



Office of the City Manager

CONSENT CALENDAR  
July 25, 2023

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

RECOMMENDATION

Adopt a Resolution allowing the City Manager 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, 2023 through June 30, 2027 for a not to exceed amount of \$3,500,000.

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" or fee.

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 citywide 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-. Separately, the city also maintains a Tourism Business Improvement District (or "Tourism BID") wherein revenues realized from lodging establishments are also distributed to Visit Berkeley.<sup>1</sup>

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<sup>1</sup> Berkeley City Council, *Assessments: Berkeley Tourism Business Improvement District*, Item 8, May 23, 2023.

While historically, two new separate contracts were signed every fiscal year with a Not to Exceed (NTE) amount provided by the Budget Office based on the City's projections for TOT and Tourism BID revenues, during the COVID-19 pandemic, the City entered into a multi-year contract (approved by Council on September 14, 2021) with Visit Berkeley to distribute both true-up payments to Visit Berkeley for FY21 and pass-through TOT payments for FYs 2022-2023. Similarly, in FY20, the City entered into a contract (approved by Council on October 29, 2019) with Visit Berkeley to administer the Berkeley Tourism Business Improvement District (Tourism BID) through FY 2027 for destination promotion and tourism marketing.

It is observed that the multi-year contract format enables the Office of Economic Development (OED) to efficiently distribute TOT revenues collected by the City of Berkeley to Visit Berkeley. While the new contract will initially include the NTE amount of \$3,500,000 (based on City staff's FY 2023-27 projected general fund revenue collections for TOT), the actual funds distributed will be based on actual TOT revenues received and thus contract amendments will be executed as necessary such that the actual TOT revenues collected by the City of Berkeley can be passed through efficiently to the city's convention and visitor's bureau (CVB), Visit 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, known as "Visit Berkeley" that same year. Ever since, there has been a contract between the City of Berkeley and Visit Berkeley to enable the pass-through of TOT funds collected.

Council is requested to empower the City Manager to enter into a sole source contract with the Berkeley Convention and Visitors' Bureau, d.b.a. Visit Berkeley, for NTE \$3,500,000, where the amount requested reflects that:

- Visit Berkeley will be owed one twelfth of the TOT collected in Q4 FY 2023 (April - June) which has not yet been paid and is estimated to be \$150,000-\$250,000 based on quarterly FY23 averages (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 FYs 2024-27 TOT revenues to Visit Berkeley for each of the four years (the City's *FY 2023 Third Quarter Revenue Report* projects that TOT collections in FYs 2024-27 will result in \$3,111,281 funding for Visit Berkeley over the four-year period)
- Since the COVID-19 pandemic, the amount of TOT collections projected by the Finance Department has been less than the actual amount collected and thus a buffer of approximately \$200,000 has been added to the not to exceed contract amount, such that a contract amendment will not be required should the actual collections exceed the TOT revenues projected for the FY24-27 period.

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

Transient Occupancy Tax or "TOT" is levied on all lodging establishments in Berkeley. As of May 2023, there were 19 such establishments, as some of the hotels previously involved had closed or were converted into homeless shelters. 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 2024 on June 27, 2023) and one-twelfth of the TOT collected annually is devoted to Visit Berkeley. Office of Economic Development (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 2024-2027 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

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### Attachments:

1: Resolution

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

EMPOWER THE CITY MANAGER TO EXECUTE A SOLE SOURCE CONTRACT WITH THE BERKELEY CONVENTION AND VISITORS' BUREAU D.B.A. VISIT BERKELEY, TO DISTRIBUTE ONE-TWELFTH OF ANNUAL BERKELEY TRANSIENT OCCUPANCY TAX (TOT) FUNDS TO SUPPORT TOURISM MARKETING AND PROMOTION FOR THE PERIOD FROM JULY 1, 2023 THROUGH JUNE 30, 2027 FOR A NOT TO EXCEED AMOUNT OF \$3,500,000.

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, Visit Berkeley will not have adequate operating funds for FY 2024 activities and beyond until a new contract is signed; and

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

WHEREAS, payments due to Visit Berkeley for FY23, the City's FY 2024-27 budget revenue projections for TOT, and Visit Berkeley's estimates for FY 2024-27 project equal approximately \$3,500,000 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 City Manager is empowered 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, 2023 through June 30, 2027 for a not to exceed amount of \$3,500,000.