



City of Santa Clara

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Agenda Report

18-868

Agenda Date: 6/26/2018

REPORT TO COUNCIL

SUBJECT

Discussion and Direction to the City Manager on an Agreement for Convention and Visitor Services with Santa Clara Chamber of Commerce for Convention-Visitors Bureau (CVB) or Other Provider

BACKGROUND

At the May 22, 2018, staff requested direction from Council on the management fee to the Santa Clara Chamber of Commerce & Convention-Visitors Bureau for the management of the Santa Clara Convention Center. After a detailed staff presentation and Council discussion, Council approved a motion to:

Direct the City Manager and City Attorney to begin a process of exploring a term sheet for a new agreement with the Chamber of Commerce for their management of the Convention Center; begin the process to execute a financial and performance audit of the Chamber; and that the management fee be suspended until such time that we can enter into a new agreement.

There are two agreements with the Santa Clara Chamber of Commerce: 1) a management agreement for the operation of the Santa Clara Convention Center and 2) an agreement to provide convention and visitor services promoting tourism in the City of Santa Clara and to market the Santa Clara Convention Center (CVB Agreement).

For FY17/18, a total not to exceed amount of \$1,461,601 for a convention and visitor services agreement with the Chamber (CVB Agreement) expires on June 30, 2018. Staff is seeking Council direction on the convention and visitor services commencing July 1, 2018.

It should be noted early in this report, that given the referenced delays, there is no way to administratively process a new one-year agreement between June 26 and June 30, for a successful contract start date on July 1, 2018. As such, there will be a lapse of service regardless of what Council action is taken on this matter, and I do not recommend that the City Council authorize continuation of services absent a contract agreement. Further, delays have impacted the City's ability to assess the status of the Agreement with Santa Clara Chamber of Commerce for Convention-Visitors Bureau (CVB) and related services (Agreement) and whether to recommend or amend the Agreement.

DISCUSSION

As reported at the June 12 Council meeting, the City Manager's office has proactively taken several steps to expeditiously implement the Council direction given on May 22, including:

- Contracting TAP International: The services of a highly qualified performance auditing firm whose principal has expertise in convention center performance audits has been retained.

- Updated the Audit Scope: In preparing the scope for the audit, it became clear that the marketing operation of the Convention-Visitor's Bureau is vital to Convention Center operations. Since an audit of convention center operations would be incomplete without a review of the \$1.5 million in public funds used by the CVB to support convention and tourism activity, the audit objectives now include a review of the CVB activity.
- Information Requests: In order for the audit to be meaningful, full access to information regarding the Convention Center and CVB operations is required. While the City has made a series of requests for information from the Chamber since April 19, additional requests have been made for the audit. The Chamber's timely documentation production is essential to audit activities, early delay of responding to request for information or rejecting the City's request have already impacted the schedule. It is important to note that only recently, the City achieved compliance from the Chamber, in accordance with existing Agreement provisions, with production of documents for the purpose of inspection of operations and the Council directed audit.
- Conducting an Audit Entrance Conference: An audit entrance conference, meant to clearly communicate the objectives, timelines and the urgency of data requests to all parties, occurred on June 7 with Convention Center staff, representatives of the CVB and Chamber, as well as City staff. The auditor made very clear data and documentation requests of the City and Chamber for Convention Center- and CVB-related activity.

While staff has made significant progress in a short time frame as noted above, the fact that data requests and document production are still a work in progress for the City, and will likely continue throughout the performance and financial audits, and in the absence of completed audit findings, there is not enough information for staff to make a professional recommendation with specificity on a CVB contract for FY18/19. As the audit progresses with preliminary observations and findings, these matters provide clarity to staff on what agreement terms to pursue, by direction of the City Council, as part of the negotiations. However, outside of the formal audit work, preliminary discussions on how the Chamber manages conflicts of interests; absence of Board training for management of public funds and governance oversight of a public facility; absence of policies regarding self-dealing (e.g., use of the Convention Center relative to fee reductions/waivers) along with already surfaced concerns regarding financial protocols and procedures, suggest deficiencies or loose management controls in protecting the use of a public facility and funds that must appear in any legal service agreement that is recommended to the City Council. These matters are incomplete and of concern to City staff regarding the appropriate use of public funds and facilities.

Recognizing the importance of maintaining convention and visitor services, which support convention center operations, there are several alternatives available for Council consideration, which are:

- 1) Maintain the Status Quo: Execute a One-Year Agreement
- 2) Allow Agreement to Expire and Direct the City Manager to Seek Another Provider for These Services and Execute Contracts
- 3) Direct City Manager to Negotiate and Execute a Bridge Agreement to:
 - (a) Transition to another provider or
 - (b) Determine Long Term Agreement Terms with the Chamber

4) Any Other Action Determined by the City Council

Below is an explanation of each of the above policy options for the Council to consider:

1) Maintain Status Quo: Execute a One-Year Agreement -- The Council could authorize and direct the City Manager to execute a one-year extension with the Chamber to fund CVB operations under the same terms and conditions. Recognizing that it is too late to expect services to continue on July 1, 2018, staff would expeditiously work to issue a contract and restore the same contractual terms as soon as possible to minimize a disruption in services. As funds for the FY17/18 agreement would be exhausted as of June 30, 2018, additional funds would be required. The FY18/19 budget carries \$1,461,601 for CVB-related services.

