



**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:		8/22/11		
Department:		Finance		
Department Head		Denise Tacke		
Agenda Coordinator (include phone #): <b>Katherine Crumbley x7479</b>				
<b>CAPTION</b>				
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 O'Neil Digital Solutions, LLC, Investor's Business Daily, and William O'Neil providing for real and business personal property tax abatement; and authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2010-2011</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	<b>0</b>
BALANCE	0	0	0	<b>0</b>
<b>FUND(s):    ECONOMIC DEVELOPMENT INCENTIVE FUND</b>				
<b>COMMENTS:</b> This item has no fiscal impact. Strategic Plan Goal: Providing economic development incentives relates to the City's goal of strong local economy				
<b>SUMMARY OF ITEM</b>				
This is related to O'Neil Digital Solutions request for tax abatement on Reinvestment Zone 125 and creation of the zone.				
List of Supporting Documents: Tax Abatement 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 agreement by and between the City of Plano, Texas, and O'Neil Digital Solutions, LLC, Investor's Business Daily, and William O'Neil providing for real and business personal property tax abatement; and 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 Tax Abatement Agreement by and between the City of Plano, Texas, and O'Neil Digital Solutions, LLC, a Texas limited liability company, Investor's Business Daily, and William O'Neil, 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:**

**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 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 22nd day of August, 2011.

\_\_\_\_\_  
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 a total assessed taxable value as determined by the Collin County Appraisal District of not less than Eight Million Five Hundred Thousand Dollars (\$8,500,000.00) on the Real Property by December 31, 2011. Tenants may render the Personalty to the Collin County Appraisal District under separate accounts; however, the combined assessed taxable value of the Personalty for those accounts as determined by the Collin County Appraisal District must be at least Eight Million Five Hundred Thousand Dollars as determined by the Collin County Central Appraisal District for the tax year beginning in 2012 unless an extension has been approved by the City as a result of an Event of Force Majeure

3. Tenants shall maintain the taxing situs of the Personalty on the Real Property and may not relocate the taxing situs of the Personalty in other Reinvestment Zones in the City.

### **JOBS**

4. Owner and Tenants agree that they will occupy the Real Property as shown in **EXHIBIT “B”** (the “Development”) and such occupancy will result in the retention, creation or transfer of up to 250 Full time jobs (“Job Equivalents”) at the Real Property. Owner and Tenants agree to have 96 Job Equivalents on the Real Property by December 31, 2013. At Owner and/or Tenants’ option, they may increase the number of Job Equivalents up to 166 by December 31, 2014, and to 250 Job Equivalents by December 31, 2015. “Job Equivalent” shall mean one or more employees located at the Real Property which individually or when combined work a total of 2080 hours on an annual basis (inclusive of holidays, vacation and sick leave) and where such employees are issued a W-2 form by the Owner and/or individual Tenants.

### **IMPROVEMENTS**

5. (a) The Tenants shall lease a minimum of 218,000 gross square feet of space on the Real Property by the Commencement Date and add the Personalty required under Paragraph 2. The “Commencement Date” means the date of occupancy of the Real Property by the Tenants but in no event shall be later than September 30, 2011 unless an extension as a result of an Event of Force Majeure is approved by the City.

(b) (i) By December 31, 2011, the Owner or Tenants shall make or cause to be made improvements to the Real Property consisting of electrical and plumbing equipment, improved air conditioning ducts and chillers, raised flooring, lights, and other improvements with an assessed taxable value of Real Property Improvements of not less than Two Million Five Hundred Thousand Dollars.

