CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY	
☐ Consent ☐ Regular ☐ Statutory	
Council Meeting Date:	01/25/16
Department:	Economic Development
Department Head	Sally Bane
Agenda Coordinator (include phone #):	**Paula Date X 8306**

CAPTION

A Resolution of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas and JPMorgan Chase Bank, NA, a national banking association, providing for real and business personal property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

FINANCIAL SUMMARY

☒ NOT APPLICABLE ☐ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: **2018-19 through 2027-28**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	0	0	**0**
BALANCE	0	0	0	**0**

FUND(S): N/A

COMMENTS: This item has no fiscal impact.

Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy.

SUMMARY OF ITEM

This relates to JPMorgan Chase Bank, NA, a national banking association, request for tax abatement on Reinvestment Zone 141 and the creation of the zone at the southeast corner of State Highway 121 and Leadership Drive.

https://goo.gl/PpxF9o

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Resolution Tax Abatement Agreement	

A Resolution of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas and JPMorgan Chase Bank, NA, a national banking association, providing for real and business personal property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas and JPMorgan Chase Bank, NA, a national banking association, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano, Texas and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 25th day of January, 2016.

_____
Harry LaRosiliere, MAYOR

ATTEST:

_____
Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

_____
Paige Mims, CITY ATTORNEY

THE STATE OF TEXAS)
)
COUNTY OF COLLIN)

TAX ABATEMENT AGREEMENT

This Tax Abatement Agreement (this "Agreement") is entered into by and between the City of Plano, Texas, a home-rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as "City" and JPMorgan Chase Bank, NA, a national banking association, duly acting by and through its authorized representative, hereinafter referred to as "Owner".

W I T N E S S E T H:

WHEREAS, on the 25th day of January, 2016 the City Council of the City of Plano, Texas, passed Ordinance No. 2016- - establishing Reinvestment Zone No. 141, for commercial/industrial tax abatement, hereinafter referred to as the "Ordinance", as authorized by V.T.C.A. Tax Code, Chapter 312.001, et seq., cited as the Property Redevelopment and Tax Abatement Act, hereinafter referred to as "Act"; and

WHEREAS, the City has adopted a policy statement for Tax Abatement by Resolution No. 2015-12-7(R) stating that it elects to be eligible to participate in tax abatement (the "Policy Statement"); and

WHEREAS, the Policy Statement sets forth appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Act; and

WHEREAS, the tax abatement will maintain and enhance the commercial/industrial economic and employment base of the Plano area thereby benefitting the City in accordance with the said Ordinance and Act; and

WHEREAS, the contemplated use of the Real Property, as hereinafter defined, and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 141 in accordance with the purposes for its creation and are in compliance with the intent of the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law.

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. Owner's real property subject to this Agreement is described by metes and bounds in **EXHIBIT "A"** (the "Real Property") attached hereto and made a part hereof.

2. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No. 141, which shall be hereinafter referred to as the "Personalty". The Personalty shall be in place on the Real Property by December 31, 2018 and shall have an assessed taxable value of not less than Seventy Million Dollars ($70,000,000) on the Real Property as determined by the Collin Central Appraisal District for the tax year 2019.

3. Owner shall maintain the taxing situs of the Personalty on the Real Property and may not relocate the taxing situs of the Personalty to other Reinvestment Zones in the City.

IMPROVEMENTS

4. (a) Owner agrees to add the Personalty required under Section 2 by December 31, 2018, unless an extension as a result of an Event of Force Majeure is approved by the City in writing. The term "Event of Force Majeure" means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns, shortages or unavailability of materials or labor, or work stoppages any of which event(s) directly impact the Owner at the Real Property. The term shall not include a downturn in the economy.

(b) By December 31, 2019, Owner shall make or cause to be made improvements to the Real Property consisting of a new building(s) and/or building improvements that are at least 800,000 gross square feet of office space with an assessed taxable value of not less than One Hundred Fifty Million Dollars ($150,000,000) for **new improvements added** to the Real Property between the dates of February 1, 2016 through December 31, 2019, as determined by the Collin Central Appraisal District. The real property abatement for the new improvements shall begin in the 2019 tax year pursuant to Section 11(a) herein unless an extension as a result of an Event of Force Majeure has been approved by the City in writing.

