



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				
<p>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 Futurewei Technologies Inc., d/b/a Huawei Technologies (USA), a Texas Corporation; authorizing its execution by the City Manager or his 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: 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	-132,000	-108,000	-240,000
BALANCE	0	7,943,485	-4,719,650	3,223,835
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				
<p>A request from Futurewei Technologies, Inc., 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. Futurewei Technologies, Inc. agrees to occupy not less than 35,000 sq. ft of office space and retain or create 110 jobs on or before 5/1/11. Futurewei Technologies may, but is not obligated, to add up to 90 additional jobs by 12/31/13.</p>				
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 Futurewei Technologies Inc., d/b/a Huawei Technologies (USA), a Texas Corporation; 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 Futurewei Technologies Inc., d/b/a Huawei Technologies (USA), a Texas Corporation, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and,

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his 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

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (“Agreement”) is made by and between the City of Plano, Texas (the “City”), and Futurewei Technologies, Inc., d/b/a Huawei Technologies (USA), a Texas Corporation, (hereinafter referred to as the (“Company”), acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, the Company is engaged in the business of design and development of telecommunications equipment as well as, sales and marketing of its product lines; and

WHEREAS, the Company plans to add taxable value of \$1,250,000.00 of real property improvements to the Property (defined below) and taxable value of \$500,000.00 of business personal property to the Property to be added to \$445,000 of existing business personal property; and maintain \$445,000 existing BPP for a total of \$945,000.

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 and national headquarters 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 agrees to occupy no less than 35,000 square feet of office space located at 5340 Legacy Drive, Building 3, Plano, TX 75024; retain or create 110 Job Equivalent positions (as hereinafter defined) on the Property by May 1, 2011 or other locations in the City of Plano as approved by the parties in writing; and with an opportunity to add up to an additional 90 Job Equivalents on the Property by December 31, 2013; and

WHEREAS, the occupancy of no less than 35,000 square feet of office space, the retention or creation of 110 full time employees, and the opportunity to add an additional 90 full time job positions to 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 May 1, 2011.

“Effective Date” shall mean the last date on which all of the parties hereto have executed this Agreement.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages any of which event(s) directly impact the Company’s operations in Plano. An economic downturn is not an Event of Force Majeure.

“Job Equivalent” shall mean one or more Company job positions located at the Property which individually or when combined total 2080 hours annually. A Job Equivalent position for the purposes of this Agreement shall not include any Company job positions maintained at 5700 Tennyson Parkway, Plano, Texas.

Article II Term

The term of this Agreement shall begin on the Commencement Date and continue until April 30, 2018, unless sooner terminated as provided herein.

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) Occupy not less than 35,000 square feet of office space at 5340 Legacy Dr., Building 3, Plano, TX 75024 (hereafter the “Property”) on or before May 1, 2011;
- (b) Retain or create 110 Job Equivalents on the Property or other locations in the City of Plano as approved by the parties in writing (“Other Locations”) on or before

May 1, 2011. The term 'Other Locations' shall not include the property located at 5700 Tennyson Parkway, Plano, Texas;

- (c) The Company may but is not obligated to add additional Job Equivalent positions to the Property or Other Locations up to a maximum of 90 additional Job Equivalents (200 combined total) by December 31, 2013 and receive a grant payment as set forth in Article IV below;
- (d) Occupy no less than 35,000 square feet of office space on the Property and maintain all Job Equivalent positions on the Property or Other Locations, for which a grant payment was received, for the full term of this agreement;
- (e) Retain during the term of this agreement Plano as the designated U.S. Headquarters for the Company; 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.** The City agrees to provide the Company a cash grant of One Hundred and Thirty Two Thousand Dollars (\$132,000.00) for the occupancy of no less than 35,000 square feet of office space on the Property or Other Locations and the retention or creation of 110 Job Equivalent positions on the Property or Other Locations by the Commencement Date and a separate cash grant of One Thousand Two Hundred Dollars (\$1,200.00) for each additional new Job Equivalent position created on the Property or Other Locations by December 31, 2013 up to a maximum of 90 Job Equivalents (200 combined total). The combined total of all grant payments paid under this Agreement shall not exceed Two Hundred and Forty Thousand Dollars (\$240,000.00).

