



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** October 24, 2017

From: Orlando Acevedo, Assistant Director **Item No:** 12
Economic Development, Housing and Transit

Subject: HOTEL TRANSIENT OCCUPANCY TAX REIMBURSEMENT
AGREEMENT

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

Direct the Town Manager to finalize negotiations and execute the Transient Occupancy Tax Reimbursement Agreement with Desai Family Trust, a hotel development and operating entity.

SUMMARY:

Mr. Mukesh Desai, Trustee of the Desai Family Trust, proposes to construct a 70-room, nationally recognized full service branded hotel, at Jess Ranch Marketplace, located at the northwest corner of Jess Ranch Parkway and Towne Center Drive, south of Cinemark and 24 Hour Fitness. Desai has over 30 years of experience in the hospitality industry, including development and management. This will be his first project in the High Desert. To better manage his investment risk and to secure investors, Desai has requested that the Town rebate a percentage of the transient occupancy taxes generated by the hotel. Like any other private business, Desai is interested in generating profits and mitigating risk. In this case, he is embarking on a high-risk venture to develop a hotel project here in Apple Valley, an untapped market, miles from the high-visibility and traffic volumes of Interstate-15, and where nearly all hotels in the region currently operate.

BACKGROUND:

Despite Apple Valley's humble origins as a resort destination for Hollywood celebrities at the Apple Valley Inn, today the hospitality sector in Apple Valley is underserved, with the closest hotels approximately 5-7 miles and 20-35 minutes away. Yet Apple Valley is still a destination location, drawing more than 65,000 visitors each year. Just in the last few weeks Apple Valley hosted the Apple Valley Air Show, drawing more than 10,000 spectators and entertainers, and the Reverse Triathlon (of the 414 athletes, 68 percent were from outside of the High Desert). The state-of-the-art Victor Valley College Public

Safety Campus in north Apple Valley regularly holds training classes for first-responders and students from as far away as Northern California, Arizona, Nevada, and Utah; yet, in staff interviews, many more students do not travel to Apple Valley nor plan extended stays here due to a lack of nearby hotels. These are just a few examples of the consumer market demands for hotel services in Apple Valley.

During the last five years, Town staff has very aggressively pursued potential hotel developers. In 2012, Town staff completed a Hotel Feasibility Study which indicated that market conditions were not ripe for a hotel project at that time. More recently, Town staff has continued to press the case that the Apple Valley market is in fact eager for hospitality services and that regional business generators and overall economic conditions have improved since that first study in 2012. Staff has attended various retail tradeshow including ICSC and hotel conferences including the California Hotel and Lodging Association annual conference and has published advertisements in the CH&LA Lodging News Magazine during the last several years in order to meet with and garner the attention of prospective hotel developers, operators and owners.

While there have been many favorable and positive discussions over the years, this project represents the most viable development opportunity to date.

Upon Desai's introduction to our community in February 2017 by Mr. Jason Lamoreaux, Broker, Coldwell Banker Commercial, staff has worked to assist Desai's efforts to secure this site and develop a premiere hotel property. In March 2017, staff commissioned another Hotel Feasibility Study by EconSolutions by HDL, to assist in a data research and analysis into regional market conditions. Upon completion of that analysis, Desai continued to press his project forward, acquiring the 10.29-acre property (Assessor's Parcel Number: 0399-271-01-0000) in December 2016.

In recent months, staff has studied other cities that provide a similar hotel TOT-Rebate program including the City of Palm Springs' Hotel Incentive Program and the Cathedral City program. Palm Springs for example offers up to 30 years of rebates while Cathedral City offers a 10-year baseline with discretionary review by the Council to extend the length of term. The programs are designed to offset a hotel's early operational losses and to incentivize future revenue growth, long-term operating sustainability, and community engagement.

Palm Springs' Program identifies three separate levels of incentives--one for "First Class New Hotels", one for "Comfort New Hotels" and one for Renovation of "Existing Hotels". The First Class New Hotel program pays back to the operator an amount equal to 75% of the TOT for 30-years or until the operator has been paid \$50 million dollars, whichever occurs first. Most comparable to our own secondary market, the Comfort New Hotels program is offered based on number of rooms, 125 or more rooms the city pays to an operator an amount equal to 50% of the TOT for 20-years or until the operator has received \$25 million, whichever occurs first. For smaller Comfort New Hotels, with 51 to 124 rooms, the payback is 50% for 10-years or until the operator receives \$20 million.