(c) Upon the occurrence of an Event of Force Majeure, Owner shall notify the City in writing not less than sixty (60) days after the commencement of the Event of Force Majeure with supporting documentation, the anticipated duration and the actions that the party will take to alleviate the Event of Force Majeure. The City Manager shall consider such request and may grant an extension of time to complete the obligations; such extension shall not be unreasonably withheld. If the Event of Force Majeure results in a delay of meeting the required improvement value, Owner agrees that in the following year the minimum required taxable value of the improvements and/or Personalty shall be met.

DEFAULT

5. Any of the following events shall be deemed a breach of this Agreement resulting in default:

(a) Owner allows its personal property taxes or real property improvement taxes owed the City to become delinquent, and fails to either:

(i) Timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes; or

(ii) Cure such delinquency within thirty (30) days of receipt of notice of such delinquency; or

(b) Owner fails to construct or cause to be constructed the Real Property improvements required in Section 4(b); or

(c) (i) In the first year of the abatement period for the Personalty, the assessed taxable value is less than the minimum amount set forth in Section 2; or

(ii) At any time during the Agreement, the Personalty is removed from the Real Property for reasons other than routine maintenance, repair, or replacement and the result is the taxable appraised value of the Personalty is below the minimum amount set forth in Section 2; or

(d) At any time during the Agreement, the assessed taxable value of the Real Property improvements is less than the minimum amount set forth in Section 4(b) as a result of the Owner's protest; or

(e) Owner or Owner's duly authorized representative fails to provide the annual certification as required in Section 9; or

(f) Owner fails to comply with the Assignment provision in Section 10; or

(g) Owner has been convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of aliens at the Real Property.

6. In the event that the Owner defaults under Section 5(b) of this Agreement, the City shall give Owner written notice of such default and if the default is not cured or a waiver obtained thereof within thirty (30) days of said written notice, this Agreement shall be automatically terminated except any damages as specified below shall survive the termination of this Agreement. In the event of a default under Section(s) 5(a), (c), (d), (e), (f) and/or (g) above, the City shall give the Owner written notice of such default and if the default is not cured or a waiver obtained thereof within thirty (30) days of said written notice, this Agreement shall be automatically terminated except any damages as specified below shall survive the termination of this Agreement. Notice shall be in writing as provided below. The City Manager is authorized on behalf of the City to send notice of default and to terminate the Agreement for any default that is not cured.

7. Upon the occurrence of an event of default under Section(s) 5(a), (b) and/or (g) above and that remains uncured, all taxes, including previously abated taxes which would have been paid to the City by the Owner without the benefit of this Agreement, shall become due and owing to the City from the Owner, together with interest charged from the date of the initial tax abatement per Section 11(a)(i) and (ii) of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07 and Texas Government Code Chapter 2264.

Upon the occurrence of an event of default under Section(s) 5(c), (d) , (e) and/or (f) above and that remains uncured, at the City's sole option, it may require all or a portion of all previously abated taxes which would have been paid to the City by the Owner without the benefit of this Agreement to become due and owing to the City from the Owner, together with interest charged from the date of the initial tax abatement per Section 11 (a)(i) and (ii) this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the

addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07. City shall exercise such option within ninety (90) days of notice of default.

EFFECT OF TERMINATION/SURVIVAL OF OBLIGATIONS

8. The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the applicable effective date of termination of this Agreement, except for any obligations or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

ANNUAL CERTIFICATION

9. Beginning November 1, 2019, and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, Owner, or its successors or assigns, must each provide annual certification (substantially in the form attached as **EXHIBIT "B"** hereto) to the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

10. If Owner wishes to assign its rights and duties under this Agreement, it must comply with the following provisions. A failure to comply is an event of default and all remedies may apply including but not limited to a suspension of the abatement for the year(s) for which non-compliance occurred.

(a) City Consent Required. Except as permitted by Section 10(b) below, this Agreement may not be assigned without the express written consent of the City, which will not be unreasonably withheld or delayed. The assignment agreement must be furnished in a form acceptable to the City and be provided at least sixty (60) days prior to the effective assignment date for the City Council review and approval.

(b) Exceptions to City Consent. Owner may assign this Agreement without obtaining the City's consent:

(i) To a wholly owned affiliate of Owner; or

(ii) Any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety percent (90%) of the assets of the Owner; or

(iii) Upon the sale of the Real Property by Owner.

(c) Prior to the effective date of the assignment or sale under Section 10(a) or (b) above, the assigning party agrees to have the assignee or successor execute an agreement with the City to be bound to all the terms and conditions of this Agreement, without exception, and the assignee or successor shall be responsible for any default(s) of the assignee or seller that occurred prior to or after the effective date of the assignment.

