

CITY OF YUBA CITY
STAFF REPORT

Date: February 16, 2021
To: Honorable Mayor & Members of the City Council
From: Development Services
Presentation By: Benjamin Moody, Development Services Director

Summary

Subject: Contract Amendment - Feather River Mill Hotel Incentive

Recommendation: Adopt a Resolution of the City Council approving the first amendment to the Transient Occupancy Taxes Reimbursement Agreement with Yuba City Hotel, L.P., authorizing to extend the commencement of operation date of the Hotel by one year to January 1, 2023

Fiscal Impact: No fiscal changes are anticipated with the time extension.

Purpose:

Due to COVID-19 pandemic impacts update the Transient Occupancy Taxes (TOT) Reimbursement Agreement timeline to ensure optimal redevelopment of the Feather River Mill site.

Background:

At the December 17, 2019 City Council meeting Council approved entering into a Transient Occupancy Taxes Reimbursement Agreement with Yuba City Hotel, L.P. regarding the operation of a Holiday Inn Express on the former Feather River Mill site, (north east corner of Shasta Street and B Street).

Per Section 2. A of the Agreement, Yuba City Hotel, L.P. is required to commence commercial operation of the hotel by January 1, 2022, or the City at its sole discretion may terminate the Agreement.

Due to business and financing impacts related to hotel development caused by the COVID-19 pandemic Yuba City Hotel, L.P. has requested a one-year time extension.

Recent work at the site has cleaned prior toxicity issues, and the site is close to receiving an official no further action letter from the state. Yuba City Hotel, L.P. has coordinated to provide approved plans with the Yuba City Building Division. Additionally, Yuba City Hotel, L.P. is currently working through financing requirements and logistics with their construction team to move the project forward.

Analysis:

Staff recognizes the effect of the COVID-19 pandemic to the hotel industry. Due to timelines associated with construction it is anticipated that to complete the project and be fully operational when factoring in weather and the remaining uncertainty of the pandemic impacts, that the current expiration date of less than 11 months will be difficult to achieve. An extension of one year would align with the current length of impacts associated with the pandemic.

Staff is recommending the time extension modification and expecting an amendment to the existing agreement that reflects the updated commencement date.

Fiscal Impact:

No fiscal changes are anticipated with the time extension amendment.

Gross revenue of Transient Occupancy Tax to the City is projected to be an estimated \$6,850,000 million over 15 years and the developer is requesting a minimum operational reimbursement of \$1,250,000. Net revenue to the City remaining is projected be \$5,600,000 or \$373,333 per year over the 15 year term of the agreement.

Additional funding and community benefit are expected to be realized over time (e.g. sales tax, property tax, job creation, capital investment, etc.) as this project will serve as an economic catalyst for the Downtown Specific Plan area.

Alternatives:

Do not extend the commencement date and or provide direction to the City Manager to negotiate different terms to the Agreement.

Recommendation:

Adopt a Resolution of the City Council approving the first amendment to the Transient Occupancy Taxes Reimbursement Agreement with Yuba City Hotel, L.P., authorizing to extend the commencement of operation date of the Hotel by one year to January 1, 2023.

Attachments:

1. TOT Reimbursement Agreement
2. Resolution

Prepared By:

/s/ Benjamin K. Moody
Benjamin K. Moody
Development Services Director

Submitted By:

/s/ Diana Langley
Diana Langley
Interim City Manager

Reviewed By:

City Attorney

[SLC by email](#)

ATTACHMENT 1

**CITY OF YUBA CITY
TRANSIENT OCCUPANCY TAXES
REIMBURSEMENT AGREEMENT**

THIS TRANSIENT OCCUPANCY TAXES AGREEMENT (“Agreement”) is entered into as of December 27, 2019 (“Effective Date”), by and between the CITY OF YUBA CITY, a California municipal corporation, (the “City”), and YUBA CITY HOTEL, LP., a California corporation (“YCH”). City and YCH are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

A. YCH intends to purchase certain real property in the City, as more fully described in Exhibit “A” (“Property”), on which YCH intends to operate an approximately 90 room hotel (“Hotel”). YCH anticipates that the Hotel, once occupied and operating, will generate transient occupancy taxes (“TOT”) to the City in an amount estimated by YCH to exceed Three Hundred Seventy-Five Thousand Dollars (\$375,000) annually during the first few years of the Hotel’s operation, in addition to increased sales taxes generated by the anticipated increased visitation to the City and new property tax revenues.

