



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:		09/22/14		
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 AMS-TAOS USA Inc., a Nevada 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:	2014/2015 through 2024/2025	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: 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				
A request from AMS-TAOS USA Inc., a Nevada corporation, for a First Ammendment to the Economic Development Incentive Agreement dated April 25, 2014. http://goo.gl/maps/a7WCC				
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 AMS-TAOS USA Inc., a Nevada 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 the City of Plano ("City") and AMS-TAOS USA Inc., a Nevada 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 April 25, 2014; and

WHEREAS, City and Company desire to amend said Economic Development Incentive Agreement to modify the Company's occupancy deadline to accommodate construction delays; 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 22nd day of September, 2014.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

THE STATE OF TEXAS §
§
§
§
COUNTY OF COLLIN §

First Amendment to the Economic
Development Incentive Agreement
by and between City of Plano and AMS-
TAOS USA Inc., a Nevada corporation

This First Amendment to the Economic Development Incentive Agreement (hereinafter "First Amendment") is made and entered into by and between **AMS-TAOS USA INC.**, a Nevada 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 April 25, 2014 (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 to modify the Company's occupancy deadline to January 31, 2015 to accommodate construction delays.

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 II of the Agreement is amended to read in its entirety as follows:

"The term of this Agreement shall begin on the Effective Date and continue until January 31, 2025, unless sooner terminated as provided herein."

II.

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

"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 January 31, 2015, occupy the office space on the Real Property and maintain occupancy throughout the term of the Agreement; and
- (b) By January 31, 2015, create or transfer at least 80 Job Equivalents and maintain the Job Equivalents for a minimum of 180 days prior to grant payment and continue to maintain those Job Equivalents on the Real Property throughout the Agreement; and
- (c) 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."

III.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Article IV, Section 4.02, Paragraph (a) of the Agreement is amended to read in its entirety as follows:

"(a) By January 31, 2015, Company shall occupy the office space and transfer or create at least 80 Job Equivalents to the Real Property and maintain the Job Equivalents for a minimum of 180 days to be eligible to receive a payment of Ninety-Six Thousand Dollars (\$96,000). 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 not earlier than July 31, 2015 and not later than October 31, 2015. 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."

IV.

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, Paragraph (a) of the Agreement is amended to read in its entirety as follows:

"(a) If the Company fails to meet and maintain the required number of Job Equivalents for more than 180 consecutive days after January 31, 2015 as set out in Section 4.02(a) and the loss is not the result of an Event of Force Majeure, the Company shall forfeit the entire grant. Thereafter, if the Company fails to maintain the required number of Job Equivalents, for which it has received payment, 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 One Thousand Two Hundred Dollars (\$1,200) 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(b) 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."

V.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Exhibit "A" is hereby replaced with the attached Exhibit "A".

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:

AMS-TAOS USA Inc., a Nevada
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 AMS-TAOS USA Inc. has occupied the office space at the Property and transferred or added at least 80 Job Equivalent positions at the Property by January 31, 2015, 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 AMS-TAOS USA Inc. has failed to occupy the office space at the Property and/or has failed to transfer or add at least 80 Job Equivalent positions at the Property by January 31, 2015, 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:

AMS-TAOS USA Inc., a Nevada corporation

Name: _____
Title: _____

By: _____
Name: _____
Chief Executive Officer

Date

NOTE: This form is due not earlier than July 31, 2015 and not later than October 31, 2015.

This Certificate of Compliance should be mailed to:

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