



**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:		09/10/12			
Department:		Economic Development			
Department Head		Sally Bane			
Agenda Coordinator (include phone #): <b>Linda Thomason x8301</b>					
<b>CAPTION</b>					
<p>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 Optisense Network, LLC, a Delaware limited liability company, and the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.</p>					
<b>FINANCIAL SUMMARY</b>					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	<b>2011-12 through 2015-16</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget		0	18,932,420	0	<b>18,932,420</b>
Encumbered/Expended Amount		0	-8,995,675	-3,885,418	<b>-12,881,093</b>
This Item		0	-45,500	0	<b>-45,500</b>
BALANCE		0	9,891,245	-3,885,418	<b>6,005,827</b>
<b>FUND(S):    ECONOMIC DEVELOPMENT INCENTIVE FUND</b>					
<b>COMMENTS:</b> Strategic Plan Goal: Providing economic development incentives relates to the City's goal of Strong Local Economy.					
<b>SUMMARY OF ITEM</b>					
<p>A request from Optisense Network, LLC to relocate its business and commercial activities, thereby generating additional local sales tax and increasing ad valorem tax values to the City. Optisense Network, LLC agrees to occupy at least 25,000 sq. ft. by 04/01/13 of office, manufacturing and/or warehouse space and to create or transfer a minimum of 50 jobs and up to 65 jobs by 04/01/13 at 2901 Summit Avenue.</p>					
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 Optisense Network, LLC, a Delaware limited liability company, 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 Optisense Network, LLC, a Delaware limited liability company, 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 10th day of September, 2012.

\_\_\_\_\_  
Phil Dyer, 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 Optisense Network, LLC, a Delaware limited liability company (“Company”), acting by and through their respective authorized officers and representatives.

### **WITNESSETH:**

**WHEREAS**, Company is engaged in the business of development and production of optical sensors for smart grid technology and plans to add One Hundred and Fifty Thousand Dollars (\$150,000.00) of Real Property improvements and One Million, Five Hundred Thousand Dollars (\$1,500,000.00) of Business Personalty property on the Real Property; and

**WHEREAS**, Company agrees to occupy at least 25,000 gross square feet of office, manufacturing and/or warehouse space and transfer or create up to sixty-five (65) 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 relocate and 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 at least 25,000 gross square feet of office, manufacturing and/or warehouse space and the creation or transfer of up to sixty-five (65) 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 Optisense Network, LLC, a Delaware limited liability company.

“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 2901 Summit Avenue, Suite 400, Plano, Texas 75074.

## **Article II Term**

The term of this Agreement shall begin on the Effective Date and continue until March 31, 2016, 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 April 1, 2013, occupy at least 25,000 gross square feet of office, manufacturing and/or warehouse space on the Real Property throughout the term of the Agreement; and

(b) By April 1, 2013, create or transfer at least fifty (50) Job Equivalents and up to sixty-five (65) Job Equivalents and maintain those Job Equivalents on the Real Property throughout the Agreement; and

(c) Use reasonable efforts to place all Company-managed local 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 Forty-Five Thousand, Five Hundred Dollars (\$45,500.00) 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 April 1, 2013, Company shall occupy not less than 25,000 gross square feet of office, manufacturing and/or warehouse space and transfer or create at least fifty (50) Job Equivalents to the Real Property to be eligible to receive a payment of Thirty-Five Thousand Dollars (\$35,000.00). The payment will not be pro-rated. If the Company exceeds the minimum number of Job Equivalents by April 1, 2013, it will be paid Seven Hundred Dollars (\$700.00) for each additional Job Equivalent up to a maximum number of sixty-five (65) Job Equivalents for a total payment not to exceed Forty-Five Thousand, Five Hundred Dollars (\$45,500.00). Job Equivalents added subsequent to April 1, 2013 shall not be compensated.

**Upon filing of the January 2016 Annual Certification pursuant to Section 4.02(b) below and provided that Company is in compliance with the obligations set out in Article III herein, Company shall be entitled to the grant payment pursuant to Section 4.02(a) herein. No grant monies shall be paid to Company by City prior to January 1, 2016.**

City will make the payment within thirty (30) days of receipt of the January 2016 annual certification unless the City reasonably objects to the certification.

