



**CITY OF PLANO
COUNCIL AGENDA ITEM**

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		03/26/12		
Department:		Economic Development		
Department Head		Sally Bane		
Agenda Coordinator (include phone #): Linda Thomason x8301				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, Ericsson Inc., and Ericsson Real Estate Holdings Inc. 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.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	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):				
COMMENTS: Strategic Plan Goal: Providing Economic Development Incentives relates to the City's goal of Strong Local Economy.				
SUMMARY OF ITEM				
This is related to Ericsson, Inc., a Delaware Corporation, request for tax abatement on Reinvestment Zone 126 and creation of the zone.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution				
Tax Abatement Agreement				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an agreement by and between the City of Plano, Texas, Ericsson Inc., and Ericsson Real Estate Holdings Inc. 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, Ericsson Inc., a Delaware corporation, and Ericsson Real Estate Holdings Inc., 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:

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 from and after its passage.

DULY PASSED AND APPROVED this the 26th day of March, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

determined by the Collin County Appraisal District of not less than Two Million Dollars (\$2,000,000.00) on the Real Property by January 1, 2015, and is or will be owned by Tenant.

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

IMPROVEMENTS

4. (a) The Tenant shall lease not less than 150,000 gross square feet of space on the Real Property and add the Personalty required under Paragraph 2 by January 1, 2015, unless an extension as a result of an Event of Force Majeure is approved by the City in writing.

(b) By December 31, 2014, the Owner or Tenant shall make or cause to be made improvements to the Real Property consisting of a three story office building, multi-level parking garage, and site improvements with an assessed taxable value of Real Property Improvements of not less than Twelve Million Seven Hundred Fifty Thousand Dollars (\$12,750,000.00) as determined by the Collin County Central Appraisal District for the tax year beginning in January 2015, unless an extension as a result of an Event of Force Majeure has been approved by the City.

(c) In the Event of a Force Majeure "Event" the affected party shall notify the City in writing not less than sixty days of the onset of the Event with supporting documentation, the anticipated duration and the actions that the party will take to alleviate the Event. 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 results in a delay of meeting the required improvement value, the party requesting the extension agrees that in the following year the minimum required taxable value of the Improvements and/or Personalty shall be met.

(d) 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 or Tenant at the Real Property. The term shall not include a downturn in the economy.

DEFAULT

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

(a) Tenant allows its personal property taxes located on the Real Property or Owner allows its real property improvement taxes owed the City to become delinquent and fails to either (1) timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes, or (2) cure such delinquency within 30 days of receipt of notice of such delinquency;
or

(b) (i) Tenant fails to lease the Improvements on or before January 1, 2015;
or

(ii) Owner or Tenant fails to construct the Improvements required in Paragraph 4(b); or

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

(ii) at any time during the Agreement, the Personalty is removed from the Real Property and the result is the assessed taxable value is below the minimum amount set forth in Paragraph 2; or

(d) The assessed taxable value of the Real Property Improvements is less than the minimum amount set forth in Paragraph 4(b) as a result of the Owner's protest; or

(e) (i) Tenant or Owner or Owner's duly authorized representative fails to provide annual certification as required in Paragraph 9 below; or

(ii) Tenant or Owner fails to comply with the Assignment provision in Paragraph 10; or

(f) Tenant or 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 Tenant or Owner defaults under this Agreement, the City shall give all parties 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 terminated as to all parties except any damages as specified in Paragraph 7 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. (a) Subject to Paragraph 6 above, upon the occurrence of an event of default under Paragraphs 5(a), (b) or (f) above and that default remains uncured, all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and owing to the City, together with interest charged from the date 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.

(b) Subject to Paragraph 6 above, upon the occurrence of an event of default under Paragraphs 5(c), (d) or (e) above and that default remains uncured, this Agreement shall terminate in its entirety to all parties upon delivery of written notice by the City to the parties. 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 without the benefit of this Agreement to become due and owing to the City, together with interest charged from the date 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. City shall exercise such option within ninety 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, 2015 and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, the Tenant and Owner, or their 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. Owner hereby grants to Tenant a power of attorney for the term of this Agreement for the limited purpose of making its annual certification on behalf of Owner and Tenant agrees to perform such duty.