B. The City wishes to provide YCH an incentive to operate the Project and ensure its viability in the initial years of operation in order that increased visitation will generate additional TOT, sales tax, and property tax revenues to the City. The City Council finds that locating a hotel within the former redevelopment project area, where this Property is located, and not visible along the highway corridor will encourage additional investment in the redevelopment of existing properties and will drive foot traffic onto historic Plumas Street and surrounding economically challenged areas of the City. The incentive will be in the form of a City reimbursement to YCH of the TOT generated by the Hotel in two phases. First to incentivize the timely opening of the Hotel, the incentive shall commence in January of 2022 or once a final certificate of occupancy is issued for the Hotel, whichever occurs first. During the first year after commencement of the incentive, the City will provide reimbursement to YCH of an amount equal to 100% less One Hundred Thousand Dollars (\$100,000) of the TOT generated by the Hotel during that initial one year period. The City shall retain Twenty-Five Thousand Dollars (\$25,000) per quarter of TOT revenues during the first year of the hotel’s operation. Thereafter, the City will provide reimbursement to YCH of an amount equal to Thirty Percent (30%) of the TOT generated by the Hotel, through the end of the term of this Agreement, provided that the total incentive provided by the City during the term of the Agreement shall not exceed One Million Two Hundred Fifty Thousand Dollars (\$1,250,000).

C. The City has determined that a TOT reimbursement to YCH in accordance with the terms and conditions set forth herein and as contemplated by this Agreement, is of public benefit and contributes to the general welfare of its citizens because the Hotel will create long-term operational jobs, increased capital investment, property values and property tax revenues, sales tax revenues, and would serve as an economic catalyst to the City by expanding the lodging options and amenities which bring additional visitors to the City.

D. Each fiscal year reimbursement payment contemplated under this Agreement shall be within the annual appropriations limit of the City for that fiscal year established in accordance with California Constitution Article XIII B.

AGREEMENT

NOW, THEREFORE, THE CITY AND YCH AGREE AS FOLLOWS:

Section 1. Reimbursement Commitment and Conditions on Payment.

- A. In consideration for YCH's agreement to operate the Hotel on the Property and the other conditions and covenants provided for herein, if and when the Hotel is built and operated on the Property, the City shall reimburse to YCH an amount equal to the TOT collected from the Hotel ("Reimbursement TOT") as follows: For the first 12 month period following commencement of payment of the incentive, the City shall reimburse to YCH an amount equal to one hundred percent (100%) less One Hundred Thousand Dollars (\$100,000) of the TOT collected from the Hotel. The City will withhold Twenty-Five Thousand Dollars (\$25,000) per quarter from the total TOT remitted by the hotel during the first year. Following that initial 12 month period, the City shall reimburse to YCH an amount equal to thirty percent (30%) of the TOT collected from the Hotel, provided that the total incentive amount that may be paid to YCH pursuant to this Agreement for the period of time between the end of the initial 12 month period and the end of the term of this Agreement shall not exceed One Million One Hundred Fifteen Thousand dollars (\$1,150,000). Payment of Reimbursement TOT by the City to YCH shall commence on the earlier of January 1, 2022, or the commencement of the first full quarter during which commercial operation of the Hotel commenced and shall continue until the earlier of (i) the date that the total not to exceed amount of Reimbursement TOT has been paid to YCH pursuant to this Agreement or (ii) fifteen (15) years from the earlier of January 1, 2022 or the first day of the first full quarter during which commercial operation of the Hotel commenced ("Reimbursement Termination Date"). TOT collected prior to the Reimbursement Termination Date is subject to reimbursement in accordance with this Agreement; TOT collected after the Reimbursement Termination Date is not. YCH shall at all times remit to City full payment of TOT as required by the City's Municipal Code. Contingent upon YCH operating the Hotel in satisfaction of the conditions precedent set forth in Section 2 herein below during each quarter prior to the Reimbursement Termination Date, distributions of Reimbursement TOT by City to YCH shall be made within sixty (60) days of the receipt by the City of the full amount of TOT from the Hotel for each quarter.
- B. Notwithstanding Section 1(A) above, the City shall only make Reimbursement TOT payments due under this Agreement on a fiscal year by fiscal year basis from TOT revenues received by the City during each respective fiscal year in exchange for TOT received from YCH to the City during that same fiscal year.

