



## CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		04/09/12		
Department:		Economic Development		
Department Head		Sally Bane		
Agenda Coordinator (include phone #): <b>Linda Thomason x8301</b>				
<b>CAPTION</b>				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a First Amendment to the Economic Development Incentive Agreement between the City of Plano, Texas, and Sears Holdings Management Corporation; authorizing its execution by the City Manager or his designee; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	<b>0</b>
<b>BALANCE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>FUND(S):    ECONOMIC DEVELOPMENT INCENTIVE FUND</b>				
<b>COMMENTS:</b> This item has no fiscal impact. Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy.				
<b>SUMMARY OF ITEM</b>				
To amend the Economic Development Incentive Agreement to reflect the revised agreement between the parties regarding reduced job equivalents and grant monies.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution 1 <sup>st</sup> Amendment of Economic Development Incentive Agreement				

**A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a First Amendment to the Economic Development Incentive Agreement between the City of Plano, Texas, and Sears Holdings Management Corporation; authorizing its execution by the City Manager or his designee; and providing an effective date.**

**WHEREAS**, the City Council has been presented a proposed First Amendment to the Economic Development Incentive Agreement by and between City of Plano ("City") and Sears Holdings Management Corporation, a Delaware corporation ("Sears"), a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "First Amendment"); and

**WHEREAS**, City and Sears entered into an Economic Development Incentive Agreement on November 8, 2011; and

**WHEREAS**, City and Sears desire to amend said Economic Development Incentive Agreement to reflect the revised agreement between the parties regarding reduced job equivalents and grant monies; and

**WHEREAS**, upon full review and consideration of the First Amendment, 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 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 First Amendment, having been reviewed by the City Council of the City of Plano 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 designee is hereby authorized to execute the First Amendment 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 9<sup>th</sup> day of April, 2012.

\_\_\_\_\_  
Phil Dyer, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

THE STATE OF TEXAS § First Amendment of Economic  
§ Development Incentive Agreement  
§ by and between City of Plano and  
§ Sears Holdings Management Corporation  
§  
COUNTY OF COLLIN §

THIS FIRST AMENDMENT of Economic Development Incentive Agreement (hereinafter "First Amendment") is made by and between **SEARS HOLDINGS MANAGEMENT CORPORATION**, a Delaware corporation (hereinafter "Company"), and the **CITY OF PLANO, TEXAS**, a home rule municipal corporation (hereinafter "City"), acting by and through its City Manager or his designee.

**WITNESSETH:**

**WHEREAS**, City and Company entered into an Economic Development Incentive Agreement on November 8, 2011 (hereinafter "Agreement"); and

**WHEREAS**, City and Company desire to amend such Agreement in certain respects as set forth herein in this First Amendment.

**NOW THEREFORE**, the Agreement is incorporated herein as if written word for word. Except as provided below, all other terms and conditions of the Agreement shall remain unchanged and shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this First Amendment and the Agreement, priority of interpretation shall be in the following order: First Amendment and then the Agreement. In consideration of the foregoing, and for other good and valuable consideration, the parties hereto agree as follows:

**I.**

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, **the second paragraph under the Witnesseth provision on the first page of the Agreement** is hereby amended to read in its entirety as follows:

**WHEREAS**, Company agrees to occupy at least 20,000 square feet of space at the Real Property and maintain or create up to 75 Job Equivalents to be located on the Real Property for the term of this Agreement; and

**II.**

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, **the fourth paragraph under the Witnesseth**

**provision on the first page of the Agreement** is hereby amended to read in its entirety as follows:

**WHEREAS**, the Council finds that the occupancy of at least 20,000 square feet of space at the Real Property, and the retention, creation or transfer of up to 75 Job Equivalents within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

### **III.**

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, **Article III, Obligations of Company, Section (b)** is hereby amended to read in its entirety as follows:

(b) Retain, create or transfer at least 75 Job Equivalents to the Real Property by December 31, 2011, and maintain those Job Equivalents on the Real Property throughout the term of the Agreement; and

### **IV.**

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, **Article IV, Economic Development Grant, Section 4.01** is hereby amended to read in its entirety as follows:

4.01 **Grant.** The City agrees to provide the Company a cash grant of Sixty Thousand Dollars (\$60,000.00) (the "Economic Development Program Grant") as long as Company meets each of the obligations set out in Article III above and complies with the certification schedule and requirements set out in 4.02 below.

