reimburse the City ninety percent (90%) of any City Equipment Assistance disbursed to Company under this Agreement;

(b) If a Reimbursement Event occurs on or after the first anniversary of the Certificate of Occupancy Date, but before the second anniversary of the Certificate of Occupancy Date, Company shall reimburse the City sixty seven percent (67 %) of any City Equipment Assistance disbursed to Company under this Agreement;

(c) If a Reimbursement Event occurs on or after the second anniversary of the Certificate of Occupancy Date, but before the third anniversary of the Certificate of Occupancy Date, Company shall reimburse the City thirty-three percent (33 %) of any City Equipment Assistance disbursed to Company under this Agreement;

(d) If Company remains in occupancy of the Premises on or beyond the third anniversary of the Certificate of Occupancy Date, Company shall not be required to reimburse the City for any portion of the City Equipment Assistance.

As security for its obligation hereunder, Company shall grant a security interest in the Eligible Equipment for which Company has received reimbursement through the City Equipment Assistance to the City. Concurrently with delivery of the Evidence of Acquisition, Company shall execute a security agreement in substantially the form attached hereto as Exhibit B and shall authorize the City to file a UCC-1 to perfect the City's security interest in the Eligible Equipment. If a Reimbursement Event occurs prior to any of the dates set forth above and Company fails to reimburse the City as required hereunder, Company hereby grants the City the right to enter the Premises (subject however, to the terms and condition of Company's Lease of the Premises), or other premises where the Eligible Equipment may have been relocated, to take possession of the Eligible Equipment. If the City takes possession of the Eligible Equipment, the City shall have the right to take any and all actions with respect to such equipment, including the sale of such equipment, and any actions taken by the City with respect to such

equipment shall be in addition to any other remedies available to the City at law or equity. The City's security interest in the Eligible Equipment shall be senior to any other lender or financing.

7. Amendments. This Agreement may be amended, changed or modified only by an instrument in writing signed by the City and Company.

8. Entire Agreement. This Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement. Any oral representations or modifications concerning the subject matter of this Agreement shall be of no force and effect.

9. Non-Discrimination. Company covenants and agrees for itself, its successors, its assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of any person or group of persons on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Premises, nor shall Company itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Premises.

10. Waiver. Any waiver by the City or Company of any term, condition or requirement of this Agreement shall not constitute a waiver of any other term, condition or requirement hereof or constitute a waiver of the same term, condition or requirement in any other instance.

11. Notices. Any notice or demand which shall be required or permitted by law or any provisions of this Agreement shall be in writing, and shall be deemed effective when personally delivered or deposited in the United States mail, certified, return receipt requested, postage prepaid, addressed as follows:

To: City of San Jose
Attention: Director of Economic Development
200 East Santa Clara Street, 17th Floor Tower
San Jose, CA 95113

To: ABB, Inc.
Attn: Director of Indirect Taxes
12040 Regency Parkway
Cary, North Carolina 27518

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to any claims against the City, its officers or employees, shall also be served in the manner specified above to the following address:

City of San Jose
Richard Doyle, City Attorney
200 East Santa Clara Street, 16th Floor Tower
San Jose, CA 95113

Notice shall be deemed given on the date of personal delivery by hand, or the date of receipt of facsimile transmission (with verification receipt), or on the date delivery is refused, if applicable.

12. Time. Time is of the essence in this Agreement.

13. Hold Harmless. Company shall indemnify, defend and hold the City, its officers and employees harmless from all suits, actions, claims, causes of action, costs, demands, judgments or liens arising out of this Agreement as a result of any acts or omissions of Company or its contractors, subcontractors, or persons claiming under any of the aforesaid, except to the extent of the sole negligence, willful misconduct, or breach of this Agreement by the City or any of such other indemnified parties.

14. Successors and Assigns. Subject to the provisions of Section 14 below, Company binds itself, its partners, successors, assigns, and legal representatives with respect to all covenants, agreements, and obligations contained in this Agreement.