ASSIGNMENT

10. If either Tenant or 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 (b) below, this Agreement may not be assigned without the express written consent of the City. 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. Tenant or Owner may assign this Agreement without obtaining the City's consent:

- (i) To an Affiliate of Tenant or Owner; or
- (ii) Any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than fifty percent (50%) of the assets of the Tenant or Owner; or
- (iii) Upon the sale of the Real Property by Owner.

For purposes of this subsection (b), an Affiliate of Tenant or Owner shall mean an entity directly or indirectly, through one or more intermediaries, that controls, is controlled by, or is under common control with the Tenant or Owner, with control meaning fifty percent (50%) or more ownership or beneficial interest of income or capital, or ownership of the voting power of the voting entity.

(c) Prior to the effective date of the assignment or sale under (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 Tenant and Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to Personalty and Real Property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2015, through December 31, 2024 (the "Term").

(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 each tax year from January 1, 2015 through December 31, 2024.

(c) The Tenant or 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 amounts required to be maintained under Paragraphs 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 Paragraphs 2 and 4 as a result of the Owner's filed protest and/or contest of the real property improvement value, or the removal of Personalty from the Real Property and such removal causes the assessed taxable value to be less than the amount set forth in Paragraph 2.

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. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For Tenant by notice to:

Ericsson Inc.
Attn: Tax Department
6300 Legacy Drive
Plano, TX 75024

With a copy to:

Ericsson Inc.
Attn: Legal Department
6300 Legacy Drive
Plano, TX 75024

For Owner by notice to:

Ericsson Real Estate Holdings Inc.
Attn: Tax Department
6300 Legacy Drive
Plano, TX 75024

With a copy to:

Ericsson Real Estate Holdings Inc.
Attn: Legal Department
6300 Legacy Drive
Plano, TX 75024

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 Tenant and 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 Tenant and 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 Tenant and Owner agree 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 and Tenant, the City represents that the Real Property is not owned by any member of the city council or planning commission.

16. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 26th day of March, 2012, authorizing the City Manager to execute the Agreement on behalf of the City.

17. This Agreement was entered into by Tenant and Owner pursuant to their duly authorized representatives.

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

19. Severability. 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.

This Agreement is performable in Collin County, Texas. Signed this ____ day of _____, 2012.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

ATTEST:

Ericsson Inc., a Delaware corporation

Title: _____

By: _____

Name: _____

Title: _____

ATTEST:

Ericsson Real Estate Holdings Inc.,
a Delaware corporation

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT "A"
LEGAL DESCRIPTION

BEING a 15.69 acre tract of land in the Collin County School Survey, Abstract No. 150, and the H. Cook Survey, Abstract No. 183, situated in the City of Plano, Collin County, Texas, being the Remainder of that tract of land described as Tract 13 in Special Warranty Deed to West Plano Land Company, L.P., as recorded in Document No. 20060920001358250, of the Official Public Records of Collin County, Texas (O.P.R.C.C.T.), and being all of Lot 2 of Pizza Hut Addition Lots 1 & 2, Block 1, as recorded in Volume 2010, Page 132, O.P.R.C.C.T., and being more particularly described by metes and bounds as follows:

BEGINNING at a found City of Plano Monument on the north right-of-way line of Tennyson Parkway (a variable width right-of-way), as recorded in Cabinet M, Page 41, and Cabinet P, Page 490, of the Plat Records of Collin County, Texas (P.R.C.C.T.) and being the easternmost corner of said Tract 13 and the southernmost corner of Lot 1, Block A, of Ericsson Village, as recorded in Volume 2008, Page 668, O.P.R.C.C.T., said monument being on a circular curve to the left having a radius of 1,110.75 feet and whose chord bears South 67 degrees 26 minutes 22 seconds West, a distance of 44.62 feet;

THENCE Southwesterly, departing said common line and along said north right-of-way line and said curve, through a central angle of 02 degrees 18 minutes 06 seconds, an arc length of 44.62 feet to the point of tangency;

THENCE South 66 degrees 17 minutes 18 seconds West, continuing along said north right-of-way line, a distance of 67.10 feet to a 5/8-inch found iron rod with Kimley-Horn cap point for corner;

THENCE South 66 degrees 17 minutes 18 seconds West, continuing along said north right-of-way line, a distance of 458.25 feet to a point for corner from which a 1-inch found iron rod bears South 13 degrees 33 minutes 30 seconds West, a distance of 0.33 feet;

