



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:	7/23/12
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): Susan Berger (7255)	

CAPTION

A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Hotel Occupancy Tax Grant Agreement for Hotel Marketing and Transportation Costs Pursuant to Texas Tax Code Chapter 351 by and between Tollway 121 Hotel, LP and the City of Plano, Texas; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 CIP

FISCAL YEAR: 2015-16 thru 2024-25	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	1,500,000	1,500,000
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	-1,500,000	-1,500,000
BALANCE	0	0	0	0

FUND(S): CONVENTION & TOURISM FUND

COMMENTS: Approval of this item will result in the City of Plano providing the Hotel Owner an annual grant payment in the amount of \$150,000 beginning January 1, 2015 for a total of 10 years. The amount to be paid out over the 10-year period is not to exceed \$1,500,000 and will be paid from Hotel/Motel Tax revenues.

STRATEGIC PLAN GOAL: Providing annual grant payments for hotel marketing and transportation costs relate to the City's Goals of Financially Strong City with Service Excellence and Strong Local Economy.

SUMMARY OF ITEM

This Resolution approves and authorizes the City of Plano to enter into a Hotel Occupancy Tax Agreement via an Occupancy Tax Grant between Tollway 121 Hotel, LP and the City of Plano. An annual grant in the amount of \$150,000 beginning January 1, 2015 will be paid for 10 years and not to exceed \$1,500,000. Funds will come from the Hotel/Motel Tax revenues.

The hotel owner, Tollway 121 Hotel, LP will develop a full-service business hotel with 285 guest rooms and 30,000 square feet of meeting/conference space. Additionally, the owner shall offer marketing services and/or guest transportation for the hotel, including promoting travel to Plano and assisting the City in promotional activities and endeavors.



**CITY OF PLANO
COUNCIL AGENDA ITEM**

List of Supporting Documents: Resolution 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 a Hotel Occupancy Tax Grant Agreement for Hotel Marketing and Transportation Costs Pursuant to Texas Tax Code Chapter 351 by and between Tollway 121 Hotel, LP and the City of Plano, Texas; 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 Hotel Occupancy Tax Grant Agreement for Hotel Marketing and Transportation Costs Pursuant to Texas Tax Code Chapter 351 by and between Tollway 121 Hotel, LP and the City of Plano, Texas, 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, 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 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 immediately upon its passage.

DULY PASSED AND APPROVED this the 23rd day of July, 2012.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

**HOTEL OCCUPANCY TAX
GRANT AGREEMENT
FOR HOTEL MARKETING AND TRANSPORTATION COSTS
PURSUANT TO TEXAS TAX CODE CHAPTER 351**

This Hotel Occupancy Tax Grant Agreement for Hotel Marketing and Transportation Costs pursuant to Texas Local Government Code Section 380.001 and Texas Tax Code Chapter 351 (the "Agreement") is entered into this ___ day of _____, 2012, by and between Tollway 121 Hotel, LP, a Texas limited partnership, duly acting by and through its authorized representative, hereinafter referred to as "Hotel Owner", and the City of Plano, Texas, a home rule municipal corporation of Collin and Denton Counties, Texas, duly acting herein by and through its City Manager, hereinafter referred to as "City".

RECITALS

WHEREAS, the Hotel Owner is developing a full-service business class hotel with conference space located at Lot 1R, Block "B" located on Granite Parkway in Granite Park, Plano, TX 75024 as more fully described in Exhibit "A" attached hereto (the "Hotel Site"); and

WHEREAS, City currently levies a local hotel occupancy tax pursuant to Chapter 351, Texas Tax Code (the "Hotel Occupancy Tax" or "HOT"); and

WHEREAS, the Hotel Owner shall develop and occupy at least 250,000 gross square feet of hotel and meeting/conference space at the Hotel Site which shall include at least 285 guest rooms and 30,000 square feet of meeting/conference space (including pre-function space), including various related meeting rooms, recreational facilities, and other ancillary facilities (collectively, the "Hotel"), which Hotel will, when operating, be subject to the Hotel Occupancy Tax; and

WHEREAS, the Hotel Owner shall offer marketing services and/or guest transportation for the Hotel in the City of Plano, Texas ("Plano"), and the surrounding area (collectively, the "Plano Area"), including promoting travel to Plano by residents outside of Plano for leisure, business, conventions and similar events. In addition to assisting the City in such promotional endeavors, the Hotel Owner shall also provide promotional activities for the Hotel. The Hotel Owner may also transport guests of the Hotel in and around the Plano Area; and

