



**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:		4/12/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): Katherine Crumbley x-7479				
CAPTION				
<p>A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between the City of Plano, Texas, and Atmos Energy Corporation, a Texas and Virginia corporation; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager, or in his absence, his authorized designee; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	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):				
COMMENTS: Notice of public hearing published on April 1, 2010, to create reinvestment zone 121. The real property improvements amount is \$6,250,000 while the business personal property amount to be maintained is \$1,350,000.				
SUMMARY OF ITEM				
This is related to Atmos Energy Corporation, a Texas and Virginia corporation, request for tax abatement on reinvestment zone 121 and creation of the zone.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Tax Abatement				

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of an Agreement by and between the City of Plano, Texas, and Atmos Energy Corporation, a Texas and Virginia corporation; providing for a business personal property and real property tax abatement; and authorizing its execution by the City Manager, or in his absence, his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Tax Abatement Agreement by and between the City of Plano, Texas, and Atmos Energy Corporation, a Texas and Virginia 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 in his absence 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:

Section I. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Plano, Texas, 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 in his absence 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 from and after its passage.

DULY PASSED AND APPROVED this the 12th day of April, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

hereinafter referred to as the "Personalty." The Personalty is to have an assessed taxable value as determined by the Collin County Appraisal District of not less than One Million Three Hundred and Fifty Thousand Dollars (\$1,350,000.00) on the Property by January 1, 2011, and is or will be owned by Owner or its affiliates. Owner shall timely render its personal property value each year to the Central Appraisal District

3. Owner may not relocate, for purposes of maintaining taxable situs of the Personalty on the Real Property in other Reinvestment Zones in the City.

JOBS

4. Owner estimates the proposed occupancy of the Real Property as shown in **EXHIBIT "B"** (the "Development") will result in the retention, creation or transfer of 78 full time jobs ("Job Equivalents") at the Development in Plano by December 31, 2010, and an additional 11 Job Equivalents at the Development in Plano by December 31, 2012. "Job Equivalent" shall mean one or more Company job positions located at the Development which individually or when combined total 2080 hours on an annual basis (inclusive of holidays, vacation and sick leave).

IMPROVEMENTS

5. The Owner shall occupy not less than 48,000 gross square feet of commercial/industrial space on the Real Property by December 31, 2010, subject to Event of Force Majeure. The Owner shall make real property improvements to the Real Property with a taxable value of not less than Six Million Two Hundred and Fifty Thousand Dollars (\$6,250,000.00) by January 1, 2011, subject to Event of Force Majeure. The term "Event of Force Majeure" means 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 Owner's operations in the City.

DEFAULT

6. Any of the following events shall be deemed a breach of this Agreement resulting in default:

(a) Owner allows its personal property taxes located on the Real Property or real property improvement taxes owed the City to become delinquent and fails to either (1) timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes, or (2) cure such delinquency within 30 days of receipt of notice of such delinquency; or

(b) Owner fails to occupy the Improvements for the Purposes set forth in paragraphs 2 and 5 above on or before December 31, 2010, subject to Event of Force Majeure; or

(c) The value of Personalty placed on the Real Property on or before January 1, 2011, subject to Event of Force Majeure, or the value of real property improvements on the Property is less than the minimum amounts set forth in paragraphs 2 and 5 above; or

(d) The assessed value of the Improvements or Personalty falls below the minimum amounts set forth in paragraph 2 and 5 above as the result of the Owner filing a protest or as a result of the removal of the Personalty from the Development.

(e) Owner fails to employ at least 75% of its employee commitment as provided in paragraph 4 above, subject to Event of Force Majeure; or

(f) Owner fails to provide annual certification as required in paragraph 9 below;
or

(g) Owner has been convicted of a violation under 8 U.S.C. Section 1324a (f) regarding the unlawful employment of aliens at the Development.