15. Assignment. Company shall not assign this Agreement, except by operation of law or to a wholly owned subsidiary of Company or a successor-in-interest to Company by merger, acquisition or corporate reorganization without the express written consent of the City, which consent shall be within the sole and absolute discretion of the City Manager.

16. Severability of Provisions. If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected hereby, if such remainder would then continue to conform to the terms and requirements of applicable law.

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


"CITY"

APPROVED AS TO FORM:



Ed Moran
Assistant City Attorney

CITY OF SAN JOSE, a charter city

By: 
Title: _____
Julie Edmonds-Mares
Deputy City Manager
"Company"

ABB, Inc., a Delaware corporation


By: 
Title: VP-Tax

EXHIBIT A
EQUIPMENT PURCHASES

CITY funds will be used to reimburse Company for the following equipment:

Equipment to be purchased in the co-location are slated to include dynacalibrators, milling machines, test chambers, analyzers, ultrasonic cleaners, precision grinders, dry air source generators, curing systems and other equipment used to produce the laser-based measurement instruments for resale.

EXHIBIT B

SECURITY AGREEMENT

THIS SECURITY AGREEMENT ("Agreement") is entered into as of this ____ day of _____, 2015 by ABB, Inc., a Delaware corporation ("Company"), whose principal place of business is located at 12040 Regency Parkway, Cary, North Carolina 27518 in favor of the CITY OF SAN JOSE, a charter city ("City").

RECITALS

A. City and Company entered into that certain Capital Equipment Assistance Agreement dated _____, 2015, ("Equipment Agreement"), whereby the City agreed to reimburse Company for the acquisition of certain capital equipment in connection with Company's rehabilitation and improvement of the property located at 2701 Orchard Parkway, San Jose, California ("Premises"). The description of the real properties on which the buildings are located is more particularly described on Attachment A attached hereto ("Property").

B. Pursuant to the terms of the Equipment Agreement, Company agreed to reimburse the City for a portion of the capital equipment assistance paid to Company if Company vacated or otherwise no longer occupied the Premises within certain time periods set forth in the Equipment Agreement ("Reimbursement Obligation").

C. As security for Company's Reimbursement Obligation, the Equipment Agreement provides that Company shall grant to the City a security interest in certain capital equipment acquired by Company for the Premises.

NOW, THEREFORE, in consideration of the City's agreement to enter into the Equipment Agreement, Company agrees as follows:

1. **SECURITY INTEREST.** Company hereby grants and assigns to City a security interest in all of the following described personal property in which Company now or at any time hereafter has any interest (collectively, the "Collateral"):

Any of the equipment listed on Attachment B attached hereto, which are or are to be incorporated into, used in connection with, or appropriated for use on the real property described on Attachment A to this Equipment Agreement.

2. **OBLIGATIONS SECURED.** This Agreement secures the payment and performance of all present and future obligations of Company to City under the Equipment Agreement and under any other agreement which recites that it is secured hereby.

3. **REPRESENTATIONS AND WARRANTIES.** Company represents and warrants that: (a) Company has, or will have, good title to the Collateral; (b) Company has not previously assigned or encumbered the Collateral, and no financing statement covering any of the Collateral has been delivered to any other person or entity; and (c) Company's principal place of business is, or will be upon completion of certain improvements to such building, located at 3055 Orchard Drive, San Jose, California, as specified above.
4. **RIGHTS OF LENDER.** In addition to City's rights as a "Secured Party" under the California Uniform Commercial Code ("UCC"), as amended or recodified from time to time, if Company is obligated to pay the Reimbursement Obligation and fails to do so within the time period set forth in the Equipment Agreement, the City may, but shall not be obligated to, without notice and at the expense of Company: (a) give notice to any person of City's rights hereunder and enforce such rights; (b) insure, protect, defend and preserve the Collateral or any rights or interests of City therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Company under or from the Collateral. City shall have no duty or obligation to make or give any presentments, demands for performance, notices of nonperformance, notices of protest or notices of dishonor in connection with any of the Collateral.
5. **COLLATERAL DESIGNATION STATEMENT.** Company shall, from time to time within five (5) business days of City's request, deliver to City a written statement showing the description and location of all Collateral then subject to this Agreement.
6. **MISCELLANEOUS UNDERTAKINGS.** Company, at its sole cost and expense, agrees to pay within thirty (30) days of City's demand, all expenses, including, without limitation, attorneys' fees and court costs, incurred by City in connection with the enforcement of any of the security interests granted under this Agreement.
7. **DEFAULT.** "Default" shall mean the failure by Company to pay the Reimbursement Obligation to the City within the time period set forth in the Equipment Agreement or the failure to be true of any representation or warranty of Company herein.
8. **LENDER'S RIGHTS ON DEFAULT.** Upon default and at any time thereafter, City may declare all obligations secured hereby immediately due and payable and shall have the remedies under the uniform commercial code of California, including without limitation the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Company can give authority therefore, with or without judicial process, enter (if this can be done without breach of the peace), upon any premises on which the Collateral or any part thereof may be situated and remove the same there from (provided that if the Collateral is affixed to real estate, such removal shall be