### **V.**

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, **Article IV, Economic Development Grant, Section 4.02** is hereby amended to read in its entirety as follows:

4.02 **Grant Payment Requirements and Schedule.** Except as otherwise indicated, the Company shall be entitled to the grant award in accordance with the following requirements and schedule:

(a) By December 31, 2011, occupy not less than 20,000 square feet of commercial space and retain, transfer, or create at least 75 Job Equivalents at the Real Property to be eligible to receive a lump sum payment of Sixty Thousand Dollars (\$60,000.00). The payment will not be pro-rated. **Company must submit the Initial Certification form attached hereto as Exhibit "A" verifying compliance with the obligations set forth in this provision not later than May 31, 2012. A failure to provide this form by that date is an event of default and, if not cured as provided**

**in Section 5.01(b) below, results in an immediate and complete forfeiture of the entire grant.**

City will make the payment within thirty (30) days of receipt of the Initial Certification unless the City reasonably objects to the Initial Certification due to the Company not being in compliance with the obligations set out in Section 4.02(a) above.

(b) Beginning January 2013, Company must submit an annual certification on the form attached hereto as Exhibit "B" not later than January 31 of each year for the duration of this Agreement verifying compliance with Article III above. The certification must be based upon the number of Job Equivalents for which the Company has received a grant. A failure to file the annual certification by the January 31 deadline during the remaining years of the Agreement shall result in a default and a right to a full refund of all grant amounts previously paid as set out in 4.03.

(c) All certifications must be verified by the Company's chief executive or financial officer.

**VI.**

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, **Exhibit "A"** attached to this First Amendment supersedes and replaces Exhibit "A" of the Agreement in its entirety.

**IN WITNESS WHEREOF**, the effective date of this First Amendment shall be the date on which all of the parties have executed this First Amendment as indicated below.

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

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

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

By: \_\_\_\_\_  
Bruce D. Glasscock, CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

SEARS HOLDINGS MANAGEMENT  
CORPORATION, a Delaware  
Corporation

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Must be signed by CEO or CFO)

**EXHIBIT "A"**

**INITIAL CERTIFICATE OF COMPLIANCE**

Real Property: Plano Corporate Center, Suite 201  
2301 West Plano Parkway  
Plano, Texas 75075

Please select one of the options below before signing and returning the certification:

\_\_\_\_\_ a. I hereby certify that Sears Holdings Management Corporation has occupied 20,000 square feet of commercial space and retained, transferred or added at least 75 Job Equivalent positions at the Real Property by December 31, 2011, and is in compliance with the Agreement and is entitled to receive payment in accordance with Section 4.02 (a) of that Agreement. The actual number of job equivalents is \_\_\_\_\_.

\_\_\_\_\_ b. I hereby certify that Sears Holdings Management Corporation has failed to occupy 20,000 square feet of commercial space and failed to retain, transfer or add at least 75 Job Equivalent positions at the Property by December 31, 2011, and is not in compliance with the Agreement and is not entitled to receive payment in accordance with Section 4.02 (a) of that Agreement. The actual number of job equivalents is \_\_\_\_\_.

ATTEST:

**Sears Holdings Management  
Corporation, a Delaware Corporation**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Must be signed by CEO or CFO)

\_\_\_\_\_

Date

**This Certification is due by May 31, 2012.**

This Certificate of Compliance should be mailed to the following address for overnight or personal delivery:

City of Plano  
Attn: Finance Director  
1520 Avenue K, Suite 370  
Plano, Texas 75074