7. In the event that the Owner defaults under this Agreement then the City shall give the Owner written notice of such default and if the Owner has not cured such default, or obtained a waiver thereof from the appropriate authority, within thirty (30) days of said written notice, this Agreement may be terminated by the City. Notice shall be in writing as provided below. Upon the occurrence of an event of default other than under Paragraphs 6(a) or 6(g) above and after the Owner fails to cure same within the cure period, this Agreement shall terminate upon delivery of written notice by the City to Owner and all taxes due after termination of this Agreement shall be paid in full without the benefit of any abatement. The parties acknowledge that actual damages in the event of default and termination would be speculative and difficult to determine.

8. Upon the occurrence of an event of default under Paragraph 6(a) above and after Owner fails to cure same in accordance herewith or upon the occurrence of an event of default under Paragraph 6(g), this Agreement shall terminate upon delivery of written notice by the City to Owner with respect to the tax abatement attributable to the Personalty and real property improvements and all taxes, including previously abated taxes which would have been paid to the City without the benefit of this Agreement, shall become due and owing to the City, together with interest charged from the date of this Agreement at the statutory rate for delinquent taxes as determined by V.T.C.A., Tax Code § 33.01, but without the addition of penalty other than that mandated by V.T.C.A., § 33.01 or 33.07.

ANNUAL CERTIFICATION

9. Beginning November 1, 2011 and on or before the 1st day of November of each calendar year thereafter during the term of this Agreement, the Owner, or its successors or assigns, must provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the Governing Body of the City certifying compliance with each applicable term of the Agreement.

ASSIGNMENT

10. The terms and conditions of this Agreement are binding upon the successors and assigns of Owner. This Agreement cannot be assigned by Owner unless written permission is first granted by the City, which permission shall be at the reasonable discretion of the City, except under the following conditions:

(a) Assignment to an affiliate of Owner is permissible;

(b) A transfer or assignment of this Agreement by Owner to successors or assigns is permissible wherein the successors or assigns agree to be bound by the terms of this Agreement and Owner shall continue to conduct business on the subject premises, and shall remain the primary tenant or landlord.

Assignment under either (a) or (b) above may be made without consent of the City; however, Owner agrees to give written notice to the City of any assignment or transfer of interest allowed pursuant to subparagraphs (a) and (b) hereof.

If (A) Owner desires to assign this Agreement and the City's consent is required to such assignment, and (B) the City does not consent to such assignment, then the Owner may terminate this Agreement by delivering written notice to the City, and upon such termination, the Owner and the City shall have no further rights, duties or obligations under this Agreement.

ABATEMENT PROVISIONS

11. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the City, a portion of ad valorem personal property taxes and real property improvement taxes belonging to Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) The tax abatements as to Personalty and real property improvements, as provided for herein, shall be for a period of ten (10) tax years, from January 1, 2011, through December 31, 2020.

(b) In accordance with all applicable federal, state, and local laws and regulations, the abatement shall be based on amounts equal to fifty (50%) of the taxable value of the Personalty and real property improvements for each tax year from January 1, 2011, through December 31, 2020.

(c) The Owner shall have the right to protest and/or contest any assessment of the Personalty or real property improvements, and the abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Notwithstanding the above, it shall be a breach of this Agreement if assessed values fall below those in paragraphs 2 and 5 as a result of an Owner filed protest and/or contest or removal of property from the Development.

NOTICE

12. Notices required to be given to any party to this Agreement shall be given personally or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party at its address as set forth below, and, if given by mail, shall be deemed delivered as of the date deposited in the United States mail:

For City by notice to:

City of Plano
Attention: Mr. Thomas H. Muehlenbeck
City Manager
P.O. Box 860358
Plano, Texas 75086-0358

With copy to:

City of Plano
Attention: Ms. Diane C. Wetherbee
City Attorney
P.O. Box 860358
Plano, Texas 75086-0358

For Owner by notice to:

Atmos Energy Corporation
Attention: Real Estate
5430 LBJ Freeway
Suite 500
Dallas, Texas 75240

With a copy to:

Atmos Energy Corporation
Attention: Legal Department
5430 LBJ Freeway
Suite 500
Dallas, Texas 75240

and

Munsch Hardt Kopf & Harr, P.C.
Attention: David Coligado
3800 Lincoln Plaza
500 N. Akard St.
Dallas, Texas 75201

Any party may change the address to which notices are to be sent by giving the other parties written notice in the manner provided in this paragraph.