ABATEMENT PROVISIONS

11. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City, a portion of ad valorem personal property taxes and real property improvement taxes belonging to Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) (i) The tax abatement as to Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2019 through December 31, 2028.

(ii) The tax abatement as to Personalty, as provided for herein, shall be for a period of January 1, 2019 through December 31, 2028.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty percent (50%) of the taxable value of the Personalty and Real Property improvements for the tax years set forth above.

(c) The Owner shall have the right to protest and/or contest any assessment of the Personalty or Real Property improvements where such assessment is above the minimum amount required to be maintained under Sections 2 and 4 of this Agreement. The abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those required in Sections 2 and 4 as a result of a protest and/or contest filed by Owner, or the removal of Personalty from the Real Property.

NOTICE

12. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Bruce D. Glasscock
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano
Attention: Ms. Paige Mims
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

Winstead PC
Attention: Mr. Tommy Mann
500 Winstead Building
2728 N. Harwood Street
Dallas, TX 75201

For Owner by notice to:

JPMorgan Chase Bank, NA, a national banking association
Attention: Mr. Robert Guardiola
Vice President
237 Park Avenue, Floor 12
New York, NY 10017

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

MISCELLANEOUS PROVISIONS

13. During the term of the Agreement, the Owner further agree that the City, its agents and employees, shall have reasonable right (with no less than five (5) business days prior written notice to Owner) to access the Real Property during regular business hours to inspect the Personalty and Real Property improvements in order to insure that the location of the Personalty and Real Property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations.

14. It is understood and agreed between the parties that the Owner, in performing their respective obligations hereunder, are acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties and Owner agrees to indemnify and hold harmless City from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of their respective defaults of their obligations hereunder.

15. Based upon the certification provided by Owner, the City represents that the Real Property is not owned by any member of the City Council of the City of Plano or by a member of the Planning and Zoning Commission.

16. Owner agrees to comply with Section 2-11(F) of the City Code of Ordinances, which reads as follows:

"It shall be unlawful for an employer to discriminate against any person on the basis of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status or United States military/veteran status by the following actions or inactions:

(a) for an employer to fail or refuse to hire, or to discharge, any person;

(b) for an employer to discriminate against any person with respect to compensation, terms, conditions or privileges, of employment;

(c) for an employer to limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee;

(d) for an employment agency to fail or refuse to refer for employment, or to otherwise discriminate against, any person because of a protected employment characteristic;

(e) for an employment agency to classify or refer for employment any person, on the basis of a protected employment characteristic;

(f) for a labor organization to exclude or expel from its membership, or to otherwise discriminate against, any person because of a protected employment characteristic;

(g) for a labor organization to fail or refuse to refer for employment any person because of a protected employment characteristic;

(h) for a labor organization to limit, segregate or classify its members or applicants for membership, in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment; or

(i) for a labor organization to cause or attempt to cause an employer to discriminate against a person in violation of this subsection;

(j) for an employer, a labor organization or a joint labor-management committee, to discriminate against any person because of a protected employment characteristic in the admission to, or employment in, any program established to provide apprenticeship or other training;

(k) for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic;

(l) for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic; or

(m) for a joint labor-management committee to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic."

Owner also understands that they are entitled to apply to the City Manager for a waiver from the Equal Rights Ordinance's application to their business if applying it would conflict with state or federal law. During the review of the waiver request, the Agreement will be placed on hold.

17. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 25th day of January, 2016, authorizing the City Manager to execute the Agreement on behalf of the City.

18. This Agreement was entered into by Owner pursuant to its duly authorized representatives.

19. This instrument shall constitute a valid and binding agreement between the City and the Owner when executed in accordance herewith.

20. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21. This Agreement is performable in Collin County, Texas and venue for any dispute arising out of this Agreement shall be in Collin County, Texas.

This Agreement shall be effective upon the last date on which all parties have executed this Agreement.

