



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:		12/08/2014			
Department:		Economic Development			
Department Head		Sally Bane			
Agenda Coordinator (include phone #): Toshia Kimball x7479					
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 Ericsson Inc., a Delaware 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:	2018-2019 through 2028- 2029	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): N/A					
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 Ericsson Inc., a Delaware corporation, for a First Amendment of Economic Development Incentive Agreement to modify the term period and certain deadlines of the Economic Development Incentive Agreement dated April 11, 2012. http://goo.gl/maps/Os85d					
List of Supporting Documents: Resolution First Amendment of 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 Ericsson Inc., a Delaware 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 Ericsson Inc., a Delaware 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 11, 2012; and

WHEREAS, City and Company desire to amend said Economic Development Incentive Agreement to modify the term period as well as certain deadlines 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 8th day of December, 2014.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

THE STATE OF TEXAS § **First Amendment of Economic**
§ **Development Incentive Agreement**
§ **By and Between City of Plano, Texas**
§ **and Ericsson Inc., a Delaware**
COUNTY OF COLLIN § **corporation**

THIS FIRST AMENDMENT OF Economic Development Incentive Agreement (hereinafter "First Amendment") is by and between **ERICSSON INC.**, a Delaware 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.

W I T N E S S E T H:

WHEREAS, City and Company entered into an Economic Development Incentive Agreement on the 11th day of April, 2012, (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 term period as well as certain deadlines to accommodate construction delays; and

WHEREAS, City and Company desire to amend the Agreement in certain respects as set forth herein 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 hereto agree as follows:

I.

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, Article II Term is hereby modified to read in its entirety as follows:

"The term of this Agreement shall begin on the Effective Date and continue until December 31, 2028 unless sooner terminated as provided herein."

II.

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, Paragraph (a) of Article III Obligations of Company is hereby modified to read in its entirety as follows:

"(a) On or before December 31, 2018, occupy at least 150,000 square feet of commercial space on the Real Property and maintain such occupancy throughout the term of the Agreement; and"

III.

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, Paragraph (c) of Article III Obligations of Company is hereby modified to read in its entirety as follows:

"(c) Create, on or after the effective date of the Agreement, at least 500 Job Equivalents above the required number of Base Employees to the Campus by December 31, 2018; and"

IV.

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, Paragraph (d) of Article III Obligations of Company is hereby modified to read in its entirety as follows:

"(d) At Company's option, it may create, on or after the effective date of the Agreement, up to an additional 300 Job Equivalents by December 31, 2020 for a total of 800 Job Equivalents above the number of Base Employees. Company agrees to maintain those Job Equivalents for which it has received a grant throughout the remainder of the Agreement. The additional 300 Job Equivalents excludes any Job Equivalents for which the Company has received grant funds from the City pursuant to its agreement under Phase I, a copy of that agreement is attached hereto as Exhibit E; and"

V.

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, Paragraph (f) of Article III Obligations of Company is hereby modified to read in its entirety as follows:

"(f) On or before January 1, 2019, make or cause to be made a minimum of Twelve Million Seven Hundred Fifty Thousand Dollars (\$12,750,000) of additional taxable value improvements to the Real Property. Such value shall be determined by the Collin County Appraisal District."

VI.

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, Article IV Economic Development Grant, Section 4.02 Grant Payment Requirements and Schedule (a) Job Equivalents and Occupancy Requirements, the first two paragraphs of (i) are hereby modified to read in its entirety as follows:

"(i) By December 31, 2018, Company shall occupy not less than 150,000 square feet of commercial space at the Real Property, have at least 500 Job Equivalents above the required number of Base Employees at the Campus, and meet all of the requirements set out in Article III to be eligible to receive a payment of Five Hundred Thousand Dollars (\$500,000). The payment will **not** be pro-rated.

Company must submit the Initial Certification form attached hereto as Exhibit "A" verifying compliance with the obligations set forth in Article III above not later than March 31, 2019. 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 and termination of the Agreement."

VII.

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, Article IV Economic Development Grant, Section 4.02 Grant Payment Requirements and Schedule (a) Job Equivalents and Occupancy Requirements, Paragraph (ii) is hereby modified to read in its entirety as follows:

"(ii) At Company's option, it may add up to an additional 300 Job Equivalents on the Real Property above the existing 500 Job Equivalents by December 31, 2020, and if it is in compliance with all of the requirements of Article III above, it is entitled to a second grant payment up to Three Hundred Thousand Dollars (\$300,000). This amount will be pro-rated at One Thousand Dollars (\$1,000) per Job Equivalent. **Company must submit the Second Certification form attached hereto as Exhibit "B" verifying compliance with the obligations set forth in Article III above not later than January 31, 2021. A failure to provide this form by that date is an event of default and, if not cured within thirty days after receiving notice thereof, results in a complete forfeiture of this portion of the grant, and the Company is not eligible for any other payments for Job Equivalents.**

City will make payment within thirty (30) days of receipt of the Second Certification unless the City reasonably objects to the Certification, but will not make any payment any earlier than January 31, 2021."

VIII.

