

"Placerville, a unique historical past forging into a golden future."

City Manager's Report
November 10, 2015 City Council Meeting
Prepared by: Cleve Morris, City Manager
Item #: //./



Subject: Adopt a Resolution Certifying the Adoption of a Hotel Incentive Agreement with All Four One, L.L.C. Outlining Additional Incentives for the Construction of a Hotel in Placerville in Accordance with Government Code Section 53083 Economic Subsidy Information to be Posted on Local Agency Website.

Discussion: On September 22, 2015, the City Council approved an agreement with All Four One, LLC for Hotel Incentives including Transient Occupancy Tax Credits. Subsequent to that adoption, the Staff discovered a newly adopted code section, which we were unaware of, which requires advance notice prior to adoption of an agreement providing subsidies. Specifically, the following information is required (Highlighted items provide the required information):

- (1) The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.

All Four One LLC, a California limited liability company
 23041 Mill Creek Drive
 Laguna Hills, California 92653

- (2) The start and end dates and schedule, if applicable, for the economic development subsidy.

Start Date: Upon Completion of the Hotel
 End Date: 20 years or when \$6,000,000 of Transient Occupancy Tax has been credited.

- (3) A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

All Four One LLC will be credited a total of \$6,000,000 in Transient Occupancy Tax over the 20 year period or until the total \$6,000,000 has been received.

(4) A statement of the public purposes for the economic development subsidy.

It is anticipated that the hotel development will increase tourism in the City of Placerville, which in turn increases revenues for maintenance of public infrastructure including streets, water and sewer.

(5) Projected tax revenue to the local agency as a result of the economic development subsidy.

It is estimated the City would receive a total of \$5,644,000. Additional sales tax revenue is also anticipated as an indirect result of the development. The amount of increase in sales tax revenue is unknown at this time.

(6) Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

It is estimated that the hotel will employ 30 – 32 Full-time Equivalents.

Most of the required information was included as part of the staff report, which was posted on the City's website prior to the meeting in accordance with the law. However, Item 6 was not included at that time.

The purpose of this item at this time is to include the required information which has now been posted on the City's website in accordance with the law. This item also requires a public hearing by the City Council. The information listed above meets the requirements of the law.

Options:

1. Approve the agreement as recommended.
2. Approve the agreement with revisions.
3. Reject the agreement.

Cost: If all provisions and estimates included as part of the agreement are realized, the City will reimburse the developer \$6,000,000 in Transient Occupancy Tax over the 20 year period. The City would also receive approximately \$5,644,000 in additional revenues under the agreement.

Budget Impact: This TOT agreement will not take effect until construction of the hotel is complete. Therefore, no budget impact will be realized by this agreement. However, additional fees, in terms of permits and inspections, would likely be realized this year.

Recommendation: Adopt a Resolution Certifying the Adoption of a Hotel Incentive Agreement with All Four One, L.L.C. Outlining Additional Incentives for the Construction of a Hotel in Placerville in Accordance with Government Code Section 53083 Economic Subsidy Information to be Posted on Local Agency Website.



M. Cleve Morris, City Manager

Attachments:

- 1. Resolution*
- 2. Agreement*

RESOLUTION NO _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLACERVILLE,
RESCINDING RESOLUTION NUMBER 8362 AND ADOPTING AN INCENTIVE
AGREEMENT BETWEEN ALL FOUR ONE LLC, AND THE CITY OF PLACERVILLE**

WHEREAS, the City of Placerville relies heavily on sales tax as a major source of revenue; and

WHEREAS, travel and tourism is a major factor in sustaining and growing the sales tax base in the City; and

WHEREAS, the City of Placerville desires to increase the sales tax base by growing the travel and tourism industry in accordance with the adopted Economic Development Strategy; and

WHEREAS, Economic Development Strategy Goal 2.5 states that the City will develop a marketing program to attract one or more Hotels to the City; and

WHEREAS, the City is desirous to provide incentives to increase the development of hotels in the City of Placerville; and