WHEREAS, the Hotel Owner's activities are compatible with the interests of the City, and the City desires to provide an incentive for such promotional and transportation activities; 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 is authorized to use Hotel Occupancy Tax funds for advertising to promote tourism and the convention and hotel industry pursuant to Section 351.101(a)(3) of the Texas Tax Code and for transportation of hotel tourists pursuant to Section 351.110 of the Texas Tax Code; and

WHEREAS, the City Council of Plano finds that it is in best interest of the City to grant Hotel Occupancy Tax funds to the Hotel Owner as an economic development incentive to use for promotional and transportation activities as set out herein.

NOW, THEREFORE, in consideration of the premises noted herein, and for good and valuable consideration provided, the sufficiency of which all Parties hereby acknowledge, the City and the Hotel Owner do hereby agree as follows:

AGREEMENT

ARTICLE I TERM

Term. The term of this Agreement shall commence on the last date on which all of the parties hereto have executed this Agreement (“Effective Date”) and shall continue until December 31, 2024, unless sooner terminated as provided herein (the “Term”).

ARTICLE II GRANT

2.01 **Grant.** The City agrees to provide the Hotel Owner an annual grant of One Hundred and Fifty Thousand Dollars (\$150,000.00) to be paid from Hotel Occupancy Tax revenue in the City’s Convention and Tourism fund (the “HOT Grant Funds”) beginning on January 1, 2015 and payable on January 1 of each year thereafter during the Term subject to the Hotel Owner complying with the obligations set out in Article III below and filing of the annual certification as set out in Section 2.03 below. The grant amount paid by the City to the Hotel Owner shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00) total during the Term. A grant year shall be from January 1 until December 31 of each year beginning on January 1, 2015 and for each year thereafter that this Agreement is in effect (the “Grant Year”).

2.02 **Separate Account.** All HOT Grant Funds provided to the Hotel Owner by the City pursuant to this Agreement shall be maintained by the Hotel Owner in a separate bank account and shall be used solely for purposes of this Agreement. HOT Grant Funds shall not be commingled with any other funds by the Hotel Owner.

2.03 **Annual Certification.** Beginning December 1, 2015, the Hotel Owner must submit an annual certification on the form attached hereto as Exhibit “B” and must submit the form not later than December 1 of each year for the duration of this Agreement certifying compliance with all of the obligations set out in Article III below.

A FAILURE TO FILE THE ANNUAL CERTIFICATION BY THE DECEMBER 1 DEADLINE SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 7.01(b) BELOW, SHALL RESULT IN THE HOTEL OWNER'S FORFEITURE OF ANY UNPAID HOT GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO SEEK A FULL REFUND OF PAID HOT GRANT FUNDS, INCLUDING DAMAGES, AS SET OUT IN SECTION 6.01 BELOW.

**ARTICLE III
OBLIGATIONS OF HOTEL OWNER**

In consideration for the City's payment of HOT Grant Funds as set forth in Section 2.01 above, the Hotel Owner agrees to perform the following:

- (a) **Occupancy and Operation.** On or before December 31, 2014 and throughout the remainder of the Term, occupy, operate and be open to the public a hotel with meeting/conference space that is a facility that is a minimum of 250,000 gross square feet of building improvements and is operated as a full-service business class hotel. The Hotel shall have a minimum of 285 guest rooms and a minimum of 30,000 gross square feet of meeting/conference space (including pre-function space) on the Hotel Site.

- (b) **Use of Funds.** The Hotel Owner's use of the HOT Grant Funds shall be limited to the following:
 - 1. Expenditure of the HOT Grant Funds shall be in conformance with (i) Section 351.101(a)(3) of the Texas Tax Code and as further amended by the legislature during the term of this Agreement, including advertising, solicitation, and marketing programs to promote tourism and the convention and hotel industry to attract tourists and convention delegates or registrants to Plano and/or the Hotel; and/or (ii) Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement, for a transportation system to transport tourists from hotels in the Plano Area to the commercial center in Plano, a convention center in Plano; other hotels in or near the Plano Area; and tourist attractions in or near the Plano Area; and

 - 2. Expenditure of the HOT Grant Funds shall be in conformance with the Annual Budget submitted by the Hotel Owner to the City pursuant to Article IV herein.