ATTEST:

CITY OF PLANO, TEXAS, a home-rule municipal corporation

_____
Lisa C. Henderson, CITY SECRETARY

_____
Bruce D. Glasscock, CITY MANAGER
Date: _____

APPROVED AS TO FORM:

_____
Paige Mims, CITY ATTORNEY

ATTEST:

_____

Title: _____

OWNER
JPMORGAN CHASE BANK, NA, a national banking association

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT "A"
LEGAL DESCRIPTION

BEING a tract of land situated in the J.C. Barrow Survey, Abstract No. 90, the H.N. Thompson Survey, Abstract No. 896 and the Garland Martin Survey, Abstract No. 662, City of Plano, Collin County, Texas, being all of Lots 1 and 2, Block B of Legacy West Addition, Lot 1 and Lot 2, Block B, Lot 1, Block C, Lot 1R, Block B and Lots 1 and 2, Block E, an addition to the City of Plano according to the plat thereof recorded in Cabinet 2015, Page 63, Map Records, Collin County, Texas and being part of called described in Limited General Warranty Deed, to SWC Tollway & 121 LLC, recorded in Instrument Number 20140205000109390, Official Public Records, Collin County, Texas and being more particularly described as follows:

BEGINNING at a point for the north corner of a corner clip at the intersection of the east right-of-way line of Leadership Drive (110' ROW) and the south right-of-way of State Highway 121 (variable width ROW);

THENCE with the south right-of-way line, North 71°34'10" East, a distance of 2143.80 feet to a point for corner;

THENCE leaving said west right-of-way line, South 63°25'53" East, a distance of 35.23 feet to a point for corner in the west right-of-way line of Communication Parkway (92' ROW);

THENCE with said west right-of-way line, the following courses and distances to wit:

South 18°13'53" East, a distance of 90.92 feet to a point at the beginning of a tangent curve to the right having a central angle of 17°45'10", a radius of 654.00 feet, a chord bearing and distance of South 9°21'18" East, 201.83 feet;

In a southeasterly direction, with said curve to the right, an arc distance of 202.64 feet to a point for corner;

South 0°28'43" East, a distance of 986.23 feet to a point at the beginning of a tangent curve to the right having a central angle of 12°02'26", a radius of 238.00 feet, a chord bearing and distance of South 5°32'30" West, 49.92 feet;

In a southwesterly direction, with said curve to the right, an arc distance of 50.02 feet to a point at the beginning of a reverse curve to the left having a central angle of 12°02'26", a radius of 262.00 feet, a chord bearing and distance of South 5°32'30" West, 54.96 feet;

In a southwesterly direction, with said curve to the left, an arc distance of 55.06 feet to a point for corner;

South 0°28'43" East, a distance of 94.20 feet to a point at the beginning of a tangent curve to the right having a central angle of 104°30'48", a radius of 105.00 feet, a chord bearing and distance of South 51°46'41" West, 166.06 feet;

In a southwesterly direction, with said curve to the right, an arc distance of 191.53 feet to a point in the north right-of-way line of Headquarters Drive (variable width ROW) for the beginning of a compound curve to the right having a central angle of 21°44'23", a radius of 870.00 feet, a chord bearing and distance of North 65°05'43" West, 328.13 feet;

THENCE with said north right-of-way line, the following courses and distances to wit:

In a northwesterly direction, with said curve to the right, an arc distance of 330.10 feet to a point at the beginning of a reverse curve to the left having a central angle of 68°41'37",

a radius of 1212.43 feet, a chord bearing and distance of North 88°34'20" West, 1368.11 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 1453.62 feet to a point for corner;

South 57°12'08" West, a distance of 16.51 feet to a point for corner;

North 77°52'30" West, a distance of 35.40 feet to a point for corner in the east right-of-way line of said Leadership Drive;

THENCE with said east right-of-way line, the following course and distances to wit:

North 32°57'07" West, a distance of 23.72 feet to a point at the beginning of a tangent curve to the right having a central angle of 13°44'23", a radius of 1445.00 feet, a chord bearing and distance of North 26°04'56" West, 345.69 feet;

In a northwesterly direction, with said curve to the right, an arc distance of 346.52 feet to a point for corner;

North 19°12'44" West, a distance of 400.66 feet to a point for corner;

North 26°10'43" East, a distance of 35.11 feet to the **POINT OF BEGINNING** and containing 48.68 acres of land.

EXHIBIT "B"
CERTIFICATION FORM

[DATE]

City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358

RE: Certification Form – Reinvestment Zone No. 141
Tax Abatement Agreement (the "Agreement") between JPMorgan Chase Bank, NA, a national banking association ("Owner"); and the City of Plano.

This letter certifies that Owner is in compliance with each applicable term as set forth in the Agreement. The term of the tax abatement pursuant to the Agreement is January 1, 2019 through December 31, 2028. This form is due on November 1, 2019 and on November 1 of each year thereafter that the Agreement is in force.

JPMORGAN CHASE BANK, NA, a national banking association

By: _____
Name: _____
Title: _____