WHEREAS, on September 22, 2015, the Council adopted a resolution approving an agreement with All Four One LLC; and

WHEREAS, California Government Code Section 53083 (Section 53083) requires that information regarding an economic development subsidy be available in written form to the public and through the City's website; and

WHEREAS, Section 53083 also requires that before granting an economic development subsidy, the local agency shall notice and hold a public hearing regarding the economic development subsidy; and

WHEREAS, the City inadvertently failed to comply with requirements of Section 53083 prior to the September 22, 2015, Council action approving the agreement with All Four One LLC; and

WHEREAS, the City has now made available the information required by Section 53083 as well as noticed and held a hearing regarding the economic development subsidy; and

WHEREAS, it is the desire of the City Council to adopt the incentive agreement.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF PLACERVILLE hereby rescinds Resolution Number 8362 and approves the Incentive Agreement between ALL FOUR ONE LLC, and the City of Placerville attached to this resolution as Exhibit A to encourage the establishment of new hotels in the City of Placerville.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Placerville held on November 10, 2015, by Councilmember _____ who moved its adoption. The motion was seconded by Councilmember _____. The motion was passed by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor, Patricia Borelli

ATTEST:

City Clerk, Susan Zito

ECONOMIC INCENTIVE AGREEMENT

This Economic Incentive Agreement (“Agreement”) is entered into as of this ____ day of _____, 2015, by and between the City of Placerville, a municipal corporation (“City”) and All Four One LLC, or its assigns, a California Limited Liability Company (“Developer”), and all of whom are collectively referred to as the “Parties”, with reference to the following facts:

RECITALS

A. WHEREAS, Developer intends to acquire the former Holiday Inn hotel site along Smith Flat Rd. in the City, on which Developer intends to develop and operate an approximately 112 room hotel project (the “Project”). Developer anticipates that the Project will generate transient occupancy taxes (TOT) in the approximate amount of Eleven Million, Seven Hundred Twenty-Six Thousand, Eight Hundred Ninety-Eight Dollars (\$11,726 898.00) during the first twenty (20) years of the Project’s operation, in addition to increased sales taxes generated by the increased visitation to the City; and

B. WHEREAS, pursuant to Title 5, Chapter 16 of the City Code (the “Ordinance”), the City will impose a transient occupancy tax on all Hotel guests at a rate of ten percent (10%) of the total room rate revenue (the "TOT"). The Hotel will be required to collect the TOT and remit said tax to the City. All TOT revenue is to be placed in the City's general fund; and

C. WHEREAS, to address certain challenges unique to the Project Site which negatively impact the economic feasibility of the Hotel, and which challenges include but are not limited to: demolishing an existing foundation and replacing it with a new foundation, street improvements and modifications to an expansion of an existing retaining wall; and in recognition that development and operation of the Hotel will result in the redevelopment of a blighted site, infuse new investment into the City, establish new tax-generating uses for the City, provide new permanent jobs, and be the first new hotel constructed in the City in over twenty (20) years, the City has approved this Agreement with Developer on the terms and conditions set forth herein; and

D. WHEREAS, the City has established a Placerville Hotel Incentive Program (the “Program”) and the Project not only qualifies for incentives pursuant to said Program, but also because of the challenges set forth herein above, qualifies for additional incentives as provided for in the Program; and

E. WHEREAS, the City desires to provide Developer with an incentive to operate the Project in order that increased visitation will generate additional TOT and sales tax to the City. The

incentive will be in the form of a City reimbursement to Developer of TOT generated by the Project as provided for herein below and in the Program.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the following mutual covenants, agreements, conditions and representations, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incentive Payments.

In Consideration for Developer operating the Project on the Property and the other conditions and covenants provided for herein, if and when the Project is built and operated on the Property and subject to the limitations herein, the City agrees to provide, on an annual basis, paid as set forth herein, economic incentive payments (“Incentive Amounts”) to Developer for the reasons stated above.