(ii) By December 31, 2014, the Owner or Tenants shall make or cause to be made additional improvements to the Real Property consisting of security system, guard shack, critical electric infrastructure include electrical transformers and other improvements with an assessed taxable value of Real Property Improvements of not less than Four Million Five Hundred Thousand Dollars as determined by the Collin County Central Appraisal District for the tax year beginning in 2015 unless an extension has been approved by the City as a result of an Event of Force Majeure

(c) In the Event of a Force Majeure "Event" the affected party shall notify the City in writing not less than sixty days of the onset of the Event with supporting documentation, the anticipated duration and the actions that the party will take to alleviate the Event. The City Manager shall consider such request and may grant an extension of time to complete the obligations, such extension shall not be unreasonably withheld. If the Event results in a delay of meeting the required improvement value, the party requesting the extension agrees that in the following year the minimum required taxable value of the Improvements and/or Personalty shall be met.

(d) 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, shortages or unavailability of materials or labor, or work stoppages any of which event(s) directly impact the Owner or Tenant at the Real Property. The term shall not include a downturn in the economy.

#### **DEFAULT**

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

(a) Tenants allows their personal property taxes located on the Real Property or Owner allows its 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) (i) Tenants or Owner fail to occupy the Improvements on or before the Commencement Date; or

(ii) Owner or Tenants fail to construct the Improvements required in 5(b); or

(c) In the first year of the abatement period, the assessed taxable value of Personalty is less than the minimum amount set forth in paragraph 2 or the assessed taxable value falls below the minimum amount set as the result of Tenants (individually or collectively) filing a protest or as a result of the removal of Personalty from the Real Property unless the party has been granted an extension for an Event of Force Majeure under 5 (c); or

(d) The assessed taxable value of the Real Property Improvements is less than the minimum amount set forth in paragraph 5(b) (i) or (ii) as a result of the Owner's protest; or

(e) Tenants or Owner fail to employ at least 75% of the required Job Equivalentents as provided in paragraph 4 above, subject to Event of Force Majeure; or

(f) Tenants or Owner or Owner's duly authorized representative fails to provide annual certification as required in paragraph 9 below; or

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

7. In the event that the Tenants (individually or collectively) or Owner defaults under this Agreement, the City shall give all parties written notice of such default and if the default is not cured or a waiver obtained thereof within thirty (30) days of said written notice, this Agreement shall be automatically terminated as to all parties except any damages as specified below shall survive the termination of this Agreement. Notice shall be in writing as provided below. The City Manager is authorized on behalf of the City to send notice of default and to terminate the Agreement for any default that is not cured.

8. Upon the occurrence of an event of default under Paragraphs 6(a), (b) and (g) above and that remains uncured, this Agreement shall terminate in its entirety as to all parties upon delivery of written notice by the City to the parties 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.

Upon the occurrence of an event of default under Paragraphs 6(c) or (d) (e) or (f) above and that remains uncured, this Agreement shall terminate in its entirety to all parties upon delivery of written notice by the City to the parties. At the City's sole option, it may require all or a portion of all previously abated taxes which would have been paid to the City without the benefit of this Agreement to 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. City shall exercise such option within ninety days of notice of default.

#### **EFFECT OF TERMINATION/SURVIVAL OF OBLIGATIONS**

9. 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 or default(s) that existed prior to such termination or as otherwise provided herein and those liabilities and obligations shall survive the termination of this Agreement, including the refund provision, maintenance of records, and access thereto.

## ANNUAL CERTIFICATION

10. Beginning November 1, 2012 and on or before the 1st day of November of each calendar year thereafter during the Term (as defined below) of this Agreement, the Tenants and Owner, or their successors or assigns, must each provide annual certification (substantially in the form attached as **EXHIBIT "C"** hereto) to the City certifying compliance with each applicable term of the Agreement. Owner hereby grants to Tenant a power of attorney for the term of this Agreement for the limited purpose of making its annual certification on behalf of Owner and Tenant agrees to perform such duty.

## ASSIGNMENT

11. Except as provided herein, this Agreement cannot be assigned by Tenants or Owner unless written permission is first granted by the City, which permission shall be at the reasonable discretion of the City. Assignment without the permission of the City is allowed to: a) A wholly owned affiliate of Tenant or Owner is permissible as long as the successors or assigns agree to be bound by the terms of this Agreement without exception and the City is provided a copy of the assignment; or, b) Upon the sale of the real property and the new Owner agrees to be bound to the terms and conditions of this Agreement without exception and provides proof of the ownership of the Real Property.

