



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:		01/10/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley - 7479				
CAPTION				
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 the City of Plano, Texas, and Hyundai Capital America, a California corporation; authorizing its execution by the City Manager or his authorized 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: 2011	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,179,503	0	12,179,503
Encumbered/Expended Amount	0	-359,500	-4,943,200	-5,302,700
This Item	0	-207,000	-136,800	-343,800
BALANCE	0	11,613,003	-5,080,000	6,533,003
FUND(s): ECONOMIC DEVELOPMENT 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 Hyundai Capital America for an Economic Development Incentive to relocate its business and commercial activities to the City, thereby generating additional local sales tax revenues and increasing ad valorem tax values to the City. Hyundai Capital agrees to occupy not less than 45,000 sq. ft of commercial office space and transfer or create 230 jobs on or before the commencement date. Hyundai Capital also has the option to add up to an additional 152 jobs on or before 12/31/13.				
List of Supporting Documents: 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 an Economic Development Incentive Agreement by and between the City of Plano, Texas, and Hyundai Capital America, a California corporation; 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 the City of Plano, Texas and Hyundai Capital America, a California corporation, 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 January, 2011.

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 Hyundai Capital America, a California corporation (hereinafter referred to as the (“Company”)), acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, the Company is engaged in the business of automobile sales financing and plans to open an office in Plano, Texas and invest approximately \$3,000,000 in real property taxable value improvements and approximately \$1,000,000 in business personal property taxable value improvements in Plano, Texas; and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to open an office and maintain 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 Company intends to occupy approximately 45,000 rentable square feet of office space located at International Business Park, 6100 Plano Parkway, Plano, Texas, 75093 (the “Property”) on or before the Commencement Date as defined below, and to maintain or create at least 230 full time job equivalent positions and potentially as many as 382 full time job equivalent positions on the Property; and

WHEREAS, the occupancy of 45,000 rentable square feet of office space and the creation and maintenance of between 230 and 382 full time jobs on the Property 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 the City’s inhabitants 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:

“Commencement Date” shall mean December 31, 2011.

“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 impact the Company’s operations in Plano. A downturn in the economy is not a qualifying event.

“Job Equivalent” shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours annually.

“Rentable square feet” shall mean the leased square feet by Company and a percentage of the common areas, i.e. restrooms, main lobby, and hallways.

Article II Term

The term of this Agreement shall be for a period of ten (10) years to run from the Commencement Date, unless sooner terminated as provided herein.

Article III Obligations of Company

3.01. In consideration for the grant of public funds as set forth in Section 4.01 below, the Company agrees to the following:

(a) Occupy not less than 45,000 rentable square feet of office space on the Property on or before the Commencement Date;

(b) Create or transfer 230 Job Equivalents on the Property on or before the Commencement Date;

(c) At the Company's option, add up to an additional 152 new Job Equivalents at the Property on or before December 31, 2013;

(d) Maintain all Job Equivalents for which a grant payment was received under this Agreement on the Property for the remainder of the term of this Agreement; and

(e) Use reasonable efforts to place all Company managed hotel room nights, to the extent related to the Company's business activities in the City of Plano, at facilities located in the City of Plano.

Article IV Economic Development Grant

4.01. **Grant.** In consideration of the Company successfully fulfilling the obligations as set forth in Article III (a) and (b) above, the City agrees to provide the Company a cash grant of Two Hundred Seven Thousand Dollars (\$207,000.00). If the Company adds additional jobs above the initial 230 Job Equivalents, the City agrees to provide the Company a cash grant of Nine Hundred Dollars (\$900.00) for each additional Job Equivalent added to the Property up to a maximum additional grant payment of One Hundred Thirty Six Thousand Eight Hundred Dollars (\$136,800.00). The Company agrees to maintain on the Property the transferred or created Job Equivalents for which a cash grant has been paid by the City to the Company throughout the term of this Agreement as provided in Section 4.03 below.

4.02. **Payment Schedule.**

(a) The Company shall be entitled to a payment of Two Hundred Seven Thousand Dollars (\$207,000.00) from the City under this Agreement within thirty (30) days after the Company verifies to the City, using the Initial Certification form attached hereto as Exhibit "A", that the Company has met its obligations as set forth in Article III (a) and (b) above (such payment referred to as the "Initial Grant Payment"). IN ORDER TO RECEIVE PAYMENT UNDER THIS AGREEMENT, COMPANY'S INITIAL CERTIFICATION VERIFYING COMPLIANCE WITH ARTICLE III (a) AND (b) ABOVE MUST BE FILED WITH THE CITY ON OR BEFORE MARCH 31, 2012 OTHERWISE THE RIGHT TO ANY AND ALL PAYMENTS IS FORFEITED.

(b) The Company shall be entitled to a second payment of Nine Hundred Dollars (\$900.00) for each additional Job Equivalent created by the Company on the Property (above the existing 230 Job Equivalents which shall be continuously maintained during the term of this Agreement) before December 31, 2013 up to a maximum total of One Hundred Thirty Six Thousand Eight Hundred Dollars (\$136,800.00) within thirty (30) days after the Company verifies to the City, using the Certification form attached hereto as Exhibit "A". IN ORDER TO RECEIVE THE SECOND PAYMENT OF UP TO ONE HUNDRED THIRTY SIX THOUSAND EIGHT HUNDRED DOLLARS (\$136,800.00), COMPANY'S CERTIFICATION VERIFYING COMPLIANCE WITH ARTICLE III (C) MUST BE FILED WITH THE CITY ON OR BEFORE MARCH 31, 2014 OTHERWISE THE RIGHT TO THE SECOND PAYMENT IS FORFEITED.

