



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:		05/12/14			
Department:		Economic Development			
Department Head		Sally Bane			
Agenda Coordinator (include phone #): Sally Bane X8302					
CAPTION					
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 and Toyota Motor North America, Inc., a California corporation, 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					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2017-18 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 Toyota Motor North America, Inc., a California corporation, request for tax abatement on Reinvestment Zone 138 and the creation of the zone at the northwest corner of Legacy Drive and Headquarters Drive. http://goo.gl/llmt2r					
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 and Toyota Motor North America, Inc., a California corporation, 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 Toyota Motor North America, Inc., a California corporation, 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 12th day of May, 2014.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

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, 2017, 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, 2017, 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 1,000,000 gross square feet of office space with an assessed taxable value of not less than Three Hundred Million Dollars (\$300,000,000) for **new improvements added** to the Real Property between the dates of January 1, 2015 through December 31, 2017, as determined by the Collin County Central Appraisal District. The real property abatement for the new improvements shall begin in the 2018 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 of 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 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 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, 2018, 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, 2018 through December 31, 2027.

(ii) The tax abatement as to Personalty, as provided for herein, shall be for a period of January 1, 2018 through December 31, 2027.

(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

For Owner by notice to:

Toyota Motor Sales, USA, Inc.
Attention: Mr. John Kennelly
Vice President and Corporate Controller
19001 S. Western Avenue
Torrance, California 90501

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. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 12th day of May, 2014, authorizing the City Manager to execute the Agreement on behalf of the City.

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

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

19. 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.

20. 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:

OWNER
TOYOTA MOTOR NORTH AMERICA,
INC., a California corporation

Title: _____

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

EXHIBIT "A"
LEGAL DESCRIPTION

BEING a tract of land situated in the J.C. Barrow Survey, Abstract No.91, the J.W. Haynes Survey, Abstract No. 458 and the William G. Garvin Survey, Abstract No. 1103, City of Plano, Collin County, Texas, being part of the R.P. Harding Survey, Abstract No. 611, the William Garvin Survey, Abstract No. 453 in the City of Plano, Denton County, Texas, and being part of a tract of land described in Limited General Warranty Deed to SWC Tollway & 121 LLC, recorded in Instrument No. 2014-10254, Deed Records of Denton County, Texas and all of a tract of land described in Special Warranty Deed to KDC Legacy HQ Investments One LP, recorded in Instrument No. 20140225000175910, Land Records of Collin County, Texas, being all of a tract of land described in deed to 121 Epic Commercial, Ltd., recorded in Document No. 2005-60189 of the Official Records of Denton County, Texas, being all of Lots 2 and 3, Block 1 of Lots 1,2,3, & 4, Palomino Crossing Addition, an addition to the City of Plano according to the plat recorded in Document 2012-134 of the Official Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a 1" iron rod found at the northernmost end of a circular right-of-way corner clip at the intersection of the west right-of-way line of Legacy Drive (a 121-foot wide right-of-way) and the north right-of-way line of Headquarters Drive (a 110-foot wide right-of-way), said point being the beginning of a curve to the right having a central angle of 76°27'04", a radius of 137.00 feet, a chord bearing and distance of South 22°12'29" West, 169.54 feet;

THENCE with said circular right-of-way corner clip and with said curve to the right, in a southwesterly direction, an arc distance of 182.80 feet to a 1" iron rod found at the southernmost end of said circular right-of-way corner clip;

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

South 60°26'04" West, a distance of 503.04 feet to a point at the beginning of a tangent curve to the right having a central angle of 28°50'08", a radius of 1945.00 feet, a chord bearing and distance of South 74°51'08" West, 968.57 feet;

In a southwesterly direction, with said curve to the right, an arc distance of 978.87 feet to a point at the end of said curve;

South 89°16'11" West, a distance of 1,368.48 feet to a point for the southeast corner of Lot 7, Block 1 of Lots 4 & Lot 7, Block 1, Palomino Crossing Addition, an addition to the City of Plano according to the plat recorded in Document 2014-131 of the Official Records of Denton County, Texas;

THENCE with the east line of said Lot 7 and the east line of Lot 5, Block 1 of Lots 4 & 5, Palomino Crossing Addition, an addition to the City of Plano according to the plat recorded in Document 2013-232 of the Official Records of Denton County, Texas, the following courses and distances to wit:

North 0°43'49" West, a distance of 324.73 feet to a point at the beginning of a tangent curve to the left having a central angle of 24°20'01", a radius of 540.00 feet, a chord bearing and distance of North 12°53'50" West, 227.62 feet;

In a northwesterly direction, with said curve to the left, an arc distance of 229.34 feet to a point at the end of said curve;

North 25°03'50" West, a distance of 502.97 feet to a point for corner in the south right-of-way line of State Highway 121 (variable width ROW);

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

South 88°58'37" East, a distance of 64.36 feet to a point for corner;

North 8°41'35" West, a distance of 45.37 feet to a point for corner;

North 47°40'00" West, a distance of 126.43 feet to a point for corner;

North 64°57'20" East, a distance of 56.24 feet to a point at the beginning of a non-tangent curve to the right having a central angle of 3°02'32", a radius of 11175.16 feet, a chord bearing and distance of North 69°12'02" East, 593.31 feet;

In a northeasterly direction, with said curve to the right, an arc distance of 593.38 feet to a point at the end of said curve;

North 70°50'41" East, a distance of 657.51 feet to a point for corner;

North 76°36'02" East, a distance of 498.57 feet to a point for corner;

North 70°50'41" East, a distance of 1053.22 feet to a point for corner;

South 69°32'31" East, a distance of 25.88 feet to a point for corner;

North 75°09'20" East, a distance of 5.40 feet to a point for corner in the west right-of-way line of said Legacy Drive;

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

South 15°09'28" East, a distance of 94.99 feet to a point for corner;

South 16°11'20" East, a distance of 250.04 feet to a point for corner;

South 15°09'28" East, a distance of 1064.24 feet to the **POINT OF BEGINNING** and containing 99.816 acres of land.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

**EXHIBIT “B”
CERTIFICATION FORM**

[DATE]

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

RE: Certification Form – Reinvestment Zone No. 138
Tax Abatement Agreement (the “Agreement”) between Toyota Motor North America, Inc.
 (“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, 2018 through December 31, 2027. This form is due on November 1, 2018 and on November 1 of each year thereafter that the Agreement is in force.

TOYOTA MOTOR NORTH AMERICA,
INC., a California corporation

By: _____
Name: _____
Title: _____