



**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:		5/10/10		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): <b>Katherine Crumbley - 7479</b>				
<b>CAPTION</b>				
A Resolution of the City Council of the City of Plano, Texas, repealing Resolution No. 2007-5-17 and approving the terms and conditions of a new Economic Development Incentive Agreement by and between the City of Plano, Texas, and Denbury Onshore LLC, a Delaware limited liability company; authorizing its execution by the City Manager or his designee; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2010</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	12,578,710	0	<b>12,578,710</b>
Encumbered/Expended Amount	0	-3,988,025	-4,435,250	<b>-8,423,275</b>
This Item	0	-156,250	-156,250	<b>-312,500</b>
BALANCE	0	8,434,435	-4,591,500	<b>3,842,935</b>
<b>FUND(S):     ECONOMIC DEVELOPMENT FUND</b>				
<b>COMMENTS: STRATEGIC PLAN GOAL: PROVIDING ECONOMIC DEVELOPMENT INCENTIVES RELATES TO THE CITY'S GOAL OF STRONG LOCAL ECONOMY.</b>				
<b>SUMMARY OF ITEM</b>				
A request from Denbury Onshore LLC to repeal Resolution No. 2007-5-17 and to create a new Economic Development Incentive to relocate its business and commercial activities to another area of the City of Plano. Denbury Onshore agrees to occupy not less than 274,000 sq. ft of commercial space by 3/1/2011 and transfer 275 jobs from the company's prior location by 3/1/11. Denbury Onshore also agrees to create 125 new jobs by 3/1/11 and add an additional 125 jobs by 12/31/11 for a total of 525 jobs.				
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, repealing Resolution No. 2007-5-17 and approving the terms and conditions of a new Economic Development Incentive Agreement by and between the City of Plano, Texas, and Denbury Onshore LLC, a Delaware limited liability company; authorizing its execution by the City Manager or his designee; and providing an effective date.**

**WHEREAS**, on May 29, 2007 the City Council adopted Resolution No. 2007-5-17 approving an Economic Development Agreement with Denbury Onshore LLC (“Denbury”) as consideration for Denbury locating its business in the City of Plano at 5160 Tennyson Parkway; and

**WHEREAS**, Denbury now wishes to transfer its entire business from its old location to a new location at 5320 Legacy Drive, Plano, Texas and to increase the total number of jobs; and

**WHEREAS**, the City Council has been presented a proposed Economic Development Incentive Agreement by and between the City of Plano, Texas and Denbury, 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 Resolution No. 2007-5-17 should be repealed and the proposed Agreement 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.** Resolution No. 2007-5-17 is hereby repealed in its entirety.

**Section II.** 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 III.** The City Manager or his 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 IV.** This Resolution shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** this the 10<sup>th</sup> of May, 2010.

\_\_\_\_\_  
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 Denbury Onshore LLC, a Delaware Limited Liability Company, (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 acquisition, development and exploration of oil and gas and anticipates that it will expand and relocate their business in Plano, Texas, add real property improvements of approximately Thirteen Million Dollars (\$13,000,000.00) and add or relocate business personal property of approximately Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) to the new location; and

**WHEREAS**, the City and Company entered into a previous economic development incentive agreement approved by the City Council in Resolution No. 2007-5-17 on May 29, 2007 for the creation of 275 Job Equivalents at a prior location in Plano, Texas, which Job Equivalents will be transferred to the new location; and

**WHEREAS**, it is the intent of the parties to this agreement that the agreement approved on May 29, 2007 is amended and replaced in its entirety with this agreement; and

**WHEREAS**, the Company has advised the City that a contributing factor that would induce the Company to maintain and expand 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**, Company intends to occupy approximately 274,000 square feet of office space located at 5320 Legacy Drive, Plano, Texas (the “Property”) on or before March 1, 2011, and to occupy an additional approximately 49,000 square feet of office space at the Property on or before April 1, 2013, and maintain or create 525 full time job equivalent positions on the Property; and

**WHEREAS**, the occupancy of 323,000 square feet of commercial space and the creation or maintenance of a minimum of 525 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 the earlier of the occupancy of the Property or March 1, 2011, whichever occurs first.

“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.

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

#### Article II Term

The term of this Agreement shall begin on the Commencement Date and continue until February 28, 2023, 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 274,000 square feet of commercial space on the Property on or before March 1, 2011;

(b) Transfer 275 Job Equivalents from the Company's prior location at Lot 2, Block 1 of Denbury Addition, Plano, Texas to the Property on or before March 1, 2011;

(c) Create 125 new Job Equivalents at the Property on or before March 1, 2011 such that the total number of Job Equivalents at the Property on March 1, 2011 shall total 400 Job Equivalents;

(d) Add an additional 125 new Job Equivalents at the Property on or before December 31, 2011 such that the total number of Job Equivalents at the Property on December 31, 2011 shall total 525 Job Equivalents;

(e) Maintain all 525 Job Equivalents on the Property for the remainder of the term of this Agreement; and

(f) 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.