4.03. **Refunds.** In the event the Company allows Job Equivalents at the Property to fall below the number of Job Equivalents for which it has received any grant payment for more than one hundred eighty (180) consecutive days during the term of this Agreement, not the result of an Event of Force Majeure, the Company shall refund to the City an amount equal to Nine Hundred Dollars (\$900.00) for each lost Job Equivalent. The Company understands and agrees that if there is a loss of Job Equivalents, the refund is for the full amount of the Job Equivalent lost and there is **no** pro-ration of the refund based upon any years where compliance occurred. For purposes of determining whether the City is due a refund under this section, the Company's President or Chief Financial Officer shall certify to the City by January 31, 2013, and by January 31st of each year thereafter during the term of this Agreement the actual number of Job Equivalents at the Property for the preceding calendar year, using the Certification form attached as Exhibit "B". All refunds under this Agreement shall be due within thirty (30) days of written demand for payment. Notwithstanding the foregoing, the sole and exclusive remedy of the City for any failure by the Company to maintain the Job Equivalents on the Property pursuant to Section 3.01 above, shall be to receive a refund of the applicable portion of the Grant as determined in accordance with the terms of this Section 4.03 including any costs, expenses and reasonable attorney fees incurred in obtaining a refund if the Company fails to make a refund when due.

In the event the Company, at any time during the term of this Agreement, 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 one hundred twenty (120) days after the date the City notifies the Company of the conviction.

Article V Termination

- 5.01. This Agreement terminates upon any one or more of the following:
- (a) By mutual written agreement of the parties;
 - (b) Upon expiration of the term of this Agreement;
 - (c) By either party, if the other 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 (provided that such 30 day period shall be extended if the default of a nature that cannot reasonably be cured within such 30 day period and further provided that the remedy is being diligently pursued); and
 - (d) By either party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or

unenforceable, provided, that such termination notice shall set forth an explanation of the terminating party's basis for termination under this subsection (d).

5.02. **Effect of Termination.** 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 that accrue prior to such termination or as otherwise provided herein. All rights and obligations set forth above shall survive the termination of this Agreement.

Article VI Miscellaneous

6.01. **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto. 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 affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the Company.

6.02. **No Joint Venture.** It is acknowledged and agreed by the parties that the terms hereof 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.

6.03. **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.

6.04. **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: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

With a copy to:
City of Plano, Texas
Attention: Diane Wetherbee
City Attorney
1520 Avenue K
Plano, Texas 75086-0358

If intended for the Company:
Hyundai Capital America
Attention: Karen Marchak
Director, Human Resources & Administration
3161 Michelson Drive, Suite 1900
Irvine, California 92612

With a copy to:
Hyundai Capital America
Attention: Director of Legal & Compliance
3161 Michelson Drive, Suite 1900
Irvine, CA 92612

6.05. **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.

6.06. **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.

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

6.08. **Legal Construction.** 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.

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

6.10. **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.

6.11. **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

EXECUTED on this _____ day of _____, 2011.

ATTEST:

CITY OF PLANO, TEXAS, a home rule
municipal corporation

Diane Zucco, CITY SECRETARY

By: _____
Thomas H. Muehlenbeck,
CITY MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

HYUNDAI CAPITAL AMERICA, a California
corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT "A"

CERTIFICATE OF COMPLIANCE*

I hereby certify that as of _____, 20____ Hyundai Capital America, has hired/transferred/retained _____ Job Equivalents and is in compliance with each applicable term as set forth in Article III [(a) and (b)] / [(c)] of the Economic Development Incentive Agreement approved by the City Council on _____ (the "Agreement") as of _____(date), and is entitled to receive payment under the terms of the Agreement.

ATTEST:

HYUNDAI CAPITAL AMERICA,
a California corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:

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

* Note: Company may modify this form as necessary and appropriate to provide the correct information.

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that Hyundai Capital America is in compliance with each applicable term as set forth in the Economic Development Incentive Agreement dated _____ (the "Agreement"). The term of this Agreement is _____ through _____. The number of new or retained Job Equivalents maintained pursuant to the Agreement for the previous twelve month period ending _____, 201_ is _____. If (i) the number herein reported is below the number required to be maintained pursuant to the Agreement, and (ii) such shortfall has continued for more than 180 consecutive days for reasons other than an Event of Force Majeure (as defined in the Agreement), I certify that the City of Plano has been refunded the appropriate amount as required by Section 4.03 of the Agreement. This form is due on January 31st of each year the Agreement is in force.

ATTEST:

HYUNDAI CAPITAL AMERICA,
a California corporation

By: _____
Name:
Title

By: _____
Name:
Title:

Date

NOTE:

This Certificate of Compliance should be mailed to:
City of Plano
Finance Department
P.O. Box 860358
Plano, Texas 75086-03586