- (c) **Hotel Tax Payment.**
 - 1. The Hotel Owner must generate and remit at least Seventy Five Thousand Dollars (\$75,000.00) annually to the City for the City portion of

the HOT payment in its first full year of operation of the Hotel and annually thereafter. **FAILURE BY HOTEL OWNER TO REMIT THE MINIMUM HOT PAYMENT TO THE CITY REQUIRED BY THIS ARTICLE III (c)(1) SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 7.01(b) BELOW, SHALL RESULT IN THE HOTEL OWNER'S FORFEITURE OF ANY UNPAID HOT GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO SEEK A FULL REFUND OF PAID GRANT FUNDS, INCLUDING DAMAGES, AS SET OUT IN 6.01 BELOW.**

2. The Hotel Owner shall timely remit all money owed to the City pursuant to the Hotel Owner's responsibility to collect and make HOT payments as required by Section 20-74 of the City of Plano Code of Ordinances and as further amended by the City during the Term. The Hotel Owner shall not become delinquent in its HOT payments to the City. **FAILURE BY HOTEL OWNER TO TIMELY MAKE HOT PAYMENTS TO THE CITY AS REQUIRED BY THIS ARTICLE III (c)(2) SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 7.01(b) BELOW, SHALL RESULT IN THE HOTEL OWNER'S FORFEITURE OF ANY UNPAID HOT GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO SEEK A FULL REFUND OF PAID GRANT FUNDS, INCLUDING DAMAGES, AS SET OUT IN 6.01 BELOW.**

ARTICLE IV ANNUAL PLAN AND BUDGET

4.01 **Preparation of Proposed Annual Plan and Budget.** On an annual basis, the Hotel Owner shall prepare and submit to the City a proposed Annual Plan and Budget itemizing the use of HOT Grant Funds for the forthcoming Grant Year prior to HOT Grant Funds being distributed. The proposed Annual Plan and Budget shall be submitted to the City no later than December 1 immediately prior to commencement of each Grant Year beginning on or before December 1, 2014 and on December 1 of each year thereafter during the Term. The proposed Annual Plan and Budget shall include, at a minimum, a line item budget detailing the use of the HOT Grant Funds for the upcoming Grant Year, the amount of expenditure for each item and a description of the item indicating how it complies with the requirements in Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement. **FAILURE TO SUBMIT THE PROPOSED ANNUAL PLAN AND BUDGET BY THE DECEMBER 1 DEADLINE SHALL BE AN EVENT OF DEFAULT AND, IF NOT CURED AS SET FORTH IN SECTION 7.01(b) BELOW, SHALL RESULT IN THE HOTEL OWNER'S FORFEITURE OF ANY UNPAID HOT GRANT FUNDS AND INVOKE THE CITY'S RIGHT TO SEEK A FULL REFUND OF PAID GRANT FUNDS, INCLUDING DAMAGES, AS SET OUT IN 6.01 BELOW.**

4.02 **Approval of Annual Plan and Budget.** The City Manager or his designee shall approve or disapprove the Annual Plan and Budget submitted by the Hotel Owner prior to disbursement of HOT Grant Funds for the upcoming Grant Year. The City shall have the right to request modifications to the Annual Plan and Budget. The City's approval shall not be unreasonably withheld or delayed.

4.03 **Alternatives.** The Hotel Owner may request that the City approve one or more alternative programs in the overall Annual Plan and Budget for a particular Grant Year, so long as all applicable alternatives are in conformance with the authorized uses pursuant to Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement.

4.04 **Effect of Approval.** Approval by the City of the Annual Plan and Budget does not alleviate the Hotel Owner's responsibility to spend the HOT Grant Funds within the limitations of Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement. The Hotel Owner acknowledges that, pursuant to the terms of this Agreement and Section 351.101(a)(3) and Section 351.110 of the Texas Tax Code and as further amended by the legislature during the term of this Agreement, the Hotel Owner has a fiduciary duty to the City with respect to its handling and use of the HOT Grant Funds provided to the Hotel Owner under this Agreement.

