



## Agenda Report

18-997

Agenda Date: 7/16/2018

### INFORMATIONAL REPORT TO COUNCIL

#### SUBJECT

Informational Report on the Management Agreement with Santa Clara Chamber of Commerce/Convention-Visitors Bureau for Management of the Santa Clara Convention Center

#### EXECUTIVE SUMMARY

The purpose of this Information Report is to provide the City Council with an update on the above matter and advise the City Council on issues that will be before the City Council in the August/September timeframe for further action. As stated the evening of June 26, the analysis had not been conducted relative to the impacts and disruption to convention and visitor services and that implementing City Council's direction would surface issues that staff would need to address. As background, the Santa Clara Chamber of Commerce/Convention-Visitors Bureau (Chamber) had two separate agreements with the City of Santa Clara related to convention and visitor services:

**(1) Management Agreement for the Santa Clara Convention Center (Management Agreement) --**

The Management Agreement provides the Chamber with oversight and implementation responsibilities for all services necessary to direct, manage all Convention Center operations including marketing, advertising and promoting the center; booking of events; hiring of staff; and, daily operations of the center including accounting, catering, security, janitorial, and maintenance.

**(2) Convention-Visitors Bureau Agreement (CVB Agreement) --** The CVB Agreement was an annual agreement with the Chamber that provided convention and visitor services through the Chamber's Convention-Visitors Bureau operation. These services included marketing and sales of the Convention Center and Santa Clara to large groups and citywide events; visitor marketing and communication; and, operation of a City Store.

The City Council has taken two recent actions on both agreements that require more clarity on the governance structure for and legal authority of oversight of the Convention Center, which are:

- a) Allowed the continuation of the Management Agreement, without compensation, placing all convention center operational responsibilities above under the legal authority of the Chamber;
- b) Allowed the CVB Agreement to expire and directed staff to retain Jones Lang LaSalle (JLL) to assist the City in the development of options for the provision of convention and visitor services for the purpose of supporting current and potential bookings at the Convention Center.

The first action maintained the Chamber's legal authority to direct, manage, and operate the Convention Center, specifically on the booking of events. The second direction to City staff to use a third-party consultant leaves the direction of these services under the legal management of the

Chamber, which limits how City staff can implement interim services. Meaning that, in order to put into place the City Council direction, the authority rests with the Chamber since it is legally required to direct, manage all Convention Center operations including the marketing, promoting, booking, and day-to-day operations of the Convention Center. However, the Auditor's preliminary observations and staff's review, give rise to valid concerns about moving forward with new a management agreement and establishing new performance measures in absence of the final Audit Report and staff's review.

### **BACKGROUND**

The two Council actions (May 22 and June 26) have had an impact on the governance structure originally in place and the options available to implement City Council direction. Without the final formal findings of the audit currently in progress, setting key performance objectives and outlining the terms of a new Management Agreement would be premature. In addition, the City's desire to seek independent third-party consultant services still provides legal authority for the Chamber for the Convention Center. While the Chamber continues to fulfill obligations under the terms of the Management Agreement to operate and management the Convention Center, they have done so without additional compensation. As a result of the above, it is unlikely that interim services will be fully implemented until further action is taken by the City Council and/or Chamber.

**Management Agreement** -- On March 27, 1984, the City of Santa Clara executed a Management Agreement with the Chamber for the management and operation of the Santa Clara Convention Center (attached). Through the Agreement, the Chamber is charged with performing all services necessary to direct, manage all Convention Center operations including marketing and promoting the center; booking of events; hiring of staff; and daily operations of the center including accounting, catering, security, janitorial, and, maintenance.

Following the February 27, 2018 Study Session on overall Convention Center issues, on May 22, 2018 Council directed the City Manager and City Attorney to: 1) begin process of exploring a term sheet for a new agreement with the Chamber for their management of the Convention Center; 2) begin process to execute a financial and performance audit; and 3) suspend management fee until such time as completed. Per Council direction, the payment of a management fee has been suspended and an audit of the Convention Center is underway. Staff expects the audit to be complete in the September/October timeframe.

