



Office of the City Manager

RECESS ITEM
CONSENT CALENDAR
 September 14, 2021

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Eleanor Hollander, Acting Manager, Office of Economic Development
 Subject: Contract: Berkeley Convention and Visitor's Bureau, d.b.a. Visit Berkeley

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a sole source contract and any amendments with the Berkeley Convention and Visitors' Bureau, d.b.a. Visit Berkeley, to distribute one-twelfth of annual Berkeley Transient Occupancy Tax funds to support tourism marketing and promotion for the period from July 1, 2020 through June 30, 2023 for a not to exceed amount of \$700,000.

NEGATIVE EFFECT IF ACTION IS DELAYED UNTIL AFTER COUNCIL RECESS

The Office of Economic Development (OED) will not be able to make payments on recent invoices received and Visit Berkeley will not have adequate operating funds for FY 2022 activities already underway.

FISCAL IMPACTS OF RECOMMENDATION

Transient Occupancy Tax (TOT) is assessed on the room charge for rental of transient lodging when the period of occupancy is 30 days or less. Hotel guests pay the tax and it is often referred to as a "hotel tax".

In 1991, the TOT collected by the City of Berkeley was raised from 11% to 12% in order to create and fund a Convention and Visitors Bureau (CVB). The City retained their original 11% TOT to the general fund and there was no out-of-pocket expense to the City for the organization's creation. Simultaneously, the lodging industry agreed to raise the TOT 1% with a goal that strategic marketing and sales outreach would increase revenues to lodging businesses and financially benefit the City by increasing general fund revenues, sales tax, and overall economic impacts from visitor spending.

Every year, the City of Berkeley collects twelve percent (12%) TOT from lodging establishments' short-term room rental revenues and distributes one-twelfth of the amount collected via a "TOT contract" with the Berkeley CVB, d.b.a. Visit Berkeley. The revenues are collected and the funds are expended from the General Fund using the budget code 011-21-208-251-0000-000-446-636110-.

While historically, a new contract was signed every fiscal year with a Not to Exceed (NTE) amount provided by the Budget Office based on the City's projections for TOT revenues, during the COVID-19 pandemic (FY 2021), OED continued distributing Visit Berkeley's TOT allocation using funds encumbered through the FY 2020 contract. As the NTE amount authorized under that contract is insufficient to distribute TOT funds owed to Visit Berkeley for FY 2020-2021 "true-up" payments, OED needs to enter a new contract with Visit Berkeley to make these payments. This same multi-year contract will also enable OED to distribute TOT payments to Visit Berkeley for FY 2022-2023.

While the contract will initially include the NTE amount of \$700,000 (based on City staff's FY 2022 proposed budget revenue projections for TOT and Visit Berkeley's estimate for FY 2023), the actual funds distributed will be based on actual TOT revenues and thus contract amendments will be executed to reflect actual TOT revenues collected by the City of Berkeley.

CURRENT SITUATION AND ITS EFFECTS

The concept of a Berkeley CVB was presented to and approved by City Council as a Consent Item on September 24, 1991 and the CVB was incorporated as a 501(c)6, Not for Profit Mutual Benefit Corporation that same year. Ever since, there has been an annual contract between the City of Berkeley and Visit Berkeley to enable the pass-through of TOT funds collected.

Council is requested to ratify the action taken by the City Manager to enter into a sole source contract with the Berkeley Convention and Visitors' Bureau, d.b.a. Visit Berkeley, for NTE \$700,000, where the amount requested reflects that:

- Visit Berkeley is owed \$45,934 for FY 2020 TOT funds (the true-up for FY 2020 that was never paid for a variety of reasons related to Visit Berkeley and the City of Berkeley OED's competing pandemic priorities)
- Visit Berkeley is owed \$35,953.80 (the TOT collected in April and May 2021 which has not yet been paid for FY 2021 because insufficient funds remain in the City's existing TOT contract with Visit Berkeley)
- Visit Berkeley will be owed the TOT collected in the final month of FY 2021 (June) after FY 2021 collections are reconciled (this amount is referred to as the "true-up" and is paid in the subsequent fiscal year)
- A new contract is needed to distribute one-twelfth of the FY 2022 TOT to Visit Berkeley (the City's FY 2022 Proposed Budget estimates that TOT collections in FY 2022 will result in \$181,125 funding for Visit Berkeley)
- One twelfth of the TOT revenues collected by the City in FY 2023 (projected by Visit Berkeley to equal approximately \$400,000 in CVB revenues) will be distributed to Visit Berkeley, as the City has concurrently entered into a contract (approved by Council on October 29, 2019) with Visit Berkeley to administer the Berkeley