#### Article IV Economic Development Grant

4.01. **Grant.** In consideration of the Company successfully fulfilling the obligations as set forth in Article III above, the City agrees to provide the Company a cash grant of Five Hundred and Eighty Seven Thousand Five Hundred Dollars (\$587,500.00). This grant includes Two Hundred Seventy Five Thousand Dollars (\$275,000.00) the Company has already received pursuant to an Economic Development Agreement approved by the City Council in Resolution No. 2007-5-17 on May 29, 2007 for the 275 Job Equivalents referenced in Article III (b) above. 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. **Grant Payments.** In addition to the Two Hundred and Seventy Five Thousand Dollars (\$275,000.00) which the Company has already received, the Company shall be entitled to a payment of One Hundred and Fifty Six Thousand Two Hundred and Fifty Dollars (\$156,250.00) 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), (b), and (c) 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 3 (a), (b), AND (c) ABOVE MUST BE FILED WITH THE CITY ON OR BEFORE JUNE 1, 2011. The Company shall be entitled to a second payment of One Hundred and Fifty Six Thousand Two Hundred and Fifty Dollars (\$156,250.00) 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 (d) above. IN ORDER TO RECEIVE THE SECOND PAYMENT OF ONE HUNDRED AND FIFTY SIX THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$156,250.00) UNDER THIS AGREEMENT, COMPANY'S CERTIFICATION VERIFYING COMPLIANCE WITH ARTICLE 3 (d) ABOVE MUST BE FILED WITH THE CITY ON OR BEFORE APRIL 1, 2012.

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 a 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 One Thousand One Hundred and Nineteen Dollars (\$1,119.00) for each lost Job Equivalent. For purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer shall certify to the City by January 31, 2012, 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, (i) the Company shall never be required to refund to the City, in the aggregate, any amount in excess of the total grant amount set forth in Section 4.01, and (ii) 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.

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;
- (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 (prior to relocation):  
Denbury Onshore LLC  
Attention: Mr. Phil Rykhoek  
5100 Tennyson Parkway, Suite 3000  
Plano, Texas 75024

cc: Director of Corporate Facilities

Denbury Onshore LLC  
5100 Tennyson Parkway, Suite 3000  
Plano, Texas 75024

If intended for the Company (after the relocation):  
Denbury Onshore LLC  
Attention: Mr. Phil Rykhoek  
5320 Legacy Drive  
Plano, Texas 75024

cc: Director of Corporate Facilities  
Denbury Onshore LLC  
5320 Legacy Drive  
Plano, Texas 75024

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.

6.12. **Dispute Resolution.** Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve their claims by mediation that, unless the parties mutually agree otherwise, shall be in accordance with the American Arbitration Association's Commercial Mediation Rules in effect at the time of mediation. Request for mediation shall be filed concurrently with the other party. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing for mediation, unless stayed for a longer period of time by agreement of the parties. The party requesting the mediation shall bear all costs related to the mediation. The mediation shall be held in Collin County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any Court having jurisdiction thereof.

**EXECUTED** on this 10<sup>th</sup> day of May, 2010.

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:

DENBURY ONSHORE LLC, a Delaware  
Corporation

By: \_\_\_\_\_  
Phil Rykhoek  
Chief Executive Officer

**EXHIBIT "A"**

**CERTIFICATE OF COMPLIANCE\***

I hereby certify that Denbury Onshore, LLC has hired/transferred/retained \_\_\_\_\_ Job Equivalents and is in compliance with each applicable term as set forth in Article III [(a), (b) and (c)] or [(d)] of the Economic Development Agreement approved by the City Council on \_\_\_\_\_ as of \_\_\_\_\_(date), and is entitled to receive payment under the terms of the Agreement.

ATTEST:

DENBURY ONSHORE, LLC, a Delaware limited liability company

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 Denbury Onshore, LLC is in compliance with each applicable term as set forth in the Economic Development Agreement approved by City Council on \_\_\_\_\_ as of \_\_\_\_\_ (date). The term of this Agreement is March 1, 2011 through February 28, 2023. 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 \_\_\_\_\_ of the Agreement. This form is due on \_\_\_\_\_ of each year this Agreement is in force.

ATTEST:

DENBURY ONSHORE, LLC, a Delaware limited liability company

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