4.05 **Permitted Limited Reallocations.** The City recognizes that the tourism and hotel industry is a dynamic one, and that prudence dictates that the Hotel Owner retain the ability to make certain minimal adjustments from time to time within the confines of the Annual Plan and Budget. Accordingly, the City agrees that the Hotel Owner may, in its professional judgment and mindful of its fiduciary responsibility to the City: (i) reduce expenditures below the level approved in the Annual Plan and Budget for all or any particular categories as the Hotel Owner deems appropriate subject to 4.07 below, (ii) reallocate up to ten (10%) of the amount in any category in the Annual Plan and Budget to another category, so as to allow a reasonable shift in emphasis as the Year develops, and (iii) allocate any amount included in an "alternative" category in the Annual Plan and Budget to any other approved category. However, the Hotel Owner acknowledges and agrees that no HOT Grant Funds may be allocated or used for any activity or program that was not approved by the City for the Annual Plan and Budget for the Grant Year. The Hotel Owner shall notify the City in writing of any changes made to the Annual Plan and Budget pursuant to this Section 4.05 within thirty (30) days of making a change.

4.06 **Annual Plan and Budget Amendments.** Should the provisions of Section 4.05 above be determined by the Hotel Owner to provide insufficient flexibility to address applicable facts and circumstances as they develop during a Grant Year, the Hotel Owner may, at any time, propose and request the City's written approval of an amendment to the approved Annual Plan and Budget for the Grant Year in question. No

such amendment shall be effective until approved in writing by the City Manager, which approval by the City Manager shall not be unreasonably withheld.

4.07 **Unexpended and Unencumbered Funds.** Unexpended and unencumbered HOT Grant Funds that remain with the Hotel Owner after December 31 of each Grant Year will revert to the City and the Hotel Owner must return said HOT Grant Funds to the City on or before January 31 of the immediately following year. Encumbered HOT Grant Funds are those funds which the Hotel Owner has received and obligated for payment by written agreement or contract to expend on approved projects listed in the Annual Plan and Budget. Requests to encumber HOT Grant Funds for projects, as approved in the Annual Plan and Budget completed after December 31 of a Grant Year, shall be submitted to the City for review and approval by December 1 of that same Grant Year. If approved by the City, the encumbered HOT Grant Fund expenditure for specific projects must be completed by December 31 of the year of the request and authorization for encumbrance. An additional annual compliance certification, in accordance with the form set forth in Section 2.03 herein, must be submitted to the City no later than April 30 in the year immediately following the year of the authorized encumbrance. HOT Grant Funds may only be encumbered for projects that have commenced prior to December 1 of the Grant Year for which the HOT Grant Funds were issued.

ARTICLE V LIABILITY AND FIDELITY BOND

5.01 **Immunity.** The Hotel Owner agrees that no provision of this Agreement is intended to or shall be interpreted to negate or diminish any statutory or common law rights the City may have to immunity under the laws of the State of Texas or any other applicable law.

5.02 **INDEMNIFICATION.** **THE HOTEL OWNER AGREES TO INDEMNIFY, SAVE AND HOLD HARMLESS THE CITY, ITS AGENTS, OFFICERS, REPRESENTATIVES, EMPLOYEES, AND AFFILIATES, OF AND FROM ANY AND ALL PRESENT OR FUTURE CLAIMS, DEMANDS OR CAUSES OF ACTION THAT MAY ACCRUE ON ACCOUNT OF, OR IN ANY WAY ARISING OUT OF, THE HOTEL OWNER'S WRONGFUL ACTS AND/OR OMISSIONS UNDER THIS AGREEMENT AND/OR THE HOTEL OWNER'S MISUSE OF HOT GRANT FUNDS AND/OR THE MISMANAGEMENT OF SUCH HOT GRANT FUNDS, AS PER THIS AGREEMENT.**

5.03 **Fidelity Bond.** Throughout the term of this Agreement, the Hotel Owner shall maintain a fidelity bond in customary commercial form in an amount at least equal to the annual amount of HOT Grant Funds, covering any employees, agents, or officers of the Hotel Owner having access to the HOT Grant Funds or the separate account in which HOT Grant Funds are deposited. The Hotel Owner shall annually on or before December 1, with submission of the Annual Plan and Budget as required by Article IV of

this Agreement, and at any time upon the City's request, provide evidence to the City that such fidelity bond is in effect.

