



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: | | 3/8/10 | | |
| Department: | | Finance | | |
| Department Head | | Denise Tacke | | |
| Agenda Coordinator (include phone #): Katherine Crumbley - x-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 Wyndham Jade LLC, a Delaware limited liability company; authorizing its execution by the City Manager or his designee and providing an effective date. | | | | |
| FINANCIAL SUMMARY | | | | |
| <input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 13,750,725 | 0 | 13,750,725 |
| Encumbered/Expended Amount | 0 | -3,745,150 | -4,310,350 | -8,055,500 |
| This Item | 0 | -72,000 | -40,000 | -112,000 |
| BALANCE | 0 | 9,933,575 | -4,350,350 | 5,583,225 |
| 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 Wyndham Jade LLC, for an Economic Development Incentive Agreement 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. Wyndham Jade agrees to occupy not less than 20,000 square feet of commercial space and agrees to retain, transfer or create 90 full time jobs by 3/1/10 and adding up to an additional 50 full time jobs by 12/31/11. | | | | |
| List of Supporting Documents: | | Other Departments, Boards, Commissions or Agencies | | |
| Economic Development Incentive Agreement | | | | |

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 Wyndham Jade LLC, a Delaware limited liability company; 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 Wyndham Jade LLC, a Delaware limited liability company, 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 March, 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 Wyndham Jade LLC, a Delaware limited liability company ("Company"), acting by and through its respective authorized officers and representatives.

WITNESSETH:

WHEREAS, the Company is a full service travel, meetings and events management company with approximately Three Hundred and Ninety-Nine Thousand Nine Hundred Dollars (\$399,900.00) of business personalty located at 6400 International Parkway, Suite 2500, Plano, Texas or at one or more other locations within the city limits of Plano, Texas (hereafter the "Property"); and

WHEREAS, the Company has advised the City that a contributing factor that would induce the Company to retain its 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, the Company agrees to occupy not less than a total of 20,000 square feet of commercial space on the Property and maintain or transfer 90 Job Equivalents on the Property on or before March 1, 2010 with an additional 50 Job Equivalents to be added up to an additional 50 Job Equivalents on the Property by December 31, 2011; and to maintain the occupancy and Job Equivalent positions for the remainder of the term of this Agreement; and

WHEREAS, the occupancy of the Property and the retention or transfer of not less than 90 Job Equivalents 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 1 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 March 1, 2010.

"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 the City.

"Job Equivalent" shall mean one or more Company job positions located at the Property, individually or when combined, total 2080 hours (inclusive of holidays, vacation and sick leave) annually.

"Taxable Value" shall mean the assessed value for ad valorem tax purposes as determined by the Collin County Appraisal District.

Article 2 Term

The term of this Agreement shall begin on the Commencement Date and continue until February 29, 2020, unless sooner terminated as provided herein.

Article 3 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 20,000 square feet of commercial space on the Property on or before March 1, 2010;
- (b) Maintain or transfer 90 Job Equivalents on the Property on or before March 1, 2010;
- (c) Add up to an additional 50 Job Equivalents on the Property on or before December 31, 2011;

(d) Continue to occupy the Property and maintain on the Property the Job Equivalents for which Company receives a grant for the term of this agreement; and

(e) 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 4 **Economic Development Grant**

4.01 **Grant.** The City agrees to provide the Company a cash grant of up to One Hundred and Twelve Thousand Dollars (\$112,000.00) for the Company's commitments as set forth in Article 3 above. The Company agrees to maintain a minimum of 90 Job Equivalents throughout the term of this Agreement as provided in Section 4.03 below.

4.02 **Grant Payments.** Except as otherwise indicated, the Company shall be entitled to a payment of Seventy-Two Thousand Dollars (\$72,000.00) 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 3 (a) and (b) above. In order to receive payment under this Agreement, Company's initial certification verifying compliance with Article 3 (a) and (b) above must be filed with the City on or before June 1, 2010. **FAILURE TO TIMELY FILE THE INITIAL CERTIFICATION WILL RESULT IN IMMEDIATE TERMINATION OF THIS AGREEMENT WITHOUT FURTHER NOTICE.** The Company shall be entitled to receive an additional grant of \$800 per each Job Equivalent created on the Property above the initial 90 Job Equivalents up to a maximum of Forty Thousand Dollars (\$40,000.00) or 50 additional Job Equivalents.

4.03 **Refunds.**

(a) In the event the Company does not maintain occupancy of the Property for the full term of this Agreement the Company shall refund the City the full amount of the grant. If the Company allows its Job Equivalents at the Property to fall below the total number for which it has received a grant payment under this Agreement 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 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, 2011 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, 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 5 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 of this Agreement;
- (c) By either party upon written notice to the other, 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);
- (d) By either party upon written notice to the other 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); and
- (e) Failure to timely file the Initial Certification as provided in Section 4.02 above.

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 in this Section 5.02 shall survive the termination of this Agreement.

Article 6 Miscellaneous

6.01 **Binding Agreement.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties. 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, (b) to its parent or (c) 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 of this Agreement 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.

6.09 **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 together 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.

6.13 **Time is of the Essence.** Time is of the essence in this Agreement.

EXECUTED on this 8th day of March, 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:

Wyndham Jade LLC, a Delaware limited liability company

By: _____
Name:
Title:

EXHIBIT "A"

INITIAL CERTIFICATE OF COMPLIANCE

I hereby certify that Company has occupied not less than 20,000 square feet of commercial space on the Property and has retained 90 Job Equivalent positions to the Property. Wyndhaven Jade LLC, is in compliance with subsections _____ (insert (a) and (b) or insert (c) as applicable) of Article 3 of the Agreement commencing effective March 1, 2010, and is entitled to receive payment under the terms of that Agreement.

ATTEST:

Wyndham Jade LLC, a Delaware limited liability company

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

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

I hereby certify that Wyndham Jade LLC, a Delaware limited liability company is in compliance with each applicable term as set forth in Article 3 of the Agreement as of _____. The term of the Agreement is March 1, 2010 through February 29, 2020. The number of 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 one hundred eighty (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 to 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 31st of each year the Agreement is in force.

ATTEST:

Wyndham Jade LLC, a Delaware limited liability company

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