



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:		05/14/12		
Department:		Economic Development		
Department Head		Sally Bane		
Agenda Coordinator (include phone #): Linda Thomason x8301				
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, Eltek, Inc., and Argent Plano Realty, L.P. 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:	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 Eltek, Inc., a Delaware corporation, and Argent Plano Realty, L.P., a Texas limited partnership request for tax abatement on Reinvestment Zone 127 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, Eltek, Inc., and Argent Plano Realty, L.P. 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, Eltek, Inc., a Delaware corporation, and Argent Plano Realty, L.P., a Texas limited partnership, 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 14th day of May, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

2. The tangible personal property subject to this Agreement shall be personal property, excluding inventory and supplies, used within Reinvestment Zone No. 127, which shall be hereinafter referred to as the "Personalty." The Personalty is to have an assessed taxable value as determined by the Collin County Appraisal District of not less than One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) on the Real Property by January 1, 2014, 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 agrees to add the Personalty required under Paragraph 2 by December 31, 2013, unless an extension as a result of an Event of Force Majeure is approved by the City in writing.

(b) By December 31, 2012, the Owner or Tenant shall make or cause to be made improvements to the Real Property consisting of a new building that is at least 100,000 gross square feet for office and warehouse space with an assessed taxable value of Real Property Improvements of not less than Five Million Dollars (\$5,000,000.00) as determined by the Collin County Central Appraisal District for the tax year beginning in January 2013 unless an extension as a result of an Event of Force Majeure has been approved by the City in writing.

(c) In the Event of a Force Majeure "Event" the affected party shall notify the City in writing not less than sixty (60) 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 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 thirty (30) days of receipt of notice of such delinquency; or

(b) Owner or Tenant fails to construct the Improvements required in 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 Paragraph 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 Paragraph 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 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 the 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 automatically terminated as to all parties 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 Paragraph 5(a) (b) or (f) above and that remains uncured, this Agreement shall terminate in its entirety as to all parties upon delivery of written notice by the City to the parties and 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.

Upon the occurrence of an event of default under Paragraph 5(c) (d) or (e) above and that remains uncured, this Agreement shall terminate in its entirety as 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 (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, 2013, 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 a wholly owned 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 ninety (90) percent of the assets of the Tenant or Owner; or

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

(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) (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, 2013, through December 31, 2022.

(ii) The tax abatement as to Personalty, as provided for herein, shall be for a period of nine (9) tax years, from January 1, 2014, through December 31, 2022.

(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 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 amount 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 Paragraph 2 and 4 as a result of a Tenant or Owner filed protest and/or contest, 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. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For Tenant by notice before relocation to:

Eltek, Inc., a Delaware corporation
Attn: Charles Bailey
Vice President of Finance-Americas
1303 E. Arapaho Road
Richardson, TX 75081

For Tenant by notice after relocation to:

Eltek, Inc., a Delaware corporation
Attn: Charles Bailey
Vice President of Finance-Americas
2925 E. Plano Parkway
Plano, TX 75074

For Owner by notice to:

Argent Realty, L.P., a Texas Limited Partnership Company
Attn: Wendy Struck
Controller
1521 Raleigh Drive
Carrollton, TX 75007

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 14th day of May, 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. 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 C. Wetherbee, CITY ATTORNEY

ATTEST:

TENANT
Eltek, Inc., a Delaware corporation

Title: _____

By: _____
Name: _____
Title: _____

ATTEST:

OWNER
Argent Plano Realty, L.P., a Texas limited partnership

Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "A"
LEGAL DESCRIPTION

BEING a tract of land situated in the J. B. Roundtree Survey, Abstract No. 759, being all of Lot 1, Block 7, Central Plano Industrial Park, Phase III, an Addition to the City of Plano, Texas, according to the plat thereof recorded under Cabinet 2008, Page 239, Official Public Records, Collin County, Texas and being a portion of that certain tract of land conveyed to Argent Plano Realty, L.P. by Special Warranty Deed recorded in Volume 4850, Page 1586, Official Public Records, Collin County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod set (from which a 1/2 inch iron rod found bears North 63 degrees 13 minutes 31 seconds East, a distance of 0.57 feet) in the North ROW line of Plano Parkway (a 100' ROW), being at the Southeast corner of said Lot 1, Block 7 and the Southwest corner of Lot 1, Block 8, Central Plano Industrial Park, Phase 3, recorded in Cabinet K, Slide 258, Official Public Records, Collin County, Texas;

THENCE: North 89 degrees 47 minutes 30 seconds West, along the North ROW line of Plano Parkway and the South line of said Lot 1, Block 7, a distance of 696.08 feet to a 1/2 inch iron rod set (from which a 3-inch aluminum disk found bears North 55 degrees 21 minutes 45 seconds West, a distance of 0.29 feet) at the Southwest corner of said Lot 1, Block 7 and the Southeast corner of Lot 2, Block 10, Central Plano Industrial Park, Phase 3, recorded in Cabinet K, Slide 81, Official Public Records, Collin County, Texas;

THENCE: North 00 degrees 12 minutes 30 seconds East, departing the North ROW line of Plano Parkway, along at the common line of said Lot 1, Block 7 and said Lot 2, Block 10, passing at 311.00 feet the Northeast corner of said Lot 2, Block 10 and the Southeast corner of a tract of land conveyed to City of Plano by Deed recorded in Volume 2481, Page 556, Official Public Records, Collin County, Texas, continuing along the common line of said Lot 1, Block 7 and said City of Plano tract, a total distance of 420.23 feet to a 1/2 inch iron rod set (from which a 1/2 inch iron rod found bears North 67 degrees 24 minutes 09 seconds West, a distance of 0.26 feet) Northwest corner of said Lot 1, Block 7 and the Southwest corner of Lot 4, Block 10 of said Central Plano Industrial Park, Phase III;

THENCE: North 89 degrees 47 minutes 30 seconds West, along the common line of said Lot 1, Block 7 and said Lot 4, Block 10, at a distance of 376.08 feet passing a 1/2 inch iron rod found with yellow cap stamped AHalf and Assoc≅ at the Southeast corner of said Lot 4, Block 10 and the Southwest corner Lot 3, Block 10, Central Plano Industrial Park, Phase 3, recorded in Cabinet Q, Slide 522, Official Public Records, Collin County, Texas, continuing along the common line of said Lot 1, Block 7 and said Lot 3, Block 10, a total distance of 696.08 feet to a 1/2 inch iron rod set (from which a 1/2 inch iron rod found with yellow cap stamped AHalf and Assoc≅ bears South 14 degrees 32 minutes 37 seconds West, a distance of 0.38 feet) in the West line of Lot 1, Block 9, Central Plano Industrial Park, Phase 3, recorded in Cabinet K, Slide 258, Official Public

Records, Collin County, Texas, being at the Northeast corner of said Lot 1, Block 7 and the Southeast corner of said Lot 3, Block 10;

THENCE: South 00 degrees 12 minutes 30 seconds West, along the common line of said Lot 1, Block 7 and said Lot 1, Block 9, at 49.52 feet passing the Southwest corner of said Lot 1, Block 9 and the Northwest corner of said Lot 1, Block 8, continuing along the common line of said Lot 1, Block 7 and said Lot 1, Block 8, a total distance of 420.23 feet to the PLACE OF BEGINNING and containing 6.715 acres of 292,514 square feet 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. 127
Tax Abatement Agreement (the “Agreement”) between Eltek, Inc. (“Tenant”); Argent Plano Realty, L.P. (“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, 2013, through December 31, 2022. 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 9 of the Agreement.

Eltek, Inc., a Delaware corporation,
as Tenant and on behalf of Argent Plano
Realty, L.P., a Texas limited partnership, as
Owner

By: _____
Name: _____
Title: _____