ARTICLE VI REFUND/DEFAULT

6.01 Refund/Default.

(a) If the Hotel Owner fails to comply with any of the provisions of this Agreement at any time during the term of this Agreement and the failure to comply is not the result of an Event of Force Majeure, and the default is not cured pursuant to Section 7.01 (b) below, the City, at its sole option, may require a full or partial refund of the entire amount of HOT Grant Funds paid by the City to the Hotel Owner. The City may use any efforts to collect such sums owed and the Hotel Owner agrees to pay any and all interest and expenses, including reasonable attorney fees and costs, incurred by the City. This obligation shall survive termination of this Agreement.

For the purposes of determining whether the City is entitled to seek a refund under this section, the Hotel Owner shall certify to the City as set out in Section 2.03 and, if necessary, Section 4.07 above that they are in compliance with Article III on the form attached as Exhibit "B". 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 operation of the Hotel as set out in Article III (a) above. The term shall not include a downturn in the economy.

(b) If the Hotel Owner fails to timely provide any certification as required by Section 2.03 or 4.07 and such failure is not cured as provided in Section 7.01(b) below, the full amount of HOT Grant Funds paid by the City to Hotel Owner shall be refunded by the Hotel Owner to the City. The City may use any efforts to collect such sums owed and the Hotel Owner agrees to pay any and all expenses, including reasonable attorney fees and costs, incurred by the City. This obligation shall survive termination of this Agreement.

(c) At any time during the term of this Agreement, if the Hotel Owner 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 the full amount of HOT Grant Funds paid by the City to the Hotel Owner 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 HOT Grant Funds and interest shall be due not later than one hundred twenty (120) days after the date the City notifies the Hotel Owner of the reimbursement requirement.

ARTICLE VII TERMINATION

7.01 **Events of Termination.** This Agreement terminates upon any one or more of the following:

(a) By expiration of the Term and where no defaults have occurred; or

(b) If a 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 by the non-defaulting party unless a longer period is provided. Any default under this provision and right to recover any claims, refunds, damages and/or expenses shall survive the termination of the Agreement.

The City Manager is authorized on behalf of the City to send notice of default and to terminate this Agreement for any default that is not cured.

7.02 **Effect of Termination/Survival of Obligations.** 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.

ARTICLE VIII RETENTION AND ACCESSIBILITY OF RECORDS

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

8.02 The Hotel Owner gives the 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 HOT Grant Funds Account belonging to or in use by the Hotel Owner pertaining to the deposit, use, and expenditure of HOT Grant Funds (the "Records") upon receipt of ten (10) business days written notice from the City. The City's access to the Hotel Owner's books and records will be limited to information needed to verify that the Hotel Owner is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by the City. The Hotel Owner shall not be required to disclose to the City any information that by law the Hotel Owner 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 the Hotel 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 the Hotel 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 VII above, or any portion thereof, for reason of default. All Records shall be retained by the Hotel 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 inquiries and open record requests are completed. The Hotel Owner agrees to maintain the Records in an accessible location.

ARTICLE IX ASSIGNMENT

This Agreement may not be assigned without the express written consent of the non-assigning party, except that the Hotel Owner may assign this Agreement without obtaining the City's consent (a) to one of its wholly owned affiliates, or (b) to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or more than ninety (90) percent of the assets of the Hotel Owner as long as the Hotel Owner gives sixty (60) days prior written notice to the City and the assignee executes an agreement with the City to be bound to all the terms and conditions of this Agreement and be responsible for any default(s) that occurred prior to or after the assignment.

For any assignment not covered by (a) or (b) in the preceding paragraph, the Hotel Owner must obtain the prior approval of the City through its City Manager and the assignee must agree to be bound to all the terms and conditions of this Agreement and to accept all liability for any default that occurred prior to and/or after the assignment.

Any assignment agreement must be furnished in a form acceptable to the City and be provided at least thirty (30) days prior to the effective assignment date. The City agrees to notify the potential assignee of any known default, but such notification shall not excuse defaults that are not yet known to the City.

ARTICLE X MISCELLANEOUS

10.01 **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.

10.02 **Notice of Bankruptcy.** In the event the Hotel Owner files for bankruptcy, whether involuntarily or voluntary, the Hotel Owner shall provide written notice to the City within three (3) business days of such event.

10.03 **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.

