

CITY OF YUBA CITY  
STAFF REPORT

**Date:** April 10, 2018  
**To:** Honorable Mayor & Members of the City Council  
**From:** Administration  
**Presentation By:** Darin Gale, Economic Growth & Public Affairs

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**Summary**

**Subject:** Feather River Mill Hotel Incentive

**Recommendation:** Authorize the City Manager to execute an agreement with Yuba City Hotel, L.P. to incentivize operation of a Holiday Inn Express on the former Feather River Mill Project as recommend the Yuba City Economic Development Commission

**Fiscal Impact:** Gross revenue of Transient Occupancy Tax to the City is projected to be approximately \$2,520,000 million over 10 years and will require an operational reimbursement of \$750,000. Net revenue to the City would be \$1,820,000

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**Purpose:**

To ensure optimal development of infill development sites and incentivize the operation of a Hotel on the former Feather River Mill property

**Background:**

For a number of years, the City has worked to attract additional hotels to the Yuba City. The last hotel to develop in the City was the Hampton Inn in 2006. The Hampton Inn is a successful development along the Highway 99 corridor with an average daily room rate of over \$160 per night with very low vacancy rates. With limited room availability and higher than average daily room rates in the region, business travelers are staying in Natomas, Lincoln, Downtown Sacramento and Colusa. Additionally, business travelers are loyal to specific brands (Hilton, Marriott, IHG etc.) and currently Hilton is the only higher-end hotel flag represented in Yuba City.

In our business attraction efforts, staff toured over 12 different hotel developers/operators around the City. Specifically, staff has spent a significant amount of time working with IHG (Holiday Inn Express) and Marriott to attract one of their hotels to the former Feather River Mill site. After each tour we were informed that although they understand the demand for a new lodging property, they prefer to be located on a site visible from Highway 99 or 20 first and then would consider a site downtown.

Due to the City's business attraction efforts two hotel projects are proposed and hope to break ground before the end of the year. The first project, a Marriot Springhill Suites, is located on Woodward and will be highly visible from both Highway 99 and 20. The project developer is local businessperson Simon Gill and will be operated by an approved Marriott operator, due to its prime location, business incentives were not required.

The second project is located on the former Feather River Mill property and will be visible from Bridge Street. Lotus Management Inc of San Jose is the developer and operator of the project. Lotus develops and owns a number of hotels in smaller communities including Hollister, Oroville, and Klamath Falls, to name a few, and is currently developing a new property in Chico. Due to the location of the project, the developer has determined that an operations incentive is need in order to ensure its financial viability into the future.

### **Analysis:**

In 2011 the City Council adopted the Yuba City Business Incentive Guidelines to Advance Job Creation & Revenue Generation. The intention of business incentives is to “increase community wealth through the addition of new employment opportunities and increase revenues to both the public and private sector.” In that document, the Council provided a toolbox of economic development tools to incentives job creation, including Transient Occupancy Tax incentives more commonly referred to as TOT. Many communities have incentivized hotels to develop in their community. Yuba City’s TOT rate is set at 10% and we receive approximately \$1 million annually in revenue. In addition to TOT revenue, hotels create long-term operational jobs, increased capital investment, property values, sales taxes and serve as an economic catalyst to the City by expanding lodging options and amenities, which bring additional visitors to the City.

Placing a hotel on the Feather River Mill site, which is within the former redevelopment project area, will encourage new investment in the redevelopment of the downtown core. The project will increase foot traffic onto historic Plumas Street and improve the surrounding economically challenged neighborhoods.

Examples of incentives offered by other communities have been: the City of Placerville provides \$3.5 million reimbursement of TOT over 15 years period; Hollister provides 70% reimbursement over a 10 year period not to exceed \$2 million; and Escondido provides a 55% reimbursement with a ceiling of \$1.45 million.

Staff is proposing the following incentive for a Holiday Inn Express to be located on the Feather River Mill property:

Year One – To incentivize the timely opening of the property the operator would receive 100% reimbursement of their TOT revenue for one year starting in January of 2020 or once a certificate of occupancy is issued for the Hotel, whichever occurs first. (estimated to be less than \$150,000)

Year Two to Eight – City to reimburse Hotel operator 50% of the TOT generated by the Hotel, not to exceed \$600,000 over seven years.

As part of the review of this the proposed hotel project and incentive, the City hired NHA Advisor, the City’s financial consultant, to review the hotel’s pro forma and provide a recommendation to the City. NHA reviewed the operational pro forma of the project and determined the incentive to be fair and reasonable. On March 28, 2018 the Yuba City Economic Development Commission reviewed the proposed incentive and recommended it for Council consideration.

**Fiscal Impact:**

Gross revenue of Transient Occupancy Tax to the City is projected to be approximately \$2,520,000 million over 10 years and will require an estimated operational reimbursement of \$750,000, resulting in net revenue to the City would be \$1,820,000

As noted above, additional funding and community benefit will be realized over time (e.g. sales tax, job creation, capital investment, etc.) as this project will serve as an economic catalyst for the Downtown Specific Plan area.