Tourism Business Improvement District (BID) through FY 2027 for the NTE amount of \$7,966,000 (using revenue numbers estimated prior to the COVID-19 pandemic). The multi-year nature of the contract will make it more efficient for the City to issue "true-up" TOT payments for past and upcoming fiscal years, as tax collections for the prior fiscal year are not usually tallied until several months after the close of the prior fiscal year. While the total contract amount may be amended throughout the multi-year period, the cumulative funds distributed to Visit Berkeley will always be reconciled so they equal one twelfth of the TOT revenues collected by the City of Berkeley. For example, if an advance payment to enable Visit Berkeley's operations in any given year exceeds the TOT amount due to Visit Berkeley for that year, the following year's distributions will be adjusted to reflect the prior year's overpayment.

BACKGROUND

TOT is levied on all lodging establishments in Berkeley. As of July 2021, there are 25 such establishments. One new property is slated to open in Fall/ Winter 2021. The origin of the arrangement with Visit Berkeley is detailed in the March 1991 *Convention and Visitors Bureau Creation Documents* and Berkeley City Council Consent Calendar, September 24, 1991. Each year, the forecasted TOT collection amount is codified in the Annual Budget (with the most recent adopted for FY 2022 on June 29, 2021) and one-twelfth of the TOT collected annually is devoted to Visit Berkeley. OED staff receives the annual TOT revenue projection from Budget staff in the City Manager's Office, calculates one-twelfth of that number, and produces a contract with Visit Berkeley for that amount with a corresponding scope of work and payment schedule.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Visit Berkeley works to promote the Bay Area Green Business certification program with Berkeley's hotel owners, thereby encouraging the local lodging industry to take considerable action to meet environmental sustainability objectives.

RATIONALE FOR RECOMMENDATION

The FY 2021-2023 TOT contract will enable the City to distribute funds owed to Visit Berkeley over a multi-year period, as per the 1991 Convention and Visitors Bureau Creation Documents.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

CONTACT PERSON

Elizabeth Redman Cleveland, Economic Development Project Coordinator, (510) 981-7532.

Eleanor Hollander, Acting Economic Development Manager, (510) 981-7534

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

RATIFYING THE ACTION TAKEN BY THE CITY MANAGER DURING RECESS TO EXECUTE A SOLE SOURCE CONTRACT WITH VISIT BERKELEY

WHEREAS, the City of Berkeley collects Transient Occupancy Tax (TOT) on room charges for rental of transient lodging every year; and

WHEREAS, TOT was raised from 11% to 12% to create and fund a Convention and Visitors Bureau (d.b.a. Visit Berkeley) in 1991 so strategic marketing and sales outreach would increase revenues to lodging businesses and financially benefit the City by increasing general fund revenues, sales tax, and overall economic impacts from visitor spending; and

WHEREAS, the City of Berkeley Office of Economic Development (OED) distributes one-twelfth of the TOT amount collected annually for the General Fund via a "TOT contract" with Visit Berkeley; and

WHEREAS, OED is unable to make payments on recent invoices received and Visit Berkeley will not have adequate operating funds for FY 2022 activities and beyond until a new contract is signed; and

WHEREAS, the City has concurrently entered into a contract (approved by Council on October 29, 2019) with Visit Berkeley to administer the Berkeley Tourism Business Improvement District (BID) through FY 2027 for similar tourism marketing; and

WHEREAS, payments due to Visit Berkeley for FY 2020-2021, the City's FY 2022 budget revenue projections for TOT, and Visit Berkeley's estimates for FY 2023 project equal approximately \$700,000 of TOT funds for Visit Berkeley; and

WHEREAS, the actual funds distributed to Visit Berkeley will be based on actual TOT revenues collected by the City of Berkeley.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council ratifies the action taken by the City Manager to execute a sole source contract and any amendments with Visit Berkeley to distribute one-twelfth of annual Berkeley TOT funds to support tourism marketing and promotion for the period from July 1, 2020 through June 30, 2023 for a not to exceed amount of \$700,000.