



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:		12/14/15			
Department:		Economic Development			
Department Head		Sally Bane			
Agenda Coordinator (include phone #): Paula Date X 8306					
CAPTION					
A Resolution 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 Optimal Blue, LLC, a Texas limited liability company; authorizing its execution by the City Manager or his designee; and providing an effective date.					
FINANCIAL SUMMARY					
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2016-17 through 2021-22	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	43,292,637	0	43,292,637
Encumbered/Expended Amount		0	-420,000	-24,866,155	-25,286,155
This Item		0	-31,200	0	-31,200
BALANCE		0	42,841,437	-24,866,155	17,975,282
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 Optimal Blue, LLC, a Texas limited liability company, for a First Amendment to the Economic Development Incentive Agreement dated August 6, 2014 to provide for additional incentives to facilitate expansion.					
http://goo.gl/maps/lwYmN					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Resolution First Amendment to the Economic Development Incentive Agreement					

A Resolution 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 Optimal Blue, LLC, a Texas limited liability company; 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 Optimal Blue, LLC, a Texas limited liability company ("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 August 6, 2014; and

WHEREAS, the Company has complied with the terms of the initial Economic Development Incentive Agreement and now desires to expand its business in the City by occupying additional office space and transferring or creating additional job equivalents; and the parties desire to amend said Economic Development Incentive Agreement to provide additional incentives to facilitate the expansion; 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 14th day of December, 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

<p>THE STATE OF TEXAS</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>COUNTY OF COLLIN</p> <p>§</p>	<p><u>First Amendment to the Economic Development Incentive Agreement by and between City of Plano, Texas and Optimal Blue, LLC, a Texas limited liability company</u></p>
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This First Amendment to the Economic Development Incentive Agreement (hereinafter “First Amendment”) is made and entered into by and between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation (hereinafter “City”), and **OPTIMAL BLUE, LLC**, a Texas limited liability company (hereinafter “Company”), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, City and Company entered into an Economic Development Incentive Agreement on August 6, 2014 (hereinafter “Agreement”) to promote economic development, stimulate commercial activity and enhance the tax base of the City; and

WHEREAS, Company plans to expand the Property and add \$765,000 of additional Real Property improvements, \$235,000 of additional Business Personalty Property, occupy an additional 17,000 square feet at the Real Property and transfer or create up to 80 additional Job Equivalents at the Real Property by December 31, 2016; and

WHEREAS, City and Company desire to amend said Agreement to provide an additional grant to help Company in the above-referenced expansion.

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

**“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 August 31, 2014, occupy the office space on the Real Property and maintain occupancy throughout the term of the Agreement; and

(b) By August 31, 2014, create or transfer at least 90 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) By December 31, 2016, and subject to maintaining the required number of Job Equivalents pursuant to Article III, Section (b) herein, Company may create or transfer up to 80 additional Job Equivalents and 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."

II.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Article IV, Section 4.01 of the Agreement is amended to read in its entirety as follows:

"4.01 **Grant.** The City agrees to provide the Company a cash grant of up to One Hundred Thirty-Two Thousand Six Hundred Dollars (\$132,600) 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."

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

"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 August 31, 2014, Company shall occupy the office space and transfer or create at least 90 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 Seventy Thousand Two Hundred Dollars (\$70,200). 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) and (b) not earlier than February 28, 2015 and not later than May 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. (Subsequently, Company has received a grant payment of Seventy Thousand Two Hundred Dollars (\$70,200) for this category.)

(b) By December 31, 2016 and subject to the Company transferring, creating and maintaining the minimum number of Job Equivalents required pursuant to Section 4.02(a) herein, Company may add up to an additional 80 Job Equivalents for a total maximum number of 170 Job Equivalents at the Real Property to be eligible to receive a second (2nd) grant payment of up to Sixty-Two Thousand Four Hundred Dollars (\$62,400) which may be pro-rated at Seven Hundred Eighty Dollars (\$780) for each Job Equivalent 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 (c) and compliance with Article III (a) and (b) not later than January 31, 2017 to be eligible for the second (2nd) 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 and invokes the City's right to a full refund, including damages, as set out in Section 4.03 below.**

(c) Beginning January 31, 2016, Company must submit an annual certification on the form attached hereto as Exhibit "B" not later than January 31st 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 31st deadline during the remaining years of the Agreement shall be an event of default and, if not cured, 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."

IV.

Beginning on the effective date of execution of this First Amendment and continuing through the remaining term of the Agreement, Exhibit "B" shall be replaced by Exhibit "B1".

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:

OPTIMAL BLUE, LLC, a Texas limited liability company

Name: _____
Title: _____

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

EXHIBIT "B1"

ANNUAL CERTIFICATE OF COMPLIANCE

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

_____ a. I hereby certify that Optimal Blue, LLC is in compliance with each applicable term as set forth in the Agreement and the transferred or added number of Job Equivalents has not fallen below the number for which Optimal Blue, LLC 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 Optimal Blue, LLC is not in compliance with each applicable term as set forth in the Agreement and the transferred or added number of Job Equivalents has fallen below the number for which Optimal Blue, LLC 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 Optimal Blue, LLC is in compliance with all terms and conditions of the Agreement and that as of December 31, 2016, Optimal Blue, LLC has added ___ total number of Job Equivalents (not to exceed 80), in addition to the 90 initial Job Equivalents, and is entitled to receive a second (2nd) grant payment in accordance with Section 4.02(b). I further certify that as of December 31 of the prior year, the total number of Job Equivalents was _____.

ATTEST:

OPTIMAL BLUE, LLC, a Texas 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, 2016, 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