2. Remittance.

A. Amount. The amount of remittance to Developer pursuant to this Agreement and the Program shall be as follows;

Three Million, Five Hundred Thousand Dollars (\$3,500,000.00) pursuant to the Incentive Program; and

One Million, Five Hundred Thousand Dollars (\$1,500,000.00) for the unique challenges with regard to the foundation, street, and retaining wall pursuant to the Additional Incentive provisions of the Program; and

One Million Dollars, (\$1,000,000.00), the payment of which is conditioned upon the Project opening and operating the first new Hotel with at least 80 rooms, which has qualified for a franchise of at least “Select Service” level by a major brand comparable to those offered by Hilton, Marriott, IHG or Hyatt, within the City limits after the execution of this Agreement or the Hotel Project begins construction within one year of City approval.

B. Manner. Pursuant to the Ordinance, Developer shall collect and remit to the City ten percent (10%) of the total room revenue levied on Hotel occupants on a calendar quarterly basis (“Hotel TOT”). Said remittance shall be made within thirty (30) days following the end of the calendar quarter. Upon receipt of the remittance, City shall have thirty (30) days to review and audit, at its own expense, all amounts so received, and remit the following amounts to Developer. In the event City does not remit the reimbursement within 30 days of receipt of Hotel TOT from Developer, Developer shall be entitled to a 10% penalty plus 5% annual interest on any unpaid amount until the Hotel TOT is reimbursed. The penalty and interest shall be applied to the Developer’s share of TOT. A 10-day grace period shall be applied for unforeseen

circumstances beyond the City's control. Examples may include bank or postal service error or extreme medical emergency on the part of individuals responsible for making the payment.

Years 1 – 3: During years one through three (1-3) of the Hotel's operation, the City will pay Developer an amount equal to ninety percent (90%) of the Hotel TOT reviewed and approved pursuant to the provisions of this paragraph.

Years 4 – 10: During years four through ten (4-10) of the Hotel's operation, the City will pay Developer an amount equal to seventy-five percent (75%) of the Hotel TOT reviewed and approved pursuant to the provisions of this paragraph.

Years 11 – 15: During years eleven through fifteen (11-15) of the Hotel's operation, the City will pay Developer an amount equal to seventy percent (70%) of the Hotel TOT reviewed and approved pursuant to the provisions of this paragraph.

Optional Years 16 and beyond until the total is reached: In the event that remittances received by Developer at the end of the fifteen (15) year period is less than Six Million Dollars (\$6,000,000.00), then the remittance period shall be extended for an additional period until the total Six Million Dollars is received. For years sixteen through the end of the period, (16-end), City will pay Developer an amount equal to five percent (5%) of the Hotel TOT reviewed and approved pursuant to the terms of this Agreement.

In the event that the City increases the TOT rate, the amount of TOT eligible for the Incentive Payments payable to Developer under this Agreement shall remain at ten percent (10%) of the Hotel TOT collected and remitted to the City by Developer.

If Developer uses a third-party company to collect room revenues on behalf of the Developer, such third-party company shall levy TOT and remit the required portion to the City according to this Agreement. Developer shall require any third-party online booking services that collect room revenues on behalf of the Hotel to collect and remit Hotel TOT to the City in accordance with this Agreement.

In the event that the City decreases the TOT rate, the Incentive Amounts payable to Developer shall be reduced accordingly on a pro rata basis. However, the total amount of TOT to be remitted to the Developer pursuant to this Agreement shall remain at Six Million Dollars (\$6,000,000.00). The Parties expressly acknowledge that this Agreement does not create a debt of the City to Developer, but rather an obligation to pay Incentive Payments only upon City's receipt of Hotel TOT in accordance with the Ordinance and the terms of this Agreement.

C. Time Limits. If either Party fails to act pursuant to the timelines set forth in Section 2(b), or the other Party wishes to challenge the action, the challenging Party shall provide written notification within sixty (60) days. Notice shall be mailed with the United States Mail, postage prepaid, certified mail, return receipt requested, and shall be considered received three (3) days after mailing. Failure to notify the other Party of the breach shall constitute a waiver of the breach and an inability to seek such payments under this Agreement.