- C. In the event of a breach by the City with respect to Reimbursement TOT payments provided for under this Agreement, YCH shall only be able to pursue collection of Reimbursement TOT payments on an individual fiscal year basis, as such payments became due.
- D. The City shall appropriate sufficient funds in the City's annual budget, for each fiscal year during the term of this Agreement, to make the Reimbursement TOT payments to YCH in each fiscal year.

Section 2. Conditions to Reimbursement. The obligation of the City to make any payment of Reimbursement TOT for any quarter is contingent upon the satisfaction by YCH of the following conditions precedent during such quarter. For the first quarter, YCH shall satisfy each of the conditions set forth herein below and for each subsequent quarter, YCH shall satisfy each of such conditions with the exception of paragraph A:

- A. Commence commercial operation of the Hotel by January 1, 2022. If YCH fails to commence commercial operation prior to that date, then the City, in its sole discretion, may terminate this Agreement by delivering written notice of such termination to YCH. Following such termination, neither Party shall have any further rights, duties or obligations hereunder, and the City shall have no obligation to pay Reimbursement TOT, provided however that if this Agreement is not so terminated and YCH subsequently commences operation of the Hotel, the terms of this Agreement shall apply and the City's right to terminate shall be void; and
- B. Be at all times operated as a Holiday Inn Express Hotel or equivalent quality hotel as approved by the City in its sole discretion.

Section 3. Public Benefit/Public Purposes. The City Council has determined that encouraging economic development, including private investment that involves creation of new jobs and income in the City is a valid exercise of its powers and provides an important public benefit and serves an important public purpose. By authorizing the City to enter into this Agreement, the City Council has determined that the benefits accruing as a result of the transactions contemplated by this Agreement, including, without limitation, (i) direct benefits such as the increase in quality hotel rooms and their role in increasing visitors to the City; (ii) increased revenues from property, sales, business license, utility and Transient Occupancy Taxes (TOT), (iii) enhanced economic opportunities generated by the development of a new hotel serving the City, and (iv) the acceleration of quality jobs and infrastructure to the City represent fair consideration for all of the obligations to be undertaken by the City as contemplated by this Agreement.

Section 4. No Obligation to Build or Operate. Both Parties acknowledge that the Hotel is currently in the proposal stages, and YCH shall have no liability to City for failure to build or operate a hotel as intended by the Parties herein.

Section 5. Indemnification. YCH shall defend, assume all responsibility for and hold the City, its council members, officers and employees, harmless from all demands, claims, actions and damages, of whatever type or nature, including all costs of defense and attorneys' fees, to any person or property arising out of or caused by any of YCH's activities under this Agreement, whether such activities or performance thereof be by YCH or anyone directly or indirectly employed or contracted with by YCH and whether such damage shall accrue or be discovered before or after commencement of operation of the Hotel.

Section 6. Default.

A. Defaults.

Any one or all of the following events shall constitute a default by YCH:

1. Any misleading statement, misrepresentation or warranty of YCH herein or in any other writing at any time furnished by YCH to City that materially harms the City or materially diminishes the benefit of the Agreement to the City;
2. Nonperformance when due of any of the obligations described herein, or failure to perform any obligation or covenant contained herein;
3. The filing by or against YCH of a petition for relief under the Bankruptcy Reform Act of 1978 or any bankruptcy or debtor relief law;
4. A general assignment by YCH for the benefit of creditors or the appointment of any receiver or trustee of all or any portion of the assets of YCH; and
5. The transfer or assignment of this Agreement without approval by the City.

B. Remedies.

Upon the occurrence of a default, the City, at its option, may declare this Agreement to be in default and, in such event, the City shall have all of the rights and remedies prescribed at law or in equity. Following an event of default, the City shall have no further obligation to disburse all or any portion of Reimbursement TOT.

C. No Liability of City Member.

No City Council Member, official or employee of the City shall be personally liable to YCH, or any successor in interest, in the event of any default or breach by City under this Agreement or for any amount which may become due to YCH or any successor or on any obligations under the terms of this Agreement.

Section 7. Compliance With Governmental Regulations.