4.02 **Grant Payments.** Except as otherwise indicated, the Company shall be entitled to a payment of One Hundred and Thirty Two Thousand Dollars (\$132,000.00) from the City under this Agreement within thirty (30) days after the Company verifies to the City using the Initial Certification form attached hereto as Exhibit "A" that the Company has met its obligations as set forth in Article III (a) and (b) above. **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 no later than August 1, 2011. Failure to certify by August 1, 2011 will void this Agreement without further notice.** After complying with Article III (a) and (b), the Company shall be entitled to additional payments of One Thousand Two Hundred Dollars (\$1,200.00) for each additional Job Equivalent created on the Property or Other Locations up to a maximum of One Hundred and Eight Thousand Dollars (\$108,000.00) within thirty (30) days after the Company verifies to the City the creation of these Job Equivalents using the Initial Certification attached hereto as Exhibit "A" modified as necessary. **Certifications for additional Job Equivalents may not be filed in increments of less than twenty-five jobs. In**

order to receive payment for additional Job Equivalents created under Article III (c) the Company's certification for those additional Job Equivalents must be filed with the City no later than April 1, 2014.

4.03 Refunds.

(a) 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 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 Two Hundred Dollars (\$1,200.00) for each lost Job Equivalent. For the purposes of determining whether the City is due a refund under this section, the Company's Chief Financial Officer or other Company Officer shall certify to the City by January 31, 2012 and by January 31 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 Certificate Form attached as Exhibit "B". All refunds under this Agreement shall be due within 30 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 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 thirty (30) day period shall be extended if the default is of a nature that cannot reasonably be cured within such thirty (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 before relocation:
Futurewei Technologies, Inc.
Attention: Ms. Christie Daniels
Office Administrator
1700 Alma Drive, Suite 100
Plano, Texas 75075

If intended for the Company after relocation:
Futurewei Technologies, Inc.
Attention: Ms. Christie Daniels
Office Administrator
5340 Legacy Drive
Building 3
Plano, TX 75093

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

By: _____
Thomas H. Muehlenbeck, CITY
MANAGER

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

FUTUREWEI TECHNOLOGIES, INC.
d/b/a HUAWEI TECHNOLOGIES (USA),
a Texas Corporation

BY: _____
Charles Ding
Co-President

EXHIBIT "A"

**INITIAL CERTIFICATE OF COMPLIANCE
FOR PROPERTY LOCATED AT
5340 Legacy Drive, Building 3, Plano, TX 75024**

I hereby certify that FUTUREWEI TECHNOLOGIES, INC. d/b/a HUAWEI TECHNOLOGIES (USA), a Texas Corporation , has occupied not less than 35,000 square feet of office space on the Property or Other Location and has retained or created _____ Job Equivalent positions to the Property. FUTUREWEI TECHNOLOGIES, INC. d/b/a HUAWEI TECHNOLOGIES (USA) is in compliance with [subsections (a) and (b)] or [subsection c] of Article III of the Agreement as of _____, and is entitled to receive payment under the terms of that Agreement.

ATTEST:

FUTUREWEI TECHNOLOGIES, INC.
d/b/a HUAWEI TECHNOLOGIES (USA),
a Texas Corporation

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

EXHIBIT "B"

**ANNUAL CERTIFICATE OF COMPLIANCE
FOR PROPERTY LOCATED AT
5340 Legacy Drive, Building 3, Plano, TX 75024**

I hereby certify that FUTUREWEI TECHNOLOGIES, INC. d/b/a HUAWEI TECHNOLOGIES (USA), a Texas Corporation is in compliance with each applicable term as set forth in Article III of the Agreement as of _____. The term of the Agreement is May 1, 2011 through April 30, 2018. 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:

FUTUREWEI TECHNOLOGIES, INC.
d/b/a HUAWEI TECHNOLOGIES (USA),
a Texas Corporation

By: _____
Name:
Chief Financial Officer

Date

NOTE:

This Certificate of Compliance should be mailed to:

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