



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:		06/09/14			
Department:		Economic Development			
Department Head		Sally Bane			
Agenda Coordinator (include phone #): Frank Haller x8301					
CAPTION					
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 by and between the City of Plano, Texas and Futurewei Technologies, Inc., a Texas corporation; authorizing its execution by the City Manager or his 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:	2009/2010 through 2016/2017	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): ECONOMIC DEVELOPMENT INCENTIVE FUND					
COMMENTS: Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy					
SUMMARY OF ITEM					
A request from Futurewei Technologies, Inc., a Texas corporation, for a First Amendment to the Economic Development Incentive Agreement dated November 9, 2009. http://goo.gl/maps/4TThl					
List of Supporting Documents: Resolution First Amendment to the Economic Development Incentive Agreement			Other Departments, Boards, Commissions or Agencies		

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 by and between the City of Plano, Texas and Futurewei Technologies, Inc., a Texas 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 Futurewei Technologies, Inc., a Texas corporation ("Company"), a substantial copy of which is attached hereto as Exhibit “A” and incorporated herein by reference (hereinafter called “First Amendment”); and

WHEREAS, City and Company entered into an Economic Development Incentive Agreement on November 9, 2009; and

WHEREAS, City and Company desire to amend said Economic Development Incentive Agreement to modify the Company’s deadline for filing the Final Certification Form and method for calculating the number of job equivalents; 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 First Amendment.

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

DULY PASSED AND APPROVED this the 9th day of June, 2014.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

THE STATE OF TEXAS	§	<u>First Amendment to the Economic</u>
	§	<u>Development Incentive Agreement</u>
	§	<u>by and between City of Plano and</u>
	§	<u>Futurewei Technologies, Inc., a Texas</u>
COUNTY OF COLLIN	§	<u>corporation</u>

This First Amendment to the Economic Development Incentive Agreement (hereinafter "First Amendment") is made and entered into by and between **FUTUREWEI TECHNOLOGIES, INC.**, a Texas 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 9, 2009 (hereinafter "Agreement") to promote economic development, stimulate commercial activity and enhance the tax base of the City; and

WHEREAS, City and Company desire to amend said Agreement in certain respects as set forth 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, Agreement.

IN CONSIDERATION of the foregoing, and for other good and valuable consideration, the parties agree as follows:

I.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Article IV Section 4.03(a) is amended to read in its entirety as follows:

“(a) In the event the Company allows Job Equivalent positions at the Property to fall below the number of Job Equivalent positions for which it has received a grant payment during the term of this Agreement, and the Job Equivalent positions are not refilled by December 31, 2016, and such failure is not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to One Thousand Two Hundred Dollars (\$1,200) for each lost Job Equivalent. For purposes of determining whether the City is due a refund under this section, a Company officer shall certify to the City by January 31, 2017 the actual number of Job Equivalent positions at the Property using the Certificate Form attached as Exhibit "B" revised as

of June 9, 2014. For purposes of calculating and satisfying the total Job Equivalent positions certified as of December 31, 2016, the City will recognize the Job Equivalent positions maintained by Futurewei Technologies, Inc., Huawei Technologies USA, Inc., Huawei Device USA, Inc. and Huawei Enterprise USA, Inc. (“Enterprise”) located at 5700 Tennyson Parkway, Plano, TX 75024.

A failure to make the refund payment prior to or at the time of filing certification shall constitute an event of default. Notwithstanding the foregoing, the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01.”

II.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Article VI Section 6.04 is amended to read in its entirety as follows:

“Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:
City of Plano, Texas
Attention: Mr. Bruce D. Glasscock
City Manager
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

With a copy to:
City of Plano, Texas
Attention: Ms. Paige Mims
City Attorney
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

If intended for the Company:
Futurewei Technologies, Inc.
Attention: Legal Department
5700 Tennyson Parkway, Suite 500
Plano, TX, 75024

With a copy to:
Futurewei Technologies, Inc.
Attention: Administration
5700 Tennyson Parkway, Suite 500
Plano, TX, 75024”

III.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Exhibit "B" of the Agreement is hereby replaced with the attached Exhibit "B" revised as of June 9, 2014.

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

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:

FUTUREWEI TECHNOLOGIES, INC., a
Texas corporation

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

EXHIBIT "B"
(Revised June 9, 2014)

FINAL CERTIFICATE OF COMPLIANCE

I hereby certify that Futurewei Technologies, Inc., a Texas corporation, is in compliance with each applicable term as set forth in Article III of the Agreement. The term of the Agreement is July 31, 2010 through July 30, 2017. The number of Job Equivalents, calculated as set forth in the Agreement, is _____ as of the date of this Final Certificate of Compliance. If the number herein reported is below the number for which Futurewei Technologies, Inc., a Texas corporation, has received payment pursuant the Agreement, I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 as amended by this First Amendment.

For purposes of calculating and satisfying the total Job Equivalents certified as of December 31, 2016, the City will recognize the Job Equivalent positions maintained by Futurewei Technologies, Inc., Huawei Technologies USA, Inc., Huawei Device USA, Inc. and Huawei Enterprise USA, Inc. located at 5700 Tennyson Parkway, Plano, TX 75024.

This form is due by January 31, 2017.

ATTEST:

FUTUREWEI TECHNOLOGIES,
INC., a Texas corporation

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date

NOTE:

This Certificate of Compliance should be mailed to:

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