THENCE South 71 degrees 33 minutes 20 seconds West, continuing along said north right-of-way line, a distance of 150.05 feet to a point for corner from which a 5/8-inch found iron rod with Kimley-Horn cap bears North 27 degrees 22 minutes 16 seconds West, a distance of 0.27 feet;

THENCE South 66 degrees 17 minutes 19 seconds West, continuing along said north right-of-way line, a distance of 182.00 feet to a 5/8-inch found iron rod with Kimley-Horn cap for corner at the beginning of the corner clip between said north right-of-way line and the east right-of-way line of said Corporate Drive (a variable width right-of-way), as shown in Right-of-Way Dedication Plat recorded in Volume P, Page 455, P.R.C.C.T.;

THENCE North 68 degrees 42 minutes 38 seconds West, departing said north right-of-way line and along said corner clip, a distance of 26.35 feet to a 1-inch found iron rod for corner on said east right-of-way line;

THENCE North 23 degrees 42 minutes 56 seconds West, departing said corner clip and along said east right-of-way line, a distance of 8.66 feet to a 1-inch found iron rod for the point of curvature of a circular curve to the left having a radius of 852.50 feet and whose chord bears North 29 degrees 56 minutes 31 seconds West, a distance of 184.92 feet;

THENCE Northwesterly, continuing along said east right-of-way line and along said curve, through a central angle of 12 degrees 27 minutes 10 seconds, an arc length of 185.28 feet to a point for corner, from which a 1-inch found iron rod bears South 04 degrees 13 minutes 41 seconds East, a distance of 0.28 feet;

THENCE North 45 degrees 05 minutes 28 seconds West, departing said curve and continuing along said east right-of-way line, a distance of 108.41 feet to a 5/8-inch found iron rod with Kimley-Horn cap for the point of curvature of a non-tangent circular curve to the left having a radius of 842.52 feet and whose chord bears North 45 degrees 48 minutes 29 seconds West, a distance of 68.73 feet;

THENCE Northwesterly, continuing along said east right-of-way line and along said curve, through a central angle of 04 degrees 40 minutes 31 seconds, an arc length of 68.75 feet to a 1-inch found iron rod for corner;

THENCE North 48 degrees 08 minutes 28 seconds West, departing said curve and continuing along said east right-of-way line, a distance of 110.07 feet to a 1/2-inch found iron rod with yellow plastic cap stamped "HALFF ASSOC" for the southernmost corner of Lot 1, Block 1, of the Pizza Hut Addition, an addition to the City of Plano, Texas, as recorded in Document No. 20100204000117940, O.P.R.C.C.T.

THENCE North 41 degrees 51 minutes 32 seconds East, departing said east right-of-way line and along the common line between said Lots 1 and 2, Pizza Hut Additions, a distance of 283.88 feet to a point for corner;

THENCE North 23 degrees 00 minutes 07 seconds East, continuing along said common line, a distance of 616.59 feet to a point for corner;

THENCE North 53 degrees 00 minutes 07 seconds East, continuing along said common line, a distance of 140.75 feet to a point for the northeast corner of said Lot 2, same being a corner on the west line of said Lot 1, Ericsson Village;

THENCE South 00 degrees 32 minutes 02 seconds East, along the common line between said Lot 2 and said Lot 1, Ericsson Village, a distance of 103.13 feet to a point for corner;

THENCE South 38 degrees 02 minutes 12 seconds East, continuing along said common line, a distance of 999.42 feet to the POINT OF BEGINNING AND CONTAINING 683,331 square feet or 15.69 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. 126
Tax Abatement Agreement (the “Agreement”) between Ericsson Inc. (“Tenant”); Ericsson
Real Estate Holdings Inc. (“Owner”) and the City of Plano.

This letter certifies that Tenant and Owner are in compliance with each applicable term as set forth in the Agreement. The term of the Agreement is January 1, 2015 through December 31, 2024. This form is due on November 1 of each year the Agreement is in force. Tenant makes this certification on behalf of Owner pursuant to its power of attorney in Section 10 of the Agreement.

Ericsson Inc., a Delaware corporation,
as Tenant and on behalf of Ericsson Real
Estate Holdings Inc., as Owner

By: _____
Name: _____
Title: _____