10.04 **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: Mr. Bruce D. Glasscock
City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

With a copy to:
City of Plano, Texas
Attention: Ms. Diane C. Wetherbee
City Attorney
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

If intended for the Hotel Owner:
Tollway 121 Hotel, LP
c/o Granite Properties
Attention: Mr. David R. Cunningham
5601 Granite Parkway, Suite 800
Plano, Texas 75024

With a copy to:
Munsch Hardt Kopf & Harr, P.C.
Attention: Mr. Robert H. Voelker
3800 Lincoln Plaza
500 N. Akard
Dallas, TX 75201

10.05 **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.

10.06 **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.

10.07 **Amendment.** This Agreement may only be amended by the mutual written agreement of the parties.

10.08 **Severability.** 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.

10.09 **Recitals.** The recitals to this Agreement are incorporated herein.

10.10 **Authorized to Bind.** The persons who execute their signatures to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

10.11 **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.

This Agreement shall be effective upon the last date on which all parties have executed this agreement.

ATTEST:

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

Diane Zucco, CITY SECRETARY

Bruce D. Glasscock, CITY MANAGER

Date: _____

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

ATTEST:

TOLLWAY 121 HOTEL, LP, a Texas
limited partnership
By: Granite Properties, Inc.,
its General Partner

Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT "A"
Legal Description of Property
LOT 1R, BLOCK "B"
GRANITE PARK PHASE III

FIELD NOTES DESCRIPTION

BEING A TRACT OF LAND LOCATED IN THE SAMUEL H. BROWN SURVEY, ABSTRACT NO. 108 AND THE JABEZ DEGMAN SURVEY, ABSTRACT NO. 279, COLLIN COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN DEED TO TOLLWAY/121 PARTNERS, LTD. AS RECORDED IN COUNTY CLERK NO. 98-0037186, OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS (D.R.C.C.T.), SAID TRACT ALSO BEING LOT 1R, BLOCK B OF GRANITE PARK PHASE III, RECORDED IN INSTRUMENT NO. 20060814010003470, OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS (O.P.R.C.C.T.), AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" IN THE NORTH RIGHT-OF-WAY LINE OF GRANITE PARKWAY (A 92 FOOT RIGHT-OF-WAY), BEING THE SOUTHWEST CORNER OF LOT 4R OF SAID BLOCK "B" AND BEING THE BEGINNING OF A CIRCULAR CURVE TO THE RIGHT;

THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID GRANITE PARKWAY AS FOLLOWS:

NORTHWESTERLY, AN ARC LENGTH OF 164.19 FEET ALONG A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 404.00 FEET, A DELTA ANGLE OF 23°17'08", AND A CHORD BEARING N 76°08'36"W, 163.06 FEET TO A 1" IRON ROD SET AT THE BEGINNING OF A CURVE TO THE LEFT;

NORTHWESTERLY, 104.17 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 486.50 FEET, A DELTA ANGLE OF 12°16'07", AND A CHORD BEARING N 70°38'06"W, 103.97 FEET TO A 1" IRON ROD SET AT THE BEGINNING OF A CURVE TO THE LEFT;

NORTHWESTERLY, 197.50 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 776.00 FEET, A DELTA ANGLE OF 14°34'55", AND A CHORD BEARING N 84°03'37"W, 196.96 FEET TO A CITY OF PLANO CONCRETE MONUMENT AT THE MOST EASTERLY SOUTH CORNER OF LOT 2, BLOCK "B", GRANITE PARK AS SHOWN BY THE PLAT RECORDED IN DOCUMENT NO. 2002-0191594 OF THE PLAT RECORDS OF COLLIN COUNTY, TEXAS (P.R.C.C.T.);

THENCE ALONG THE EAST BOUNDARY LINE OF SAID LOT 2, AS FOLLOWS:

N 00°15'30"E, 42.87 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

N 21°45'28"W, 111.61 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

N 00°15'30"E, 227.84 FEET TO A CITY OF PLANO CONCRETE MONUMENT AT THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, SAID IRON ROD BEING IN A WESTERLY LINE OF SAID LOT 4R;

THENCE ALONG THE COMMON LINE OF SAID LOT 4R AND LOT 1R, AS FOLLOWS:

NORTHEASTERLY, AN ARC LENGTH OF 161.46 FEET ALONG SAID NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 355.00 FEET, A DELTA ANGLE OF 26°03'31", AND A CHORD BEARING OF N 63°07'57" E, 160.07 FEET TO 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC", THE BEGINNING OF A CURVE TO THE LEFT;