YCH shall, at its sole cost and expense, comply with all applicable municipal, county, state and federal laws, rules, regulations and ordinances now in force, or which may hereafter be in force, pertaining to its activities contemplated under this Agreement, including, but not limited to, all land use entitlements applicable to the Property; issuance of building and use permits and compliance with all federal and state labor laws (collectively, "Laws"). Supplementing the indemnity set forth in Section 5 above, YCH shall defend, indemnify and hold the City, its elected officials, officers, members, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of YCH to comply with such Laws relating to this Agreement.

Specifically, by its execution of this Agreement, YCH certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If any work being performed by YCH pursuant to or related to this Agreement is an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, YCH agrees to fully comply with such Prevailing Wage Laws. If required, YCH shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the work on the project available to interested parties upon request, and shall post copies at the YCH's principal place of business and the project site, and shall fully indemnify the City in accordance with this Section 7 and Section 5 of this Agreement for any failure to comply with such requirements.

Section 8. Miscellaneous Provisions.

A. Transfer or Assignment.

YCH shall not assign or transfer this Agreement, in whole or part, without providing written notice to the City and receiving a written acknowledgement of the transfer from the City. If the City fails to acknowledge the transfer within 14 business days, YCH may transfer the Agreement. Failure to notify the City and wait for the acknowledgement shall be a default under this Agreement.

B. Interest of Members of City.

No member of the City Council of City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of the City's work shall have any personal interest, direct or indirect, in this Agreement.

C. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California, to the jurisdiction of which the Parties hereto submit. Venue shall be in the Superior Court of the County of Sutter County, or in the Sacramento Division of the Eastern District of the United States District Court.

D. Time of the Essence.

Time is of the essence of each and every provision of this Agreement.

E. Notices.

Notices or other communications given under this Agreement shall be in writing and shall be served personally or transmitted by first class mail, postage prepaid. Notices shall be deemed received either at the time of actual receipt or, if mailed in accordance herewith, on the third (3rd) business day after mailing, whichever occurs first. Notices shall be directed to the parties at the following addresses or at such other addresses as the parties may indicate by notice:

City: City of Yuba City
1201 Civic Center Blvd.
Yuba City, CA 95993
Attention: City Manager

YCH: Yuba City Hotel, LP
P.O. Box 41160
San Jose, CA 95160
Attention: Prakash J Patel

F. Headings.

The titles and headings of the various sections of this Agreement are intended solely for reference and are not intended to explain, modify or place any interpretation upon any provision of this Agreement.

G. Severability.

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such or the remaining provisions of this Agreement.

H. Waiver.

No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

I. Number and Gender.

As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each include the others whenever the context so indicates or requires.

J. Further Assurances.

The parties shall execute, acknowledge, file or record such other instruments and statements and shall take such additional action as may be necessary to carry out the purpose and intent of this Agreement.

K. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Parties' respective heirs, legal representatives, successors and assigns.

L. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral, including the "City of Yuba City Transient Occupancy Taxes Reimbursement Agreement" dated April 20, 2018, which is expressly replaced by this Agreement in its entirety. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each Party hereto.

M. Attorneys' Fees.

In the event of any litigation arising out of this Agreement, the prevailing Party in such action, or the nondismissing Party where the dismissal occurs other than by reason of a settlement, shall be entitled to recover its reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and costs paid or incurred in good faith. The "prevailing party," for purposes of this Agreement, shall be deemed to be that Party who obtains substantially the result sought, whether by settlement, dismissal or judgment.

N. Amendment.

This Agreement may be amended only by a written instrument signed by both City and YCH.


- O. Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other Person shall have any right of action based upon any provision of this Agreement.
- P. Limitation of Legal Acts. Except as provided in Section 1(C), in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.
- Q. Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of YCH, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.
- R. Signature Pages. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

Dated: August 3, 2020

CITY:

CITY OF YUBA CITY,
a California municipal corporation

By: 
Michael Rock, City Manager

ATTEST:

 Patricia Buckland, City Clerk


 Shannon L. Chaffin, City Attorney

APPROVED AS TO FORM.



