



**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:		09-24-12		
Department:		Economic Development		
Department Head		Frank Turner		
Agenda Coordinator (include phone #): <b>Cindy Pierce, ext. 7121</b>				
<b>CAPTION</b>				
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 Collin Creek Mall, LLC and the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
<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>2012-13</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
				<b>TOTALS</b>
Budget		0	18,932,420	0
Encumbered/Expended Amount			-9,492,175	-3,855,418
This Item		0		-600,000
<b>BALANCE</b>		0	9,440,245	-4,455,418
<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>				
A request from Rouse Properties for funding to pay expenses including, but not limited to, costs associated with plans, studies, improvements, and tenant retention, attraction and/or attainment for Collin Creek Mall. Rouse Properties agrees to maintain ownership of Collin Creek Mall which shall continue to operate as a retail mall space and be open to the public during the term of this agreement and use its best efforts to retain, expand and/or secure business enterprises at Collin Creek Mall.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution Economic Development 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 Collin Creek Mall, LLC 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 Collin Creek Mall, LLC 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 24th 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 Collin Creek Mall, LLC, a Delaware limited liability company (“Company”), acting by and through their respective authorized officers and representatives.

### **WITNESSETH:**

**WHEREAS**, Company is the Owner of Collin Creek Mall, a retail mall space, located at 811 N. Central Expressway, Plano, Texas (the “Property”), and is in the process of retaining and securing business enterprises at the Property; and

**WHEREAS**, the City of Plano finds that Collin Creek Mall is a vital part of the City’s economy, and recognizes that action to revitalize and diversify the mall will achieve an important public benefit and stimulate the local economy; 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 Collin Creek Mall, 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 down turn shall not constitute an event of force majeure.

“Property” shall mean Collin Creek Mall located at 811 N. Central Expressway, Plano, Texas.

## **Article II Term**

The term of this Agreement shall begin on the Effective Date and continue until December 31, 2013, 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 maintain ownership of the Property which shall continue to operate as a retail mall space and be open to the public during the term of this Agreement and use its best efforts to retain and/or secure business enterprises at the Property located in the City of Plano.

## **Article IV Economic Development Grant**

4.01 **Grant.** The City agrees to provide the Company a cash grant in an amount not to exceed Six Hundred Thousand Dollars (\$600,000.00) to be paid to Company no later than October 31, 2012.

4.02 **Use of Funds.** Company may use the grant to pay expenses, including but not limited to, costs associated with plans, studies, improvements, and tenant retention, attraction and/or attainment for the Property.

4.03 **Refund/Default.**

(a) If either party breaches any of the terms and conditions herein during the term of this Agreement, it shall be an event of default.

(b) If 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.

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 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 VII Miscellaneous**

7.01 **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.

7.02 **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.

7.03 **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.

7.04 **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:  
Rouse Properties, Inc.  
Attention: Chief Operating Officer  
1114 Avenue of the Americas, Suite 2800  
New York City, New York 10036

With Copy to:  
Rouse Properties, Inc.  
Attention: General Counsel  
1114 Avenue of the Americas, Suite 2800  
New York City, New York 10036

7.05 **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.

7.06 **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.

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

7.08 **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.

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

7.10 **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.

7.11 **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:

COLLIN CREEK MALL, LLC, a Delaware  
limited liability company

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

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

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_