MISCELLANEOUS PROVISIONS

13. The Owner further agrees that the City, its agents and employees, shall have reasonable right (with no less than 5 business days prior written notice to Owner) to access the Real Property during regular business hours to inspect the Personalty and real property improvements in order to insure that the location of the Personalty and real property improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. During the term of this Agreement City shall have the continuing right (with no less than 5 business days prior written notice to Owner) to inspect the Real Property and Personalty during regular business hours to insure that the Personalty and real property improvements are thereafter maintained in accordance with this Agreement.

14. It is understood and agreed between the parties that the Owner, in performing its obligations hereunder, is acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties and Owner agrees to indemnify and hold harmless City from any and all claims, suits, and causes of actions, including attorneys' fees, of any nature whatsoever arising out of Owner's default of its obligations hereunder.

15. The City represents and warrants that the Personalty or Property do not include any property that is owned by it or its council or boards, agencies, commissions, or other entities approving, or having responsibility for the approval of this Agreement.

16. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 12th day of April, 2010, authorizing the City Manager to execute the Agreement on behalf of the City.

17. This Agreement was entered into by Owner pursuant to its duly authorized representative.

18. This instrument shall constitute a valid and binding agreement between the City and Owner when executed in accordance herewith.

19. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision, to persons or circumstances other than those in respect of which it is invalid or unenforceable) except those terms or provisions, which are made subject to or conditioned upon such invalid or unenforceable term or provision, shall not be affected thereby, and each other term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This Agreement is performable in Collin County, Texas. Signed this 12th day of April, 2010.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Thomas H. Muehlenbeck
CITY MANAGER

APPROVED AS TO FORM:

Diane Wetherbee, CITY ATTORNEY

ATMOS ENERGY CORPORATION, a
Texas and Virginia corporation

By: _____
Name: _____
Title: _____

EXHIBIT "A"
LEGAL DESCRIPTION
REINVESTMENT ZONE NO. 121

Real Property
Metes and Bounds

Description of Land

BEING a tract of land situated in the Martha McBride Survey Abstract No. 553, Collin County, Texas and being a portion of the land described in a deed to The Board of Regents of the University of Texas System as recorded in Volume 976, Page 517 and a portion of the land described as Exhibit R in a Quick Claim Deed to The Board of Regents of the University of Texas System as recorded in cc#94-0062867 of the Real Property Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at an x-cut in concrete found in the northerly right of way line of Mapleshade Lane (a 92 foot wide right of way), said x-cut being the southeasterly corner of Lot 5, Block A of Coit Center an addition to the City of Plano according to the plat recorded in Clerks File No. 2006-100 of the Plat Records of Collin County, Texas;

THENCE along the easterly line of said Lot 5 as follows:

North 00 degrees 13 minutes 59 seconds West a distance of 114.89 feet to a 1/2 inch iron rod found for corner;

South 89 degrees 40 minutes 57 seconds West a distance of 130.00 feet to a 1/2 inch iron rod set for corner;

North 00 degrees 19 minutes 11 seconds West passing at a distance of 315.14 feet a 1/2 inch iron rod found for the northeasterly corner of said Lot 5 and continuing along the easterly line of Lot 6, Block A of Coit Center an addition to the City of Plano according to the plat recorded in County Clerks File No. 2006-99 of the Plat Records of Collin County, Texas passing at a distance of 693.87 feet the southeasterly corner of Lot 2R, Block A of Coit Center Addition an addition to the City of Plano according to the plat recorded in County Clerks File No. 2007-97 of the Plat Records of Collin County, Texas, passing at a distance of 846.93 feet a capped iron rod stamped "CARTER/BURG" found for the northeasterly corner of said Lot 2R in all a total distance of 874.36 feet to a capped iron rod stamped "CARTER/BURG" found for the northwesterly corner of said Exhibit R tract and the southerly right of way line of the Atchison, Topeka and Santa Fe Railroad (a 125 feet right of way at this point);