By comparison, Desai's financial projections estimate his project will generate between \$37.65 million in revenues during the first 15-years to upwards of \$53.69 million during the first 20-years of operations with a loss in Net Operating Income of approximately \$1.4 million over the first four years of operations. As a result, Desai's request ranges from \$2.5 million to \$3.55 million depending on the final number of hotel rooms, which will be determined during his capital fundraising. Per the terms of the agreement, attached, the Town will reimburse to Desai one hundred percent (100%) of the Town's current TOT through operating years 1-6; seventy percent (70%) through operating years 7-13; and fifty percent (50%) through operating years 14-20, collected from the Project, in an amount estimated between \$2.5 and \$3.55 million, dependent on the total number of rooms built.

For comparison, the two existing Motel operating in Apple Valley generate less than \$6000 per year in Transient Occupancy Tax (TOT).

According to HDL, Apple Valley has one of the lowest per capita revenues in the state and lower than Barstow, Hesperia and Victorville. Attracting overnight visitors will help increase retail and restaurant demand in Apple Valley and encourage business generators (local businesses, hospitals, colleges and the public safety campus) to conduct more meetings and conferences in our community. The Recreation Department has already reported the loss of soccer tournaments during the last few years in part due to the lack of close-by overnight accommodations available for out-of-area visitors.

FISCAL IMPACT:

This Agreement dedicates only a reimbursement of the transient occupancy taxes generated by the hotel. No general fund dollars are obligated further. In summary, the following formula has been established by which the Town will reimburse transient occupancy taxes during the term of the agreement:

Years 1 through 6:	100% TOT to developer/operator
Years 7 through 13:	70% TOT to developer/operator
Years 14 through 20:	50% TOT to developer/operator

Moreover, the following is an escalator of the total not-to-exceed rebate amount should the project increase the number of rooms ultimately delivered:

70 rooms:	\$2,500,000
80 rooms:	\$2,850,000
90 rooms:	\$3,200,000
100 rooms:	\$3,550,000

ATTACHMENT:

Hotel Transient Occupancy Tax Reimbursement Agreement

TOWN OF APPLE VALLEY
TRANSIENT OCCUPANCY TAXES
REIMBURSEMENT AGREEMENT

THIS TRANSIENT OCCUPANCY TAXES AGREEMENT (“Agreement”) is entered into as of _____, 2017, by and between THE TOWN OF APPLE VALLEY, a California municipal corporation, (the “Town”), and Mukesh Desai, Desai Family Trust, (“Hotel”). Town and Hotel are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

A. The Hotel controls certain real property in the Town, on which Hotel intends to develop and operate an approximately 70 room hotel project (“Project”). Hotel anticipates that the Project, once occupied, will generate transient occupancy taxes (“TOT”) to the Town in an amount estimated by Hotel to exceed Three Million Seven Hundred and Fifty Seven Thousand Dollars (\$3,757,000) during the first 20 years of the Project’s operation, in addition to increased sales taxes generated by the anticipated increased visitation to the Town.

B. The Town wishes to provide Hotel an incentive to operate the Project in order that increased visitation will generate additional TOT and sales tax to the Town, and to provide certain emergency services to Town residents. The incentive will be in the form of a Town reimbursement to Hotel of the TOT generated by the Project up to a maximum of Two Million Five Hundred Thousand Dollars (\$2,500,000) for 70-room Project. However, should the project build more than 70 rooms, Town will provide additional \$35,000 TOT Incentive per each additional room built by the Project.

C. The Town has determined that a TOT reimbursement to the Hotel 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 development of the Project will create both temporary construction and permanent operational jobs, increased capital investment, property values and tax

revenues, and sales tax revenues, and would redevelop a previously underutilized site thereby further serving as an economic catalyst to the Town by expanding the lodging options and amenities which support tourism.

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

AGREEMENT

NOW, THEREFORE, THE TOWN AND HOTEL AGREE AS FOLLOWS:

Section 1. Reimbursement Commitment and Conditions on Payment.

A. In consideration for Hotel's operating the Project 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 Town shall reimburse to Hotel one hundred percent (100%) of Town's current TOT through operating years 1-6; seventy percent (70%) through operating years 7-13; and fifty percent (50%) through operating years 14-20, as defined in Section 3.24.030 of the Apple Valley Municipal Code as of the date of this Agreement, collected from the Project in an amount estimated to be between \$2,500,000 and \$3,550,000 dollars ("Reimbursement TOT"). Payment of Reimbursement TOT by Town to Hotel shall commence for the first full quarter during which commercial operation of the Project commenced and shall continue until maximum allowable reimbursement has been made by the Town ("Reimbursement Termination Date"). TOT collected prior to the Reimbursement Termination Date is subject to reimbursement pursuant to this Agreement; TOT collected after the Reimbursement Date is not. Hotel shall at all times remit to Town full payment of TOT as required by the Town's Municipal Code. Contingent upon the Hotel operating the Project in satisfaction of the conditions precedent set forth in Section 2 hereinbelow during each quarter prior to the Reimbursement Termination Date, distributions of Reimbursement TOT by Town to Hotel shall be made within sixty (30) days of the receipt by the Town of the full amount of TOT from the Property for each quarter.

