CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY
☐ Consent ☐ Regular ☐ Statutory

Council Meeting Date:	07/22/2013
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 Economic Development Incentive Agreement by and between Harley-Davidson Financial Services, Inc., a Delaware corporation, and the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☒ OPERATING EXPENSE ☐ REVENUE ☐ CIP

FISCAL YEAR: **2013-14 through 2023-24**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	25,668,337	0	**25,668,337**
Encumbered/Expended Amount	0	-499,448	-13,435,350	**-13,934,798**
This Item	0	-216,000	0	**-216,000**
BALANCE	0	24,952,889	-13,435,350	**11,517,539**

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 Harley-Davidson Financial Services, Inc., a Delaware corporation, to expand its business and commercial activities in the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City. Harley-Davidson Financial Services, Inc. agrees to occupy 69,321 square feet of office space and create up to 270 Job Equivalents on the Real Property at 1801 Alma Drive.

List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Resolution Economic Development Incentive Agreement	

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Economic Development Incentive Agreement by and between Harley-Davidson Financial Services, Inc., a Delaware corporation, and the City of Plano, Texas; 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 Economic Development Incentive Agreement by and between Harley-Davidson Financial Services, Inc. and the City of Plano, Texas, 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, THAT:

Section I. The terms and conditions of the Agreement, 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 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 immediately upon its passage.

DULY PASSED AND APPROVED this the 22nd day of July, 2013.

_____
Harry LaRosiliere, MAYOR

ATTEST:

_____
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Plano, Texas (the "City"), and Harley-Davidson Financial Services, Inc., a Delaware corporation ("Company"), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, Company is engaged in the business of providing services for commercial, consumer and dealer financing and insurance related services in the motorcycle industry and plans to add One Million, Seventy-Three Thousand, Eight Hundred Fifty-Six Dollars ($1,073,856) of Real Property improvements and Two Hundred Thousand Dollars ($200,000) of Business Personalty property improvements to the existing One Million, Fifty-Two Thousand Dollars ($1,052,000) of Business Personalty property for a total of One Million, Two Hundred Fifty-Two Thousand Dollars ($1,252,000) of Business Personalty property on the Real Property; and

WHEREAS, Company agrees to occupy 69,321 gross square feet of office space on the Real Property and retain, transfer or create up to 270 Job Equivalents to be located on the Real Property for the term of this Agreement; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to expand its business and commercial activities in the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values for the City, would be an agreement by the City to provide an economic development grant to the Company; and

WHEREAS, the Council finds that the occupancy of 69,321 gross square feet of office space and the retention, creation or transfer of up to 270 Job Equivalents within the City will promote economic development, stimulate commercial activity and enhance the tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development; and

WHEREAS, the City is authorized by TEX. LOC. GOV'T CODE §380.001 *et seq*. to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City has determined that making an economic development grant to the Company in accordance with the terms and conditions set forth in this Agreement will further the objectives of the City, will benefit the City and its citizens and will promote local economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing and the premises, mutual covenants and agreements contained herein, and other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I
Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"Company" shall mean Harley-Davidson Financial Services, Inc., a Delaware corporation.

"Effective Date" shall mean the last date on which all of the parties hereto have executed this Agreement.

"Event of Force Majeure" shall mean 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 or work stoppages any of which event(s) directly and significantly impact the Company's operations in the City. An economic downturn shall not constitute an Event of Force Majeure.

"Job Equivalent" shall mean one or more Company employees, whether individual or combined with other employees, who are located at the Property and each Job Equivalent is paid a total 2,080 hours annually and issued an Internal Revenue Service W-2 form by the Company.

"Real Property" or "Property" shall mean that portion of leased office space at 1801 Alma Drive, Suite 200, Plano, Texas 75075 occupied by the Company.

Article II
Term

The term of this Agreement shall begin on the Effective Date and continue until January 31, 2024, unless sooner terminated as provided herein.

Article III
Obligations of Company

In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to perform the following:

(a) On or before March 31, 2014, occupy the office space on the Real Property throughout the term of the Agreement; and

(b) By March 31, 2014, retain, create or transfer at least 227 Job Equivalents and maintain those Job Equivalents on the Real Property throughout the Agreement; and

(c) By December 31, 2016, and subject to at least the minimum amount of Job Equivalents being added and maintained by Company pursuant to Article III, Section (b) herein, Company may create or transfer up to an additional 43 Job Equivalents and shall maintain those Job Equivalents on the Real Property throughout the Agreement; and

(d) Use reasonable efforts to place all Company-managed hotel room nights, related to the Company's business activities, at facilities located in the City of Plano.