**Alternatives:**

1. Authorize a TOT incentive at a different rate than proposed
2. Do not authorize a TOT incentive for a Hotel project within the City

**Recommendation:**

Authorize the City Manager to execute an agreement with Yuba City Hotel, L.P. to incentivize operation of a Holiday Inn Express on the former Feather River Mill Project

**Attachments:**

1. TOT Incentive Agreement
2. 2011 Yuba City Business Incentive Guidelines to Advance Job Creation & Revenue Generation
3. 10 Year Estimated Transient Occupancy Tax Generation

Prepared By:

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Submitted By:

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City Manager

**Reviewed by:**

Finance

[RB](#)

City Attorney

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# ATTACHMENT 1

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

THIS TRANSIENT OCCUPANCY TAXES AGREEMENT (“Agreement”) is entered into as of April 20, 2018 (“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 Two Hundred Thousand Dollars (\$200,000) 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.

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 and sales tax 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 2020 or once a 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% of the TOT generated by the Hotel during that initial one year period. Thereafter, the City will provide reimbursement to YCH of an amount equal to 50% 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 between the end of the initial one year period and the end of the term of the Agreement shall not exceed Six Hundred Thousand Dollars (\$600,000).

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 tax revenues, and 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 XIIB.

## 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%) of the TOT collected from the Hotel. Following that initial 12 month period, the City shall reimburse to YCH an amount equal to fifty percent (50%) 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 Six Hundred Thousand dollars (\$600,000). Payment of Reimbursement TOT by the City to YCH shall commence on the earlier of January 1, 2020, 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) seven (7) years from the earlier of January 1, 2020 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 consideration 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 agrees to waive (1) any right to acceleration of all future Reimbursement TOT payments and (2) collecting the full repayment obligation of the City under the 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, 2021. 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.

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 executing 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. 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.

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

Dated: \_\_\_\_\_

**CITY:**

CITY OF YUBA CITY,  
a California municipal corporation

By: \_\_\_\_\_  
Steven C. Kroeger, City Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Patricia Buckland, City Clerk

\_\_\_\_\_  
Timothy Hayes, City Attorney

**YCH:**

YUBA CITY HOTEL, LP., a California  
corporation

By:

\_\_\_\_\_

Its: \_\_\_\_\_

# ATTACHMENT 2

## Adopted Yuba City Business Incentives Guidelines To Advance Job Creation & Revenue Generation

### 1. Taxes

Sales Tax	Negotiate reimbursement of a Percentage of Net New Sales Tax over a limited time period, not to exceed development fees
Transient Occupancy Tax	Negotiated based upon need and benefit to the community
Property Tax	Negotiate reimbursement of unsecured property tax increase over a limited time period, not to exceed development fees
Enterprise Zone	Actively Promote program to businesses and work at State level to protect current Enterprise Zone State Tax Credit

### 2. Financing Program

SCIP – State Financing Program	Actively promote program and create marketing materials to increase use of SCIP program
CFD & Mello Roos	Allow use of CFD and Mello Roos projects when feasible

### 3. Development

Utilities Infrastructure	Negotiate cost sharing of utilities extension for key employer based development and create impact fee deferral program Water & Sewer impact fees
Permitting	Review existing plan review periods, continue ombudsmen program and create “development team” with the appropriate staff members for future development or business inquiries
Redevelopment	Negotiable based upon cost and benefit to RDA & City
Impact Fees	Negotiate locking in of non-residential impact fees at entitlement and negotiate fees for large manufacturing or industrial job creation

### 4. Promotion

Sign Ordinance	Review sign ordinance and consider specific revisions for highway corridors and electronic billboards
Shop Local	Continue to work with Chamber in promoting “Think Yuba Sutter First” Campaign
CDBG Micro Loans	Create CDBG Micro Loan/Grant Program for adoption by Council and consider additional CDBG allocation depending upon success of program

# ATTACHMENT 3

## Estimated 10 Year Transient Occupancy Tax Generation

	Total	Yuba City Hotel LP	City of Yuba City
Year 1	\$150,000	\$150,000	\$0
Year 2	\$150,000	\$75,000	\$75,000
Year 3	\$200,000	\$100,000	\$100,000
Year 4	\$250,000	\$125,000	\$125,000
Year 5	\$250,000	\$125,000	\$125,000
Year 6	\$300,000	\$150,000	\$150,000
Year 7	\$300,000	\$25,000	\$275,000
Year 8	\$300,000	\$0	\$300,000
Year 9	\$320,000	\$0	\$320,000
Year 10	\$350,000	\$0	\$350,000
<b>Total</b>	<b>\$2,570,000</b>	<b>\$750,000</b>	<b>\$1,820,000</b>