- B. Notwithstanding Section 1(A) above, the Town shall only make Reimbursement TOT payments due under this Agreement on a fiscal year by fiscal year basis from TOT revenues received by the Town during each respective fiscal year in exchange for consideration received from the Hotel to the Town during that same fiscal year.

- C. In the event of a breach by the Town with respect to Reimbursement TOT payments provided for under this Agreement, Hotel agrees to waive any right to acceleration of all future Reimbursement TOT payments. The Hotel shall only be able to pursue collection of Reimbursement TOT payments on an individual fiscal year basis, as such payments became due.

- D. The Town shall appropriate sufficient funds in the Town's annual budget, for each fiscal year during the term of this Agreement, to make the Reimbursement TOT payments to the Hotel in each fiscal year.

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

- A. Commence commercial operation of the Project by date of issuance of Certificate of Occupancy (CofO). If Hotel fails to commence commercial operation prior to that date, then the Town, in its sole discretion, may terminate this Agreement by delivering written notice of such termination to Hotel. Following such termination, neither Party shall have any further rights, duties or obligations hereunder, and the Town shall have no obligation to pay Reimbursement TOT, provided however that if this Agreement is not so terminated and Hotel subsequently commences operation, the terms of this Agreement shall apply and the Town's right to terminate shall be void; and

B. Be at all times operated as a Nationally Recognized Franchise Hotel Brand

Section 3. Public Benefit/Public Purposes. The Town Council has determined that encouraging economic development, including private investment that involves creation of new jobs and income in the Town, or the retention of existing jobs and income that would otherwise be lost or be unavailable to the residents of the Town, is a valid exercise of its powers and provides an important public benefit and serves an important public purpose. By authorizing the Town to enter into this Agreement, the Town 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 high quality hotel rooms and their role in increasing tourism; (ii) increased revenues from property, sales, parking, business license, utility and Transient Occupancy Taxes (TOT), (iii) enhanced economic opportunities generated by the development of a new hotel serving downtown Apple Valley, and (iv) the acceleration of quality jobs and infrastructure to the Town represent fair consideration for all of the obligations to be undertaken by the Town as contemplated by this Agreement.

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

Section 5. Indemnification. Hotel shall defend, assume all responsibility for and hold the Town, 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 Hotel's activities under this Agreement, whether such activities or performance thereof be by Hotel or anyone directly or indirectly employed or contracted with by Hotel and whether such damage shall accrue or be discovered before or after commencement of operation of the Project.

Section 6. Default.

A. Defaults.

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

1. Any misleading statement, misrepresentation or warranty of Hotel herein or in any other writing at any time furnished by Hotel to Town that materially harms the Town or materially diminishes the benefit of the Agreement to the Town;
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 Hotel of a petition for relief under the Bankruptcy Reform Act of 1978 or any bankruptcy or debtor relief law;
4. A general assignment by Hotel for the benefit of creditors or the appointment of any receiver or trustee of all or any portion of the assets of Hotel; and
5. The transfer or assignment of this Agreement without approval by the Town.

B. Remedies.

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

C. No Liability of Town Member.

No Town Council Member, official or employee of the Town shall be personally liable to Hotel, or any successor in interest, in the event of any default or breach by Town under this Agreement or for any amount which

may become due to Hotel or any successor or on any obligations under the terms of this Agreement.

Section 7. Compliance With Governmental Regulations.

Hotel 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,; 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, Hotel shall defend, indemnify and hold the Town, 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 Hotel to comply with such Laws relating to this Agreement.

Specifically, by its execution of this Agreement, Hotel 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, Hotel agrees to fully comply with such Prevailing Wage Laws. If required, Hotel 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 Hotel's principal place of business and the project site.

Section 8 Miscellaneous Provisions.

A. Transfer or Assignment.

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

B. Interest of Members of Town.

No member of the Town Council of Town and no other officer, employee or agent of the Town who exercises any functions or responsibilities in connection with the carrying out of the Town'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:

Town: Town of Apple Valley
 Town Manager
 14955 Dale Evans Parkway
 Apple Valley, CA 92307
 Attention: Town Manager

Hotel: Mukesh Desai
Desai Family Trust
8787 North Eureka Ave
Fresno, CA 93720

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. 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 Town and the Hotel.

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

Dated: _____

TOWN:

TOWN OF APPLE VALLEY,
a California municipal corporation

By: _____
Scott Nassif, Mayor

APPROVED AS TO LEGAL FORM:

ATTEST:

BEST BEST & KRIEGER LLP

La Vonda M-Pearson, Town Clerk

John Brown, Town Attorney

HOTEL:

Mukesh Desai

Desai Family Trust

By: _____

Its: _____