Article IV
Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company a cash grant of up to Two Hundred Sixteen Thousand Dollars ($216,000) 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 Section 4.02 below.

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 March 31, 2014, Company shall occupy the office space and retain, transfer or create at least 227 Job Equivalents to the Real Property to be eligible to receive a payment of One Hundred Eighty-One Thousand, Six Hundred Dollars ($181,600). The payment will not be pro-rated. **Company must submit the Initial Certification form attached hereto as Exhibit "A" certifying compliance with the obligations set forth in Article III, Sections (a), (b) and (d) not later than June 30, 2014. A failure to provide this form by that date is an event of default and, if not cured, 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 certification. However, in no event will the City make the grant payment prior to April 30, 2014.

(b) By December 31, 2016 and subject to the Company retaining, adding and maintaining at least the minimum number of Job Equivalents pursuant to Section 4.02(a) herein, Company may add up to an additional 43 Job Equivalents for a total maximum number of 270 Job Equivalents at the Real Property to be eligible to receive a second grant payment of up to Thirty-Four Thousand, Four Hundred Dollars ($34,400) which may be pro-rated at Eight Hundred Dollars ($800) for each Job Equivalent over 227 and up to the maximum amount allowed herein. **Company must submit the Annual Certification form attached hereto as**

Exhibit "B" as required by Section 4.02(c) below certifying the number of Job Equivalents added pursuant to Article III, Section (c) and compliance with Article III (a), (b), and (d) above not later than January 31, 2017 to be eligible for the second grant payment. A failure to provide this form by that date is an event of default and, if not cured, results in an immediate and complete forfeiture of the remaining grant available under this Section 4.02(b) herein and invokes the City's right to a full refund, including damages, as set out in Section 4.03 below.

City will make the payment within thirty (30) days of receipt of the January 31, 2017 annual certification if Company qualifies for a second grant payment pursuant to this Section 4.02(b) herein unless the City reasonably objects to the certification. However, in no event will the City make the second grant payment prior to January 31, 2017.

(c) Beginning January 31, 2015, 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 certifying compliance with all of the obligations set out in Article III above. A failure to file the annual certification by the January 31 deadline during the remaining years of the Agreement shall be an event of default and, if not cured within thirty (30) days after written notice from the City, results in the City's right to a full refund, including damages, as set out in Section 4.03.

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

4.03 **Refund/Default.**

(a) If the Company fails to meet the required number of Job Equivalents for more than 180 consecutive days at any time during the term of this Agreement and the loss is not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to Eight Hundred Dollars ($800) for each lost Job Equivalent.

For the purposes of determining whether the City is due a refund under this section, the Company shall certify to the City as set out in Section 4.02 above the actual number of Job Equivalents at the Real Property for the compliance period using the form attached as Exhibit "B". A failure to make the refund payment prior to or at the time of filing certification shall constitute an event of default. If a refund has been paid for one or more Job Equivalent(s), Company is not entitled to any future payment for that lost Job Equivalent(s) notwithstanding that it subsequently complies with the Job Equivalent requirements of this Agreement at a later date.

(b) If the Company defaults on the payment of any refund or fails to timely provide any certification as required by Section 4.02, the full amount of the entire grant paid shall be refunded by Company to the City. City may use any efforts to collect such sums owed and Company agrees to pay any and all interest, and expenses, including attorney fees and costs incurred by City. This obligation shall survive termination of this Agreement.

(c) At any time during the term of this Agreement the Company is convicted of a violation under 8 U.S.C. Section 1324a(f) regarding the unlawful employment of undocumented workers, it shall reimburse the City all grant funds paid pursuant to this Agreement together with interest charged from the date of payment of the funds at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty. Repayment of grant funds and interest shall be due not later than 120 days after the date the City notifies the Company of the conviction.

Article V
Termination

5.01 **Events of Termination.** This Agreement terminates upon any one or more of the following:

(a) By expiration of the term and where no defaults have occurred; or

(b) If a party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof by the non-defaulting party unless a longer period is provided. Any default under this provision and right to recover any claims, refunds, damages and/or expenses shall survive the termination of the Agreement.

The City Manager is authorized on behalf of the City to send notice of default and to terminate this Agreement for any default that is not cured. All notices of default shall be sent to the Company at the address set forth in Section 8.04.

5.02 **Effect of Termination/Survival of Obligations.** 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.

Article VI
Retention and Accessibility of Records

6.01 Company shall maintain the fiscal records and supporting documentation for expenditures of funds to support each Annual Certification form associated with this Agreement. Company shall retain such records, and any supporting documentation for the greater of:

(a) A period of five (5) years after the date each Annual Certification form is accepted by the City; or

(b) The period required by other applicable laws and regulations.