subject to the conditions stated in the Uniform Commercial Code of California); and the City shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Company's right of redemption in satisfaction of the Company's Obligations as provided in the Uniform Commercial Code of California. City without removal may render the Collateral unusable and dispose of the Collateral on Company's premises. City may require Company to assemble the Collateral and make it available to City for possession at a place to be designated by City which is reasonably convenient to both parties. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, City will give Company at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Company shown at the beginning of this agreement at least ten (10) days before the time of the sale or disposition. City may buy at any public sale.

The remedies of the City hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Uniform Commercial Code of California shall not be construed as a waiver of any of the other remedies of the City so long as any part of the Reimbursement Obligation remains unsatisfied.

Notwithstanding any other provision of this Agreement, City shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Company to City unless City shall make an express written election of said remedy.


9. **POWER OF ATTORNEY.** Company hereby irrevocably appoints City as Company's attorney-in-fact (such agency being coupled with an interest), for the sole purpose of , without the obligation to do so, in City's name or in the name of Company, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of City's security interests and rights in or to any of the Collateral, and, upon Default hereunder take any other action specified in Section 8 hereof; provided that City as such attorney-in-fact shall be accountable only for such funds as are actually received by City.
10. **POSSESSION AND USE OF COLLATERAL.** Except as otherwise provided in this Agreement, so long as no Default exists under this Agreement, Company may possess, use, move, transfer or dispose of any of the Collateral in the ordinary course of Company's business. Company will not, without the prior written consent of City, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of the Collateral, other than in the ordinary course of Company's business.

11. **INTEGRATION**. This Agreement and the Equipment Agreement contain the entire agreement of the parties and supersede any and all prior negotiations. No subsequent agreement, representation, or promise made by either party shall be of any effect unless it is in writing and executed by the party to be bound thereby.
12. **FURTHER ASSURANCES**. At any time or from time to time upon the request of City, Company shall execute and deliver such further documents and do such other acts and things as City may reasonably request in order to affect fully the purpose of this Agreement, including, without limitation, perfecting the interest of the City hereunder.

IN WITNESS WHEREOF, Company has executed this Security Agreement as of the date appearing on the first page of this Agreement.

COMPANY:

ABB. Inc.,
a Delaware corporation

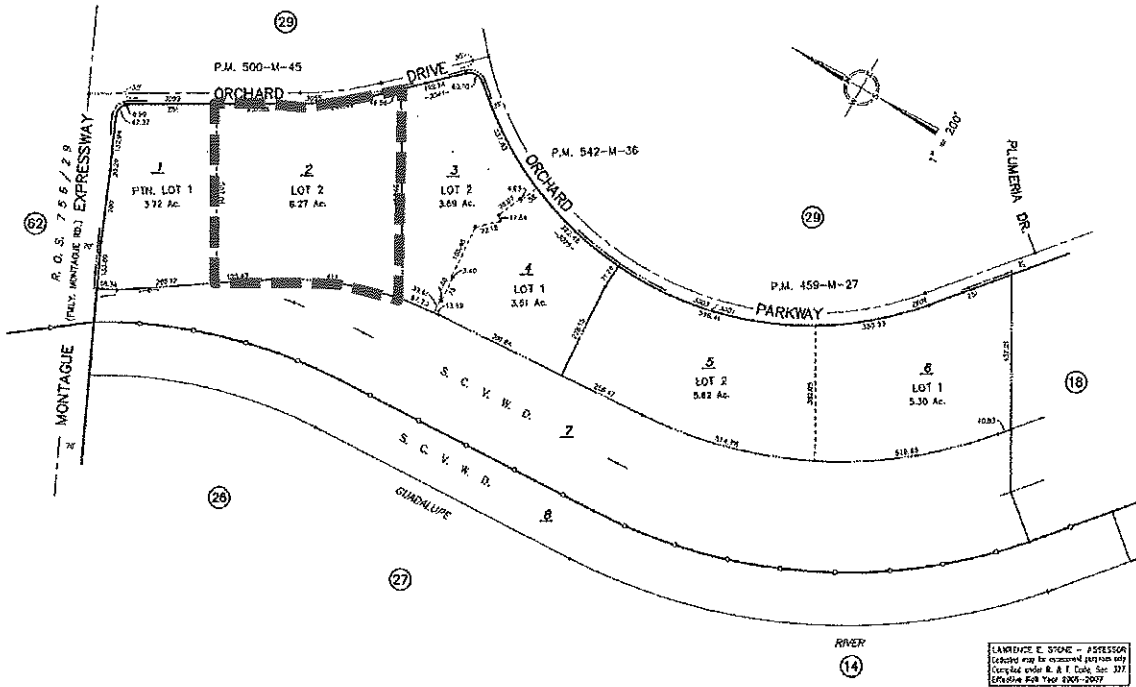
By: 
Title: VP-Tax

Attachment A
Property

3050 Orchard Drive, San Jose, CA is the building located on assessor parcel
number 101-28-002

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

BOOK	PAGE
101	28



Attachment B

Equipment

Equipment to be purchased in the co-location are slated to include dynacalibrators, milling machines, test chambers, analyzers, ultrasonic cleaners, precision grinders, dry air source generators, curing systems and other equipment used to produce the laser-based measurement instruments for resale.

CONTRACT TRANSMITTAL TO CITY MANAGER

Received

CONTRACTOR: ABB, Inc. Business Tax Certificate 9447036984

MAY 28 2015

CONTRACTOR CONTACT: ALLEN WELLS 919-856-3074 (ALLAN.J.WELLS@US.ABB.COM)

CONTRACTOR ADDRESS: 12040 REGENCY PARKWAY, CARY, NC 27518

City Manager Office

NEW CONTRACT ☒ **AMENDMENT** ☐ **IF AMENDMENT, LIST NUMBER**

TERM: 6/1/2015 to 6/1/2019 **AMOUNT OF CONTRACT:** \$100,000

TERM OF ORIGINAL AGREEMENT: TO **AMOUNT OF ORIGINAL AGREEMENT:** \$

COUNCIL DATE: 5/19/15

COUNCIL AGENDA ITEM NUMBER: 4.1

COUNCIL RESOLUTION NUMBER: 77355

BUDGET REFERENCE: 14-15 Adopted Budget

BUDGET: \$1,390,000 **APPROPRIATION:** 3535

DEPT.: Manager (OED)

CONTACT: John Lang

PHONE: 408-535-8178

TYPE OF CONTRACT: Professional Services **CEQA STATUS:** Not a Project

DESCRIPTION OF CONTRACT: (What work will the contractor accomplish?)

On May 19, 2015, the San Jose City Council approved a \$100,000 equipment reimbursement agreement with ABB, Inc. to support their consolidation and relocation into San Jose.