(b) Beginning January 2014, Company must submit an annual certification on the form attached hereto as Exhibit "A" 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 certifications by the January 31 deadline shall be an event of default upon notice from the City and, if not cured within 30 days, results in complete forfeiture of the grant.

(c) 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 and maintain 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 forfeit a portion of the grant or the entire grant pursuant to the terms of the Agreement as follows:

(i) If Company's Job Equivalents drop below the range of sixty-five (65) down to fifty (50) Job Equivalents for more than 180 consecutive days at any time after April 1, 2013, the Company shall forfeit an amount equal to Seven Hundred Dollars (\$700.00) for each lost Job Equivalent from the grant payment.

(ii) If Company's Job Equivalents drop below fifty (50) for more than 180 consecutive days at any time after April 1, 2013, the Company shall forfeit the entire grant amount.

For the purposes of determining whether a forfeiture is warranted 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 "A". The Company shall not be entitled to reinstatement of the forfeited portion of the grant for those 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 fails to timely provide any certification as required by Section 4.02, the full amount of the entire grant shall be forfeited.

(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 forfeit the right to all grant funds.

**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 payment of the grant 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.

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 associated with this Agreement. Company shall retain such records, and any supporting documentation for the greater of: (1) Five (5) years from the end of the Agreement period; or (2) 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 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.

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.

The City agrees to keep all information concerning any assignment, proposed assignment, sale or merger, including the existence of such a proposed event confidential to the extent permitted by law. After the assignment actually occurs, the City may disclose the fact of the assignment but not the terms of the assignment as between assignee and assignor.

## **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 before relocation:

Optisense Network, LLC  
Attention: Mr. Stephen L. Prince  
Chief Executive Officer  
1308 10<sup>th</sup> Street  
Bridgeport, TX 76426

If intended for the Company after relocation:

Optisense Network, LLC  
Attention: Mr. Stephen L. Prince  
Chief Executive Officer  
2901 Summit Avenue, Suite 400  
Plano, TX 75074

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:

OPTISENSE NETWORK LLC, a Delaware  
limited liability company

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

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

**EXHIBIT "A"**  
**ANNUAL CERTIFICATE OF COMPLIANCE**

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

- \_\_\_\_ a. For January 2014 and January 2015 (if in compliance): I hereby certify that Optisense Network, LLC has occupied at least 25,000 gross square feet of office and/or warehouse space and transferred or added at least 50 Job Equivalent positions at the Property by April 1, 2013, and is in compliance with all terms of the Agreement. The number of Job Equivalents as of April 1, 2013 was \_\_\_\_\_. I certify that as of December 31 of the prior year, the number of Job Equivalents was \_\_\_\_\_.
- \_\_\_\_ b. For January 2016 (if in compliance): I hereby certify that Optisense Network, LLC is in compliance with all terms of the Agreement and is entitled to receive payment in accordance with Section 4.02(a) of the Agreement. The number of Job Equivalents as of April 1, 2013 was \_\_\_\_ and the number has not fallen below the required minimum number of Job Equivalents for a period of over 180 consecutive days during the term of the agreement. I further certify that as of December 31 of the prior year, the number of Job Equivalents was \_\_\_\_\_. Since April 1, 2013, Optisense Network, LLC has maintained \_\_\_\_ Job Equivalents for more than 180 consecutive days at any time during the term of this Agreement and is entitled to a grant payment in the amount of \$ \_\_\_\_\_.
- \_\_\_\_ c. I hereby certify that Optisense Network, LLC is not in compliance with all terms of the Agreement. The number of Job Equivalents as of April 1, 2013 was \_\_\_\_\_. I certify that as of December 31 of the prior year, the number of Job Equivalents was \_\_\_\_\_ and Optisense is not entitled to receive payment under the Agreement.

ATTEST:

OPTISENSE NETWORK LLC, a Delaware  
limited liability company

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Date

NOTE:

**This form is due by January 31 of each year beginning on January 31, 2014, 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, Texas 75086-0358