NORTHEASTERLY, AN ARC LENGTH OF 114.56 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 864.42 FEET, A DELTA ANGLE OF 7°35'35", AND A CHORD BEARING OF N 46°18'23" E, 114.47 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 47°25'16" E, 44.35 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 18°26'12" E, 138.29 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 54°01'25" E, 113.80 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

S 23°10'57" E, 13.31 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC", AT THE BEGINNING OF A CURVE TO THE RIGHT;

SOUTHEASTERLY, AN ARC LENGTH OF 19.58 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 60.00 FEET, A DELTA ANGLE OF 18°42'00", AND A CHORD BEARING OF S 13°49'57" E, 19.50 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHEASTERLY, AN ARC LENGTH OF 29.29 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 72.25 FEET, A DELTA ANGLE OF 23°13'32", AND A CHORD BEARING OF S 16°05'43" E, 29.09 FEET TO A 1/2" IRON ROD SET

WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHEASTERLY, AN ARC LENGTH OF 125.46 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 187.50 FEET, A DELTA ANGLE OF $38^{\circ}20'21''$, AND A CHORD BEARING OF $S 46^{\circ}52'39'' E$, 123.14 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

$S 66^{\circ}02'50'' E$, 83.22 FEET TO 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;

SOUTHWESTERLY, AN ARC LENGTH OF 55.68 FEET ALONG SAID NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 525.00 FEET, A DELTA ANGLE OF $6^{\circ}04'35''$, AND A CHORD BEARING OF $S 59^{\circ}17'52'' W$, 55.65 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE LEFT;

SOUTHWESTERLY, AN ARC LENGTH OF 100.62 FEET ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 80.00 FEET, A DELTA ANGLE OF $72^{\circ}03'53''$, AND A CHORD BEARING OF $S 26^{\circ}18'13'' W$, 94.12 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC" AT THE BEGINNING OF A CURVE TO THE RIGHT;

SOUTHEASTERLY, AN ARC LENGTH OF 77.12 FEET ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 370.00 FEET, A DELTA ANGLE OF $11^{\circ}56'34''$, AND A CHORD BEARING OF $S 3^{\circ}45'26'' E$, 76.98 FEET TO A 1/2" IRON ROD SET WITH CAP STAMPED "WIER & ASSOC INC";

$S 02^{\circ}12'51'' W$, 24.99 FEET TO THE PLACE OF BEGINNING AND CONTAINING 4.624 ACRES (201,432 SQUARE FEET) OF LAND, MORE OR LESS.

EXHIBIT "B"

ANNUAL CERTIFICATE OF COMPLIANCE

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

_____ a. I hereby certify that Tollway 121 Hotel, LP, a Texas limited partnership, is in compliance with each applicable term as set forth in the Agreement including all the terms of Article III of the Agreement. The amount of Hotel Occupancy Tax paid by Tollway 121 Hotel, LP to the City for the previous year was _____. Attached is a fidelity bond for Tollway 121 Hotel, LP in the amount of One Hundred and Fifty Thousand Dollars (\$150,000.00) and an Annual Plan and Budget for the upcoming Grant Year as required by Section 5.03 and Section 4.01 of the Agreement. I further certify that Tollway 121 Hotel, LP is entitled to receive a grant payment in accordance with the terms and conditions set out in Article II for the upcoming Grant Year.

_____ b. I hereby certify that Tollway 121 Hotel, LP, a Texas limited partnership, is not in compliance with each applicable term as set forth in the Agreement including all the terms of Article III of the Agreement. The amount of Hotel Occupancy Tax paid by Tollway 121 Hotel, LP to the City for the previous year was _____. I further certify that Tollway 121 Hotel, LP is not entitled to receive a grant payment in accordance with the terms and conditions set out in Article II for the upcoming Grant Year.

ATTEST:

Tollway 121 Hotel, LP,
a Texas limited partnership
By: Granite Properties, Inc.,
its General Partner

Name: _____
Title: _____

By: _____
Name: _____
Title: _____

[MUST BE CFO OR CEO]

NOTE:

This form is due by December 1 of each year beginning on December 1, 2015 and as long as this Agreement is in effect. Please note that an Annual Plan and Budget and Fidelity Bond are due on December 1, 2014 but a compliance statement is not due at that time.

This Certificate of Compliance should be mailed to:

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