**CVB Agreement** -- On June 26, 2018, Council did not fund a \$1.5 million request from the Chamber for convention and visitor service activity and directed staff to retain Jones Lang LaSalle (JLL) to assist the City in the development of options for the provision of convention and visitor services. Further at the June 26 Council meeting, City staff presented valid concerns with 1) the absence of information to extend the CVB Agreement and 2) the observations that had been made by either City staff or the Auditor charged with implementing City Council's direction. The Auditor provided preliminary observations and maintained her professional practice of *"when there is preliminary evidence of potential fraud, waste or abuse, it is an audit requirement to immediately report it to the client (the City). The Chamber/CVB and CC providing discounts to Chamber members at the Convention Center, including full discounts to the Chamber and other entities that use Convention Center facilities triggered this requirement."* These preliminary observations also contribute to the concern of not prematurely implementing Council direction that may not cure the issues requiring corrective action, e.g., given that the Chamber would maintain legal authority of the management and oversight.

**Options to Move Forward** -- The Management Agreement provides each party with the right to terminate the Agreement with a 180-day notice. At the May 22 Council meeting, there was testimony expressing concern about requiring the Chamber to provide service without compensation. As such, and in combination with staff's inability to set audit-recommended performance objectives for several more months, staff will be seeking direction from the Council in regard to the termination provision of the Management Agreement and the potential termination of the contract. Accordingly, during the City Council recess, City staff will approach the Chambers to determine whether it has a preference on how it would like to proceed.

Upon this information, and receipt of information from the Chamber, staff will be requesting the Council to provide direction on the following options to resolve governance and legal authority over the Convention Center, which are:

- Option 1: Resend a 180 day notice of the termination of the Management Agreement, given that the Council has already determined that a new Management Agreement is necessary in its May 22 City Council direction.
- Option 2: Pursue discussion with the Chambers that would allow for the early termination of the Management Agreement, with interim services provided by JLL and Convention Center staff while a competitive procurement process is completed.

#### 180-day Notice

Significant time has passed since the transmittal of the June 4, 2015 letter terminating the Management Agreement. As the active negotiations on significant changes to the Management Agreement cannot occur until after the audit is complete and presented to Council for policy direction, to provide the City with as much flexibility as possible while giving the Chamber with as much notice as possible, Council may consider authorizing the delivery of a 180-day notice of the termination of the 1984 Management Agreement. Even if after the audit is complete and the City and Chamber determine that it is in their mutual best interest to continue its contractual relationship regarding the management of the Convention Center, a new agreement will be necessary.

#### Allow for the early termination of the Management Agreement by the Chamber

The 1984 Management Agreement provides for a requisite 180 day notice for either party to terminate the Agreement. As the Council has directed the suspension of the Management Fee until the audit is complete, the Chamber may determine that it is not financially feasible for it to continue to provide services. The City Council may also determine that it is in the best interest of the Convention Center to be managed by another party until the audit findings are determined and to restructure the existing governance and legal authority. Staff is seeking Council direction and authority to accept a notice from the Chamber to terminate the Management Agreement with less than a 180-day notice (with a minimum of 30 days) if the Chamber delivers such a notice to the City.

#### **CONCLUSION**

The Chamber has continued to provide management and operational services at the Convention Center and is assisting City staff as the City becomes increasingly active in the financial activity of the Convention Center and the contract management of the Management Agreement. While staff began to pursue implementation of the June 26 City Council direction, it became clearer that the legal authority of Convention Center oversight still rests with the Chamber and that it would be premature to

pursue the May 22 direction because of the absence of the audit findings and given the serious nature of the preliminary observations, along with staff's disclosures regarding conflicts of interest and other issues recently presented. In advance of the final audit report, staff will reach out to the Chamber during the Council recess to discuss the Chamber's interests and potential options. Staff will bring forward to the City Council the above options and information from the Chamber for the City Council consideration, an audit update and a status report on interim services.

After the completion of the audit in September/October, staff will present findings to the Council and seek direction on the establishment of key performance objectives for future Management Agreement contracts. At that time, staff would also seek direction from the Council regarding a procurement process for permanent delivery of services. In either event, a new Management Agreement is required to implement the City Council's directions and, based on the audit findings, it may be that additional City Council action is required.

### **COORDINATION**

This report has been coordinated with the City Attorney's Office.

Reviewed by: Ruth Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Convention Center Management Agreement
2. April 22, 2015 letter to Chamber
3. June 4, 2015 letter to Chamber