6.02 Company gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or personal and Real Property belonging to or in use by Company pertaining to the Economic Development Program Grant (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to Company's books and records will be limited to information needed to verify that Company is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by City. In no event shall City's access to Company's Records include any access to any personal and/or medical data of any employees of Company except to confirm payroll information compliance for Job Equivalents. Company shall not be required to disclose to the City any information that by law Company is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require Company to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Company. The rights to access the Records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend or terminate this Agreement as provided for in Section 5.01 above, or any portion thereof, for reason of default. All Records shall be retained by Company for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. Company agrees to maintain the Records in an accessible location.

Article VII
Assignment

This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Company may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned affiliates, or (b) to 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 Company as long as the Company gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) in the preceding paragraph, the Company must obtain the prior approval of the City through its City Manager and the assignee must agree to be bound to all the terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment.

Any assignment agreement must be furnished in a form acceptable to the City and be provided at least thirty (30) days prior to the effective assignment date. City agrees to notify the potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

Article VIII
Miscellaneous

8.01 **No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create a partnership or joint venture among the parties. Neither party shall have any authority to act on behalf of the other party under any circumstances by virtue of this Agreement.

8.02 **Notice of Bankruptcy.** In the event Company files for bankruptcy, whether involuntarily or voluntary, Company shall provide written notice to the City within three (3) business days of such event.

8.03 **Authorization.** Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

8.04 **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, TX 75086-0358

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

If intended for the Company:
Harley-Davidson Financial Services, Inc.
Attention: Mr. Al Ely
Vice President, Commercial Business
1801 Alma Road, Suite 200
Plano, TX 75075

With a copy to:
Harley-Davidson Financial Services, Inc.
Attention: General Counsel and Chief Financial Officer
222 W. Adams St., Suite 2000
Chicago, IL 60606

8.05 **Entire Agreement.** This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

8.06 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

8.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

8.08 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

8.09 **Recitals.** The recitals to this Agreement are incorporated herein.

8.10 **Authorized to Bind.** The persons who execute their signatures to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

8.11 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

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

_____
Diane Zucco, CITY SECRETARY

_____
Bruce D. Glasscock, CITY MANAGER
Date: _____

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

HARLEY-DAVIDSON FINANCIAL SERVICES, INC., a Delaware corporation

_____
Name: _____
Title: _____

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

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

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

_____ a. I hereby certify that Harley-Davidson Financial Services, Inc. has occupied the office space and retained, transferred or added at least 227 Job Equivalent positions at the Property by March 31, 2014, and is in compliance with all terms of 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 Harley-Davidson Financial Services, Inc. has failed to occupy the office space and/or has failed to retain, transfer or add at least 227 Job Equivalent positions at the Property by March 31, 2014, 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:

HARLEY-DAVIDSON FINANCIAL SERVICES, INC., a Delaware corporation

_____
Name: _____
Title: _____

By: _____
Name: _____
Chief Financial Officer

_____
Date

This Certification is due by June 30, 2014.

This Certificate of Compliance should be mailed to:

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

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

Please select all applicable options below before signing and returning the certification:

_____a. I hereby certify that Harley-Davidson Financial Services, Inc. is in compliance with each applicable term as set forth in the Agreement and the retained, transferred or added number of Job Equivalents has not fallen below the number for which Harley-Davidson Financial Services, Inc. has received a grant payment in accordance with the terms and conditions set out in Article IV. I further certify that as of December 31 of the prior year, the number of Job Equivalents was _____.

_____ b. I hereby certify that Harley-Davidson Financial Services, Inc. is not in compliance with each applicable term as set forth in the Agreement and the retained, transferred or added number of Job Equivalents has fallen below the number for which Harley-Davidson Financial Services, Inc. has received a grant payment. I further certify that as of December 31 of the prior year, the number of Job Equivalents was _____ and that that the City of Plano has been refunded the appropriate amount as required by Article IV, Section 4.03 of the Agreement.

_____ c. **(FOR USE IN JANUARY 2017 ONLY IF APPLICABLE)** I hereby certify that Harley-Davidson Financial Services, Inc. is qualified to receive a second grant payment as of January 31, 2017 in the amount of _____($_____) for adding an additional _____ total number of Job Equivalents at the Real Property in addition to the 227 previous Job Equivalents for which Harley-Davidson Financial Services, Inc. previously received a grant payment.

ATTEST:

HARLEY-DAVIDSON FINANCIAL SERVICES, INC., a Delaware corporation

_____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Chief Financial Officer

NOTE:

This form is due by January 31 of each year beginning on January 31, 2015, and as long as this Agreement is in effect.

This Certificate of Compliance should be mailed to:

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