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, Article IV Economic Development Grant, Section 4.02 Grant Payment Requirements and Schedule, Paragraph (b) is hereby modified to read in its entirety as follows:

"(b) **Development Fee/Permit Grant.** If Company complies with the required obligations set forth in Article III, the Development Permit fees paid by the Company to the City of Plano will be reimbursed as a grant where such fees are required to be obtained in order for Company to obtain a certificate of occupancy at the Property as follows:

The City agrees to make a grant to reimburse Company up to Two Hundred Twenty Five Thousand Dollars (\$225,000) for Development Permit Fees that are paid to the City of Plano for the construction of improvements to the Property and which fees are incurred after the execution of this Agreement. In order to receive this reimbursement, the Company must submit one written request for reimbursement itemizing and listing the nature of the fees paid and amount, provide all necessary documentation that supports the request, including receipts and invoices, all of which must be submitted to the City no earlier than March 31, 2019. If the information supporting the request is deemed satisfactory by the City, the reimbursement shall be made within thirty days of receipt unless the City reasonably objects to the request. A failure to submit the request with all supporting documents by April 30, 2019, is an event of default and, if not cured within thirty days after receiving notice thereof, shall result in a forfeiture of this portion of the grant."

IX.

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, Article IV Economic Development Grant, Section 4.02 Grant Payment Requirements and Schedule, Paragraph (c) is hereby modified to read in its entirety as follows:

"(c) **Relocation Grant.** If Company is in compliance with the required obligations set forth in Article III, City shall pay a cash grant up to Six Hundred Thousand Dollars (\$600,000) to offset relocation and occupancy expenses. Company shall submit a certification that includes proof of such expenses and issuance of an occupancy permit by the City of Plano, and that the reimbursement for the expenses is in accordance with the terms of this Agreement. Company agrees that only one submittal will occur with a single certification. This certification may not be submitted any earlier than March 31, 2019 and not later than April 30, 2019. If the information supporting the request is deemed satisfactory by the City, reimbursement shall be made within thirty days of receipt unless the City reasonably objects to the certification. A failure to submit the request with all supporting documents by April 30, 2019, is an event of default and, if not cured within thirty days after receiving notice thereof, shall result in a forfeiture of this part of the grant."

X.

Beginning on the effective date of this First Amendment and continuing through the remaining term of the Agreement, Article IV Economic Development Grant, Section 4.02 Grant Payment Requirements and Schedule, Paragraph (d) is hereby modified to read in its entirety as follows:

"(d) **Annual Certification.** Beginning January 2020, Company must submit an annual certification on the form attached hereto as Exhibit "C" not later than January 31 of each year for the duration of this agreement verifying compliance with Article III above. A failure to file the annual certification by the January 31 deadline during the remaining years of the Agreement is an event of default and, if not cured, shall result in a default and a right to a full refund."

XI.

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

XII.

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

XIII.

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

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

CITY OF PLANO, TEXAS, a home-rule
municipal corporation

Date: _____

Bruce D. Glasscock, CITY MANAGER

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

ERICSSON INC., a Delaware corporation

Date: _____

By: _____
Name: _____
Title: _____

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

I hereby certify and affirm that Ericsson Inc. has occupied not less than 150,000 square feet of commercial space on the Real Property and has added at least 500 Job Equivalent positions above the required number of Base Employees to the Campus by December 31, 2018. Company is in compliance with the Agreement and is entitled to receive payment in accordance with Section 4.02 (a)(i) of that Agreement.

ATTEST:

ERICSSON INC., a Delaware corporation

Name: _____
Title: _____

By: _____
Name: _____
Director of Business Operations

Date

This Certification is due by March 31, 2019.

This Certificate of Compliance should be mailed to:

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

EXHIBIT "B"

**SECOND CERTIFICATE OF COMPLIANCE FOR ADDITIONAL
JOB EQUIVALENTS AND BASE EMPLOYEES**

I hereby certify and affirm that Ericsson Inc. is in compliance with all terms and conditions of the Agreement and that Ericsson Inc. has transferred or added up to 300 new Job Equivalents to the Campus by December 31, 2020, and is entitled to receive payment in accordance with Section 4.02 (a)(ii). The exact number of added Job Equivalents is _____ and the total number of Job Equivalents at the Campus is _____ and the number of Base Employees at the Campus is _____.

ATTEST:

ERICSSON INC., a Delaware corporation

Name: _____
Title: _____

By: _____
Name: _____
Director of Business Operations

Date

This Certification is due by January 31, 2021.

This Certificate of Compliance should be mailed to:

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

EXHIBIT "C"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify and affirm that Ericsson Inc. is in compliance with each applicable term as set forth in the Agreement and the transferred or created number of Job Equivalents has not fallen below the number for which it has received a grant payment in accordance with the terms and conditions set out in Article IV. I further certify and affirm that as of December 31 of the prior year, the number of Job Equivalents was _____ and the number of Base Employees at the Campus was _____. If the number of Job Equivalents is below the number required to be maintained pursuant the Agreement, I certify and affirm that the City of Plano has been refunded the appropriate amount as required by Article IV, Section 4.03 of the Agreement.

ATTEST: ERICSSON INC., a Delaware corporation

Name: _____	By: _____
Title: _____	Name: _____
	Director of Business Operations

Date _____

NOTE:

**This form is due by January 31 of each year as long as this Agreement is in effect with the final annual certification due on January 31, 2028.
The first filing is due by January 31, 2020.**

This Certificate of Compliance should be mailed to: City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-0358