The Capital Equipment Assistance Agreement will provide a \$100,000 equipment reimbursement to ABB, Inc. once they have purchased their eligible equipment. Should ABB leave the premise before three years, ABB will be required to repay the City of San Jose a portion of the \$100,000. Should ABB remain on site for longer than three years, they will be under no obligation to repay the City.

CONTRACTOR SELECTION PROCESS: (Please describe how the contractor was selected.)

ABB, Inc. approached the City of San Jose when they were considering various locations in the South Bay to consolidate their operations into on City. In an effort to attract ABB, Inc. to San Jose the Office of Economic Development offered the Council approved Manufacturing Incentive. The Manufacturing Incentive eligibility criteria require a minimum of 100 new jobs be created or retained, and the business must be a manufacturer. The level of grant by the City is determined the amount of investment by the business.

INFLUENCE OF LOCAL PREFERENCE:

- N (y/n) Local Business – At least one employee in Santa Clara County
- N (y/n) Small Business – 35 or fewer employees companywide
- N (y/n) Award influence by Local Preference Policy
- N (\$ value) Closest non-Local bid

ISSUES: (Please list any issues of importance.)

ABB, Inc has asked for a wet signature of the agreement and therefore two copies of the agreement is attached for signature.

COORDINATION:

This grant agreement and resolution has been coordinated with Attorney's Office.

Department Head Signature

Date

5-28-15

Assistant City Manager Signature

Date

5/29/2015

RESOLUTION NO. 77355

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY MANAGER TO EXECUTE A CAPITAL EQUIPMENT AND ASSISTANCE AGREEMENT WITH ABB INC. IN WHICH THE CITY WILL PROVIDE AN AMOUNT NOT TO EXCEED \$100,000 FOR REIMBURSEMENT OF THE COST OF PRODUCTION AND ASSEMBLY EQUIPMENT AT ABB INC. MANUFACTURING AND PRODUCTION FACILITIES IN SAN JOSE

WHEREAS, ABB Inc., a manufacturer operating in nearly 100 countries and employing about 140,000 people worldwide, has identified a 94,170 square foot office and industrial building located at 3055 Orchard Drive in San José ("Site") as the desired location to collocate and consolidate its West Coast headquarters and manufacturing facility; and

WHEREAS, the existing facility on the Site will require an estimated \$3 million in improvements to accommodate ABB Inc.'s operational needs; and

WHEREAS, as a charter city, under its municipal and police powers, the City of San José ("City") may provide financial assistance to businesses for the purchase of capital equipment that will benefit the citizens of San José; and

WHEREAS, assistance from the City in the acquisition of certain capital equipment exclusively for manufacturing uses on the Site will help cover some of the costs associated with ABB Inc.'s collocation to San José; and

WHEREAS, ABB Inc.'s investment in improvements to the Site will benefit San José by adding quality jobs, increasing tax revenue to the City, strengthening the local manufacturing ecosystem, and furthering the goals of the City's 2010 Economic Strategy; and

WHEREAS, the City desires to authorize the City Manager or his designee to execute a Capital Equipment and Assistance Agreement, in which the City will reimburse ABB Inc. for an amount not to exceed \$100,000 for the purchase of eligible capital equipment;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The City Manager or his designee is hereby authorized to execute a Capital Equipment and Assistance Agreement with ABB Inc., in which the City will provide an amount not to exceed \$100,000 for reimbursement of the cost of production and assembly equipment at ABB Inc. manufacturing and production facilities in San José.

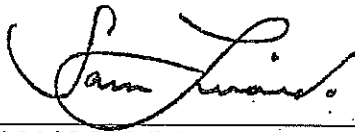
ADOPTED this 19th day of May, 2015, by the following vote:

AYES: JONES, KHAMIS, MATTHEWS, NGUYEN, OLIVERIO,
PERALEZ, ROCHA; LICCARDO.

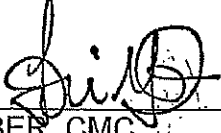
NOES: NONE.

ABSENT: CARRASCO, HERRERA, KALRA.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST: 

TONI J. TABER, CMC
City Clerk