3. Annual Audit.

Developer agrees to provide a letter by February 1 of each year following implementation of this Agreement, signed by a certified public accountant attesting that all TOT revenues have been collected and submitted in accordance with the City's ordinance and this Agreement.

4. Record Retention.

The Developer agrees to retain all unaudited Hotel financial records regarding Hotel's revenues subject to TOT during the term of this Agreement plus five (5) years. The Developer agrees to make the Hotel's financial records regarding revenues subject to TOT available to the City within 30 days of a written request for auditing purposes. However, once records have been supplied or audited, the Developer's obligation to provide those records shall cease.

5. Conditions of Reimbursement.

As a condition precedent to payment of any Reimbursement TOT, Developer shall:

A. Begin Construction within two years of City Approval of Project. If Developer fails to commence construction within two years, then the City, in its sole discretion, may terminate this Agreement by delivering written notice of such termination to Developer. 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 Developer subsequently commences construction, 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 "Select Service Hotel" as defined in the Program.

C. Participate in, complete all requirements, and receive approval for the Placerville Hotel Incentive Program.

6. Length of Term.

This Agreement shall apply to the first TOT payment by Developer to the City following the opening of the Hotel and shall remain in effect, unless otherwise terminated as provided for

herein, until Developer has received the total amount of Six Million Dollars (\$6,000,000.00) in TOT reimbursement.

7. No Obligation to Build or Operate.

Both parties acknowledge that the Project is currently in the proposal stages, and Developer shall have no liability to City for failure to build or operate a Hotel as intended by the parties herein.

8. Disclosure.

Developer is informed and hereby acknowledges that the City is uncertain as to whether the benefits conferred by this Agreement create a public work for prevailing wage purposes, which, in turn, requires the payment of prevailing wages on the Hotel Project. Developer expressly and affirmatively acknowledges that the City's representation of uncertainty, as specifically set forth in this Agreement, is the sole and complete representation made by the City regarding the prevailing wage issue. Developer hereby acknowledges that Developer has been informed of the City's uncertainty in this regard. Developer may wish to treat this Agreement as an event triggering the consequences attendant with a prevailing wage project to remove any uncertainty; Developer are encouraged to seek the advice of its own attorney(s) as to this issue, prior to the execution of this Agreement. Developer's execution of this Agreement is an acknowledgment that such independent advice and counsel has been obtained.

9. Indemnity Obligation.

Developer agrees to protect, defend (with legal counsel acceptable to the City), indemnify and hold harmless the City, its council members, officers, agents, independent contractors and employees from any and all claims, damages, penalties, losses, costs, expenses (including reasonable attorneys' fees and court costs), injuries and liabilities of every kind arising out of or caused by any of Developer's negligence, gross negligence or intentional wrong doing under this Agreement, whether such activities or performance thereof be by Developer or anyone directly or indirectly employed by or contracted with Developer and whether such damage shall accrue or be discovered before or after commencement of operation of the Project, including but not limited to all claims that the benefits conferred by the City under this Agreement create a public work for prevailing wage purposes thereby requiring the payment of prevailing wages, and all claims challenging the legality, constitutionality, or enforceability of this Agreement, including but not limited to the City's authority to pay TOT Incentive Amounts.

The City's rights of indemnity, as expressly set forth in this Agreement, shall not depend upon the actual payment of any claim, damage, penalty, loss, cost, expense (including reasonable attorneys' fees and court costs), injury or liability sustained by the Developer and/or its contractors, subcontractors, agents and/or employees.

In the event that the City tenders the defense and indemnification of a claim contemplated by this Agreement to Developer and/or to his/her/its contractors, subcontractors, agents and/or employees, the City shall be entitled to actively supervise the claim and/or the defense of the same, shall be authorized to select and retain its own separate independent counsel, at Developer's and/or his/her/its contractors', subcontractors', agents' and/or employees' expense, as necessary, which decision shall be made solely and exclusively by the City, and the City must consent to the disposition of any such claim, including but not limited to, the settlement of any such claim.