Comment: This alternative would preserve the status quo of the existing service agreement without the benefit of any further due diligence, pending the completion of the performance and financial audits. Under this option, the Chamber would continue to oversee CVB operations at an annual expense to the City of \$1,461,601. A renewed, status-quo agreement would maintain the option to terminate the contract, which is a ninety-day noticing provision and at an estimated cost of \$365,000 for the noticing term. A one-year extension to the contract allows for continuation of service, but without the benefit of analysis of the operational effectiveness and suitability of current practices and procedures as well as the value of the return on investment received by the City for the expenditure. Staff believes that it would be premature to pursue this policy option since the audit findings could be key to developing new agreement terms and the 90-day noticing term is too costly.

2) Allow Agreement to Expire and Direct the City Manager to Seek Another Provider for These Services and Execute Contracts -- The City Council could direct the City Manager to allow the contract to expire at the end of its current term of June 30, 2018. Under this scenario, the existing contractual relationship with the Chamber for managing CVB operations would end and there would be no contractual services provided as of July 1, 2018, until the City approved a contract for these services with a new service provider. This alternative affords the City maximum flexibility to implement new practices and governance, but at the same time, the transitional support required would need to be reprioritized against other workload.

Comment: This option would close out the current service provider and require staff to conduct a process to secure another provider for these services. Staff does not have an asset inventory in its possession to determine what transfer arrangements would need to be established should this option be directed, although this information was requested of the Chamber but not provided. Approval of this policy option eliminates the 90-day noticing requirement, at a savings of approximately \$365,000, if the Council desires to allow this contract to expire. The total fiscal impact of the value by allowing this contract to expire is unknown and staff would not have time to analyze the pros and cons of this policy action before June 30, 2018 for a more informed City Council policy decision. This approach would have service delays, result in some disruption, and/or potential loss of business for the Convention Center; however, it allows for the City to test the market for other providers and the estimated cost for services.

3) Direct City Manager to Negotiate and Execute a Bridge Agreement to: (a) Transition to Another Provider or (b) Negotiate a Long Term Agreement Terms with the Chamber -- The Council could authorize and direct the City Manager to execute an up to four-month contract under the existing terms, in an amount not to exceed \$487,200, while exploring and negotiating new terms

and conditions for (1) a new CVB Agreement with the Chambers or (2) a new service provider. This would allow the existing service structure to continue while new terms are identified and determined with either the current or a new provider. This option allows all parties to benefit from the completion of data and document requests and perhaps early findings in the performance and financial audits which could inform the best course forward for the City. As part of approving this option, Council could also provide direction on the commencement of negotiations with the Chamber for continued services; provide direction on a new contract with an alternate service provider; or, provide direction on an alternate course of action.

Comment: This option provides flexibility to the City while determining the future of these services and service provider. There is much to learn from the audit that is underway. It is already very clear that the two agreements with the Chamber do not provide enough assurances for the City to manage public funds and track performance outcomes. This approach preserves the service in its current form for an interim term, while creating an environment where improvements could be achieved, data and information validated, and improved performance outlined with either the current provider or a new provider.

4) Any Other Action Determined by the City Council --

- (a) The City Council may take any other action than the above policy options, including a change of term for Policy Option #3 above.
- (b) The City Council could also authorize and direct the City Manager to execute an agreement with the Chamber to continue to oversee CVB operations, with new terms and conditions, either as a short-term bridge contract or a full-year contract. The option is essentially a hybrid of options one and three above.
- (c) Any other policy option determined by the Council.

ENVIRONMENTAL REVIEW

This is an information report only and no action is being taken by the City Council and no environmental review under the California Environmental Quality Act ("CEQA") is required.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov or at the public information desk at any City of Santa Clara public library.

ALTERNATIVES

See Discussion section for a complete narrative on policy options available to the City Council to determine:

- 1) Maintain the Status Quo: Execute a One-Year Agreement
- 2) Allow Agreement to Expire and Direct the City Manager to Seek Another Provider for These Services and Execute Contracts
- 3) Direct City Manager to Negotiate and Execute a Bridge Agreement to:

- (a) Transition to another provider or
- (b) Determine Long Term Agreement Terms with the Chamber

4) Any Other Action Determined by the City Council

As stated on June 12, there is not enough information to determine that award of another one-year agreement is the best option for the City. Additionally, there is not enough time to execute an agreement before July 1, 2018 to continue services, and the City Manager can't recommend allowing services to continue without a contract.

As stated earlier in this report, there are significant concerns that have surfaced with the maintenance of this contract and indicate that a changed approach is required to manage risk and protect public funds and facilities. As stated earlier, outside of the formal audit work, preliminary discussions on how the Chamber manages conflicts of interests; absence of Board training for management of public funds and governance oversight of a public facility; absence of policies regarding self-dealing (e.g., use of the Convention Center relative to fee reductions/waivers) along with already surfaced concerns regarding financial protocols and procedures, suggest deficiencies or lose management controls in protecting the use of a public facility and funds that must appear in any legal service agreement that is recommended to the City Council. These matters are serious in nature and the City's review of them, along with the open audit, does not allow for the City Manager to make a professional recommendation other than any continuation of service requires remedy to existing management, if continued.

RECOMMENDATION

Recommend approval of either:

1. Alternative #2: Allow Agreement to Expire and Direct the City Manager to Seek Another Provider for These Services and Execute Contracts; OR
2. Alternative #3: Direct City Manager to Negotiate and Execute a Bridge Agreement to:
 - (a) Transition to another provider; or
 - (b) Determine Long Term Agreement Terms with the Chamber

There is very little information for the City Manager to make an informed decision for renewing the contract for another year. Preliminary observations, as mentioned in this report, illustrate that major improvement relative to oversight and management of these services is required. Additionally, delays have already adversely impacted the continuation of these services and there will be disruption in services, as detailed above.

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. FY 2017/18 Agreement with Chamber of Commerce for CVB