



**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:		11-8-10		
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 Capital One, National Association, a national banking association; authorizing its execution by the City Manager or his 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: 2010	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	12,578,710	0	12,578,710
Encumbered/Expended Amount	0	-4,503,225	-4,611,650	-9,114,875
This Item	0	-100,000	-300,000	-400,000
BALANCE	0	7,975,485	-4,911,650	3,063,835
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 Capital One 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. Capital One agrees to occupy not less than 135,000 sq. ft of commercial space by 3/31/12 and create or transfer 200 jobs on or before 6/1/12.				
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 Capital One, National Association, a national banking association; authorizing its execution by the City Manager or his 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 Capital One, National Association, a national banking association, 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 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 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 8th day of November, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

STATE OF TEXAS §
 § **ECONOMIC DEVELOPMENT INCENTIVE**
 § **AGREEMENT**
COUNTY OF COLLIN §

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Capital One, National Association, (hereinafter referred to as the (“Company”)), acting by and through their respective authorized officers and representatives.

WITNESSETH:

WHEREAS, the Company is a full service bank providing a broad spectrum of financial products and services to consumers, small businesses and commercial clients with plans to construct real property improvements with an initial expenditure of not less than Fifteen Million Dollars (\$15,000,000.00) or a taxable value of not less than Five Million Dollars (\$5,000,000.00) in the City of Plano and anticipated to expend not less than Four Million (\$4,000,000.00) on Business Personal Property ; 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 will construct and occupy not less than 135,000 square feet of commercial office space in Building 3 at Capital One’s campus located at 7941 Preston Road, Plano, Texas, 75024 (the “Property”); and add 200 Job Equivalent positions to the Property; and

WHEREAS, the occupancy of 135,000 square feet of office space (the “Improvements”) and the creation or transfer of 200 new FTE positions 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 completion of construction of Phase 3 or March 31, 2012, 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 job positions (at the Company or one of its affiliates) assigned to the Property which individually or when combined total 2080 hours annually. For purposes of this Agreement, Job Equivalents shall not include the 1,200 Job Equivalents from Company’s Phases I and II adjacent to the Property that were required with the prior agreements.

Article II Term

The term of this Agreement shall begin on the Commencement Date and continue for ten (10) years thereafter.

Article III Obligations of Company

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

- a. construct new commercial office space of 135,000 square feet on the Property on or before March 31, 2012;
- b. Create or transfer 200 Job Equivalents to the Property on or before July 1, 2012;

- c. Maintain the 200 Job Equivalents for which a grant was paid pursuant to this Agreement for the remainder of the term of this Agreement; and

Article IV Economic Development Grant

4.01 **Grant.** The City agrees to provide the Company the following incentives:

- a. A cash grant of up to One Hundred Thousand Dollars (\$100,000.00) for the reimbursement of permit, building inspection, engineering and planning fees paid to the City by Company for the construction of the Improvements on the Property. Such grant shall be payable by the City within thirty (30) days of request thereof but not later than October 1, 2012.

- b. A cash grant of One Hundred and Twenty Thousand Dollars (\$120,000.00) from the City under this Agreement payable within thirty (30) days after the City's receipt of the Initial Certification substantially in the 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 OCTOBER 1, 2012.**

- c. The Company shall be entitled to a second grant payment ("Additional Grant Payment") equal to Six Hundred Dollars (\$600.00) times the additional Job Equivalents, in excess of 200, assigned to the Property before March 31, 2014 and maintained for the remaining term of the Agreement. Such Additional Grant Payment shall not exceed One Hundred and Eighty Thousand Dollars (\$180,000.00). Payment shall be made thirty (30) days after receipt of the verification substantially in the form of the Verification attached hereto as Exhibit "A" **IN ORDER TO RECEIVE THE ADDITIONAL GRANT PAYMENT, COMPANY'S CERTIFICATION AS TO THE NUMBER OF JOB EQUIVALENTS CREATED PRIOR TO MARCH 31, 2014 MUST BE FILED WITH THE CITY ON OR BEFORE JULY 1, 2014.**

4.02 **Refunds.**

- a. In the event the Company fails to perform its obligations as set forth in Article III (a) for the full term of this Agreement, Company shall, as liquidated damages, refund to the City the full amount of this grant. In the event the Company, allows the 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 Eight Hundred Dollars (\$800.00) for each Job Equivalent below the Job Equivalent level for which it received a grant payment. The repayment required of Company may not exceed Four Hundred Thousand Dollars (\$400,000.00) in the aggregate. For purposes of determining whether the City is due a refund under this section, an officer of the Company 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 substantially in the form of the attached as Exhibit "B". All refunds under this Agreement shall be due within sixty (60) days of written demand for payment. Notwithstanding the foregoing, 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.

b. 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 is 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 under Section 4.01 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
Attn: Thomas H. Muehlenbeck
City Manager
1520 Avenue K
P.O. Box 860358
Plano, Texas 75086-0358

With a copy to:

City of Plano, Texas
Attn: Diane Wetherbee
City Attorney
1520 Avenue K
Plano, Texas 75086-0358

If intended for the Company:

Capital One, National Association
Attention: Chief Counsel - Contracts
1680 Capital One Drive
McLean, Virginia 22102

With a copy to:

Capital One, National Association
Attention: Mr. Sandy Garber
15000 Capital One Drive
Richmond, Virginia 23238

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 _____ day of _____, 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 C. Wetherbee, CITY ATTORNEY

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
association

BY: _____
Daniel R. Mortensen
Senior Vice President Facilities
Management/Real Estate

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE*

I hereby certify that CAPITAL ONE, NATIONAL ASSOCIATION has occupied not less than 135,000 square feet of commercial space in Building III on the Property and has added _____ new Job Equivalent positions to the Property. CAPITAL ONE, NATIONAL ASSOCIATION, is in compliance with subsections (__) of Article III of the Agreement and is entitled to receive payment under the terms of that Agreement.

ATTEST: CAPITAL ONE,
NATIONAL ASSOCIATION, a national
banking association

BY: _____
Daniel R. Mortensen
Senior Vice President Facilities
Management/Real Estate

NOTE:

This Certificate of Compliance should be mailed to:

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

*This form may be modified as appropriate to certify payment for the Additional Grant Payment.

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that CAPITAL ONE, NATIONAL ASSOCIATION , is in compliance with each applicable term as set forth in Article III of the Agreement as of _____. The term of the Agreement is March 31, 2012 through March 30, 2022. The number of new Job Equivalents, calculated as set forth in the Agreement, and maintained pursuant to the Agreement since its inception has not fallen below _____ for more than 180 consecutive days and is _____ as of the date of this Certificate of Compliance. If the number herein reported is below the number required to be maintained pursuant 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 31 of each year this Agreement is in force.

ATTEST:

CAPITAL ONE, NATIONAL
ASSOCIATION, a national banking
association

BY: _____
Daniel R. Mortensen
Senior Vice President Facilities
Management/Real Estate

NOTE:

This Certificate of Compliance should be mailed to:

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