THENCE along the northerly line of said Exhibit R tract and the southerly right of way line of said Atchison, Topeka and Santa Fe Railroad South 67 degrees 44 minutes 07 seconds East a distance of 557.77 feet to a 1/2 inch iron rod set for corner;

THENCE departing the northerly line of said Exhibit R tract and the southerly right of way line of said Atchison, Topeka and Santa Fe Railroad South 00 degrees 19 minutes 11 seconds East a distance of 867.05 feet to a 1/2 inch iron rod set for corner in the southerly right of way line of the proposed extension of Mapleshade Lane (a 92 feet wide right of way);

THENCE along the southerly right of way line of the proposed extension of Mapleshade Lane South 89 degrees 40 minutes 49 seconds West a distance of 350.84 feet to a 1/2 inch iron rod found for corner in the southerly right of way line of Mapleshade Lane;

THENCE North 02 degrees 05 minutes 56 seconds East a distance of 90.14 feet to an aluminum monument found in the northerly right of way line of Mapleshade Lane;

THENCE along the northerly line of said Mapleshade Lane North 87 degrees 24 minutes 03 seconds West a distance of 38.19 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bounds 10.825 acres of land more or less.

SAVE AND EXCEPT THE FOLLOWING:

BEING a tract of land situated in the Martha McBride Survey Abstract No. 553, Collin County, Texas and being a portion of the land described in a deed to The Board of Regents of the University of Texas System as recorded in Volume 976, Page 517 and a portion of the land described as Exhibit R in a Quick Claim Deed to The Board of Regents of the University of Texas System as recorded in cc#94-0062867 of the Real Property Records of Collin County, Texas and being more particularly described as follows:

BEGINNING at an x-cut in concrete found in the northerly right of way line of Mapleshade Lane (a 92 feet wide right of way), said x-cut being the southeasterly corner of Lot 5, Block A of Coit Center an addition to the City of Plano according to the plat recorded in Clerks File No. 2006-100 of the Plat Records of Collin County, Texas;

THENCE along the proposed northerly right of way line of Mapleshade Lane (proposed 92 feet wide right of way) North 89 degrees 40 minutes 49 seconds East a distance of 385.17 feet to a 1/2 inch iron rod with blue plastic cap stamped ElamPack Surveyors set for corner;

THENCE South 00 degrees 19 minutes 11 seconds East a distance of 92.00 feet to a 1/2 inch iron rod with blue plastic cap stamped ElamPack Surveyors set for corner in the proposed southerly right of way line of said Mapleshade Lane (proposed 92 feet wide right of way);

THENCE along the proposed southerly right of way line of said Mapleshade Lane (proposed 92 feet wide right of way) South 89 degrees 40 minutes 49 seconds West a distance of 350.84 feet to a 1/2 inch iron rod with blue plastic cap stamped ElamPack Surveyors set for corner in the easterly line of the existing Mapleshade Lane right of way;

THENCE along the easterly line of the existing Mapleshade Lane right of way North 02 degrees 05 minutes 56 seconds East a distance of 90.14 feet to an aluminum monument found for corner in the existing northerly right of way line of Mapleshade Lane;

THENCE along the existing northerly right of way line of said Mapleshade Lane North 87 degrees 24 minutes 03 seconds West a distance of 38.19 feet to the POINT OF BEGINNING;

Containing within these metes and bounds 0.738 acres or 32,135 square feet of land more or less.

**EXHIBIT “C”
CERTIFICATION FORM
REINVESTMENT ZONE NO. 121**

[DATE]

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

RE: Certification Form – Reinvestment Zone No. 121
Tax Abatement Agreement (the “Agreement”) between Atmos Energy Corporation
 (“Atmos”) and the City of Plano, dated as of April 12, 2010

This letter certifies that Atmos is in compliance with each applicable term as set forth in the Agreement. The term of the Agreement is January 1, 2011, through December 31, 2020. This form is due on November 1 of each year the Agreement is in force.

ATMOS ENERGY CORPORATION,
a Texas and Virginia corporation

By: _____
Name: _____
Title: _____