10. Authority to Execute Agreement.

Each individual signing this Agreement represents and warrants that he or she has full authority to execute the same on behalf of the Party on whose behalf he or she so signs, and that he or she is acting within the scope of his authority. Each individual signing this Agreement agrees to indemnify and hold harmless the other Party for loss, damage, liability, cost or expense (including reasonable attorneys' fees) arising out of any claims made by anyone that such authority to sign this Agreement does not exist.

11. Default.

A. Defaults.

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

1. Any misleading statement, misrepresentation or warranty of Developer herein or in any other writing at any time furnished by Developer 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 if noncompliance is not cured by Developer within 90 days after written notice of noncompliance is provided to Developer by the City;
3. The filing by or against Developer of a petition for relief under the Bankruptcy Reform Act of 1978 or any bankruptcy or debtor relief law;
4. A general assignment by Developer for the benefit of creditors or the appointment of any receiver or trustee of all or any portion of the assets of Developer;
5. The transfer or assignment of this Agreement prior to opening the hotel and beginning operations.

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 Developer, 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 Developer or any successor or on any obligations under the terms of this Agreement.

12. Compliance with Governmental Regulations.

Developer 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, issuance of building and use permits and compliance with all federal and state labor laws (collectively, "Laws"). Supplementing the indemnity set forth in Section 7 above, Developer 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 Developer to comply with such Laws relating to this Agreement.

Specifically, by its execution of this Agreement, Developer 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 the project being performed is an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, Developer agrees to fully comply with such Prevailing Wage Laws. If required, Developer 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 Developers principal place of business and the project site.

13. Advice of Counsel.

Each of the Parties hereto has received the advice of independent legal counsel prior to signing this Agreement. Each of the Parties hereto acknowledges that no other party or agent or attorney of any other party has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce the other Party to execute this Agreement.

14. Entire Agreement.

It is expressly understood and agreed that this Agreement, inclusive of the Placerville Hotel Incentive Program and the Hotel Operations Covenant Agreement, contains the entire agreement and understanding concerning the subject matter thereof, and supersedes and replaces all prior negotiations and agreements between the Parties, whether written or oral. In the event there is a conflict between this document, the Placerville Hotel Incentive Program and the Hotel Operations Covenant Agreement, this document shall take precedent. It is expressly understood and agreed that there have been no promises, agreements, warranties or inducements, not herein expressed, and The Parties acknowledge that they have read this Agreement and have executed it without relying upon any statements, representations, or warranties, whether written or oral, not expressly set forth herein.

15. Governing Law.

All questions with respect to the construction of this Agreement and the rights and liabilities of the Parties hereto shall be governed by the laws of the State of California.

16. Further Assurances.

The Parties shall, at their own cost and expense, execute and deliver such further documents and instruments, including, but not limited to, escrow instructions, and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

17. Captions.

Sections, titles and captions contained in this Agreement are inserted only as a matter of convenience and for reference and shall in no way be construed to define, limit or extend the scope of this Agreement or the intent of any of its provisions.

18. Contingent on City Council's Approval.

Developer understands and acknowledges that this Agreement is subject to approval by the City Council of the City and that it cannot be fully performed by the City unless and until such approval has been duly and regularly made. The terms, conditions, and covenants set forth herein are all made expressly contingent upon approval by the City Council. In the event this Agreement is not approved, neither Party shall be obligated to perform and is released and discharged by the other from any and all obligations hereunder.

19. Amendment.

This Agreement shall not be amended except by a written instrument signed by the Parties or their respective successors and assigns.

20. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

21. Severability.

If any provision of this Agreement or the application thereof, to any person or entity is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

AGREED:

All Four One, L.L.C., by

City of Placerville:

M. Cleve Morris, City Manager

Approved as to form and content:

John Driscoll, City Attorney

ATTEST:

Susan Zito, City Clerk