## ABATEMENT PROVISIONS

12. 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 Tenants and Owner located on the Real Property otherwise owed to the City shall be abated as follows:

(a) The tax abatement as to Personalty and Real Property Improvements shall be for a period of ten (10) tax years, from January 1, 2012, through December 31, 2021 (the "Term"); and

(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 during their respective terms as set forth in 12(a) above; and

(c) The Tenants or Owner shall have the right to protest and/or contest any assessment of the Personalty or real property improvements where such assessment is above the minimum amount required to be maintained under Paragraphs 2 and 5 of this Agreement. 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 required in paragraph 2 and 5 as a result of a Tenants or Owner filed protest and/or contest or the removal of Personalty from the Real Property.

## NOTICE

13. 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. Bruce D. Glasscock  
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 Tenants by notice to:

O'Neil Digital Solutions, LLC                      Attn: Jim Lucanish  
Title: General Manager  
12655 Beatrice Street  
Los Angeles, CA 90066

Investors Business Daily  
Attn: Jim Lucanish  
Title: General Manager  
12655 Beatrice Street  
Los Angeles, CA 90066

For Owner by notice to:

William O'Neil and Company  
Attn: James J. Keenan  
Title: Representative  
4454 Via Esperanza,  
Santa Barbara, CA 93121

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

14. During the term of the Agreement, the Tenants and Owner further agree 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.

15. Tenants and Owner shall maintain the fiscal records and supporting documentation for expenditures of funds associated with this Agreement and shall retain such records, and any supporting documentation for the greater of: (1) Five [5] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

16. Tenants and Owner give City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or personal and real property belonging to or in use by the Tenants and Owner pertaining to this Agreement (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to books, records and property will be limited to information needed to verify that Tenants and Owner are complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by City. In no event shall City's access to Records include any access to any personal and/or medical data of any employees of Tenant except to confirm payroll information compliance for Job Equivalents. Neither Tenants nor Owner shall be required to disclose to the City any information that by law either is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require Tenants or Owner to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of Tenants or Owner. The rights to access the Records shall terminate five (5) years after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend or terminate this Agreement as provided for in Article IV. above, or any portion thereof, for reason of default. All Records shall be retained by Tenants and Owner for a period of five (5) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquires and open record requests are completed. Tenants and Owner agree to maintain the Records in an accessible location.

17. It is understood and agreed between the parties that the Tenants and Owner, in performing their respective obligations hereunder, are acting independently, and the City assumes no responsibilities or liabilities in connection therewith to third parties and Tenants and Owner agree 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 their respective defaults of their obligations hereunder.

18. Based upon the certification provided by Owner and Tenants, the City represents that the Personalty or Real 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.

19. This Agreement was authorized by Resolution of the City Council at its Council meeting on the 22nd day of August, 2011, authorizing the City Manager to execute the Agreement on behalf of the City.

20. This Agreement was entered into by Tenants and Owner pursuant to their duly authorized representatives.

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

22. 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 \_\_\_\_ day of \_\_\_\_\_, 2011.

ATTEST:

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

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

\_\_\_\_\_  
Bruce D. Glasscock, CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
Diane Wetherbee, CITY ATTORNEY

O'NEIL DIGITAL SOLUTIONS, LLC, a  
Texas company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

INVESTORS BUSINESS DAILY, a  
California company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

WILLIAM O'NEIL COMPANY, a  
California Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**

TRACT 1

Being an 11.40 acre tract of land situated in the J.B. Roundtree Survey, Abstract No. 759, Collin County, Texas and being all of Lot 1, Block 1, Plano Tech Center II, an addition to the City of Plano, Texas, as recorded in Cabinet N, Page 459, of the Real Property Records of Collin County, Texas, (R.P.R.C.C.T.), and being that tract of land described in deed to Hendry Mechanical Works, as recorded in County Clerk's No. 2001-0076607, R.P.R.C.C.T., and being more particularly described as follows:

BEGINNING at a point for the Northwest corner of said Lot 1, Block 1, Plano Tech Center II, same being the Northeast corner of Lot 1, Block A, Bowater Computer Forms, Inc., an addition to the City of Plano, Texas, as recorded in Cabinet C, Page 76, R.P.R.C.C.T., said point being on the South right-of-way line of Plano Parkway (a 105 foot wide right-of-way);

THENCE South 89 degrees 47 minutes 30 seconds East, along said South right-of-way line, a distance of 33.72 feet to a ½-inch found iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereinafter referred to as "with cap") for the point of curvature of a tangent circular curve to the left having a radius of 771.21 feet and whose chord bears North 74 degrees 16 minutes 08 seconds East, a distance of 423.58 feet;

THENCE Northeasterly, continuing along said South right-of-way line and with said curve, through a central angle of 31 degrees 52 minutes 44 seconds, an arc distance of 429.09 feet to a found "X" cut in concrete for the Northeast corner of said Lot 1, Block 1;

THENCE South 27 degrees 26 minutes 24 seconds East, departing said South right-of-way line and the East line of said Lot 1, a distance of 115.38 feet to a found "X" cut for corner;

THENCE due South, continuing along said East line, a distance of 956.92 feet to a ½-inch iron rod with cap for corner;

THENCE South 64 degrees 59 minutes 53 seconds West, along a South line of said Lot 1, Block 1, a distance of 50.51 feet to a 3-inch found aluminum monument for corner;

THENCE North 89 degrees 37 minutes 00 seconds West, continuing along a South line of said Lot 1, Block 1, a distance of 452.34 feet to a ½-inch found iron rod with cap for the Southwest corner of said Lot 1, Block 1;

THENCE North 00 degrees 12 minutes 30 seconds East, along the West line of said Lot 1, Block 1, a distance of 962.93 feet to the POINT OF BEGINNING AND CONTAINING 496,620 square feet or 11.40 acres of land, more or less.

TRACT 2

Non-exclusive Common Access Easement created in Declaration of Easements and Restrictions for Plano Tech Center II filed June 27, 2001, recorded in Volume 4948, Page 2518, Land Records of Collin County, Texas.



**EXHIBIT "C"**

**ANNUAL CERTIFICATE OF COMPLIANCE**

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

\_\_\_\_\_ a. I hereby certify that for the prior year WILLIAM O'NEIL COMPANY has been in continuous compliance with all terms of the Agreement.

\_\_\_\_\_ b. I certify that for the prior year WILLIAM O'NEIL COMPANY has failed to be in compliance with one or more terms of the Agreement.

ATTEST:

WILLIAM O'NEIL COMPANY,  
a California company

\_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chief Financial Officer

\_\_\_\_\_  
Date

**This Certification is due by November 1 of each year beginning in 2012 while the Agreement is in effect.**

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**

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

\_\_\_\_\_ a. I hereby certify that for the prior year O'NEIL DIGITAL SOLUTIONS, LLC has been in continuous compliance with all terms of the Agreement.

\_\_\_\_\_ b. I certify that for the prior year O'NEIL DIGITAL SOLUTIONS, LLC has failed to be in compliance with one or more terms of the Agreement.

ATTEST:

O'NEIL DIGITAL SOLUTIONS, LLC  
a Texas company

\_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chief Financial Officer

\_\_\_\_\_  
Date

**This Certification is due by November 1 of each year beginning in 2012 while the Agreement is in effect.**

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**

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

\_\_\_\_\_ a. I hereby certify that for the prior year INVESTORS' BUSINESS DAILY has been in continuous compliance with all terms of the Agreement.

\_\_\_\_\_ b. I certify that for the prior year INVESTORS BUSINESS DAILY has failed to be in compliance with one or more terms of the Agreement.

ATTEST:

INVESTORS BUSINESS DAILY,  
a California company

\_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chief Financial Officer

\_\_\_\_\_  
Date

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