YCH:

YUBA CITY HOTEL, LP., a California corporation

By: 

Its: 

ATTACHMENT 2

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
APPROVING THE FIRST AMENDMENT TO THE TRANSIENT OCCUPANCY TAXES
REIMBURSEMENT AGREEMENT WITH YUBA CITY HOTEL, L.P., AUTHORIZING TO
EXTEND THE COMMENCEMENT OF OPERATION DATE OF THE HOTEL BY ONE YEAR
TO JANUARY 1, 2023**

WHEREAS, the City and Yuba City Hotel, L.P. ("YCH") entered into a Transient Occupancy Taxes Reimbursement Agreement dated December 27, 2019, which established the terms of reimbursement of Transient Occupancy Taxes (TOT) for the operation of a 90-room hotel; and

WHEREAS, all parties desire to enter into an amendment to the Original Agreement, and the City Council desires to approve the same.

NOW, THEREFORE, the City Council of Yuba City resolves as follows:

1. The City Council of Yuba City approves the "First Amendment to the City of Yuba City Transient Occupancy Taxes Reimbursement" to the Original Agreement," attached as Exhibit "A," and the City Manager to execute the same on behalf of the City. The City Manager is authorized to make any non-material, technical, and clerical edits and corrections to the agreement subject to approval as to form by City Attorney.

2. This resolution shall take effect immediately.

The foregoing resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 16th day of February 2021.

AYES:

NOES:

ABSENT:

ATTEST:

Marc Boomgaarden, Mayor

Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY:

Shannon Chaffin, City Attorney
Aleshire & Wynder, LLP

Exhibit A: First Amendment to the City of Yuba City Transient Occupancy Taxes
Reimbursement to the Original Agreement

Exhibit A

**FIRST AMENDMENT TO THE CITY OF YUBA CITY TRANSIENT OCCUPANCY TAXES
REIMBURSEMENT AGREEMENT**

This FIRST AMENDMENT TO THE CITY OF YUBA CITY TRANSIENT OCCUPANCY TAXES REIMBURSEMENT AGREEMENT (“**Amendment**”) is entered into this ___ day of _____, 2021 by and between the CITY OF YUBA CITY, a municipal corporation (“**City**”), and YUBA CITY HOTEL, L.P., a California corporation (“**YCH**”), consent and agree.

RECITALS:

A. City and YCH entered into that certain Transient Occupancy Taxes Reimbursement Agreement dated December 27, 2019 regarding the operation of a 90 room hotel located at the north east corner of B Street and Shasta Street in the City of Yuba (APNs 52-324-023 and 52-502-008) as legally described in the Original DDA.

B. The parties desire to amend the Original Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, City and YCH agree as follows:

AGREEMENT

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein by reference.
2. **Defined Terms.** All terms not specifically defined in this Amendment shall have the meaning in the Original Agreement.
3. **Amendment Effective Date.** This Amendment shall be effective upon the last to occur of: (i) approval of the City Council and execution by City; (ii) delivery of an executed copy to YCH (“**Amendment Effective Date**”).
4. **Amendments/Modifications/Confirmations.** The parties agree as follows:
 - A. **Section 2. A. (Conditions to Reimbursement)** is amended to extend the date by one year. The first sentence is to be changed to read:

Commence commercial operation of the Hotel by **January 1, 2023.**
5. **Reaffirmation of Original Agreement.** Except as amended by this Amendment, the Original Agreement shall remain unchanged and is hereby reaffirmed, ratified and confirmed in its entirety. If there is any conflict, inconsistency or ambiguity between the Original Agreement and this Amendment, then this Amendment shall govern and control.
6. **Entire Agreement.** This Amendment constitutes the entire agreement and supersedes any prior written or oral agreements among the parties with respect to the specific matters addressed herein.
7. **Authorization.** Each individual executing this Amendment on behalf of YCH represents and warrants that he has been duly authorized to do so by YCH on whose behalf he executes this Amendment and YCH is hereby obligated to perform the terms of this Amendment.

8. Execution in Counterpart. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall be deemed but one and the same instrument, and a facsimile copy of such execution shall be deemed an original.

IN WITNESS WHEREOF, this Amendment has been executed by City and YCH as of the dates below.

YCH:

YUBA CITY HOTEL, L.P., a California Corporation

By: _____
Prakash Patel, General Partner

_____, 2021

CITY:

CITY OF YUBA CITY, a municipal corporation

By: _____
Diana Langley, Interim City Manager

_____, 2021

ATTEST:

Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER

By: _____
Shannon Chaffin, City Attorney