



Office of the City Manager

RECESS ITEM
CONSENT CALENDAR
 January 31, 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 No. 32200036 Amendment: Berkeley Convention and Visitors Bureau, d.b.a. Visit Berkeley

RECOMMENDATION

Adopt a Resolution ratifying the action taken by the City Manager during recess to modify the sole source contract (Contract No. 32200036) 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.

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 2023 activities already underway. The contract has exceeded the not-to-exceed amount of \$700,000 (established by council action on September 14, 2021).

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.

Subsequently, a new contract (Contract Number #32200036) for FYs 22 and 2023 was established with Visit Berkeley in September 2021 with a not-to-exceed (NTE) amount of \$700,000 using the best post-pandemic predictions regarding TOT available at the time. The NTE amount authorized under that contract is currently insufficient to distribute TOT funds owed to Visit Berkeley for FY 2023 payments, and now OED needs to modify the existing contract with Visit Berkeley to make these payments. A modification of this same multi-year contract (to remove the NTE amount) will enable OED to distribute all TOT payments due to Visit Berkeley for FYs 2022-2023 as pass through contract reflecting actual TOT revenues collected by the City of Berkeley.

CURRENT SITUATION AND ITS EFFECTS

The concept of a Berkeley Convention and Visitors Bureau (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 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 modify a sole source contract (Contract Number: 32200036) with the Berkeley Convention and Visitors' Bureau, d.b.a. Visit Berkeley, to remove the not-to-exceed (NTE) amount of \$700,000, as revenues collected to date have already exceed that amount. The removal of the NTE amount on Contract Number #32200036 reflects that:

- As of October 31, 2022, \$511,048.06 has been expended in contract number #32200036 (that is) paid to Visit Berkeley FYs 2022 and 2023.
- Visit Berkeley is currently owed \$253,527.62 in FY 2023 TOT funds, billed in November 2022.
- One twelfth of the TOT revenues collected by the City in FYs 2022 and 2023 (projected to equal approximately \$700,000 in CVB revenues) has been distributed to Visit Berkeley to date, and the NTE amount of the contract must be removed to pass through the remaining collected TOT funds for the term of the contract (June 30, 2023) as to date, a total of \$ 764,575.68 under this contract Visit Berkeley should have received by now.
- Visit Berkeley will be owed the TOT collected in the final month of FY 2023 (June) after FY 2023 collections are reconciled (this amount is referred to as the "true-up" and is paid in the subsequent fiscal year).

- The multi-year nature of the contract makes 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. 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.
- 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.

BACKGROUND

TOT is levied on all lodging establishments in Berkeley. As of December 2022, there are 26 such establishments. 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 Biennial (or Annual) Budget and one-twelfth of the TOT collected annually is devoted to Visit Berkeley. OED staff receives the annual or biennial 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. If the revenues come in over the amount anticipated, the contact must be modified to properly pass through the funds in accordance with the adopted 1991 Resolution entitled *Convention and Visitors Bureau Creation Documents*.

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

Modifying 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

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Attachments:

1: Resolution

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

RATIFYING THE ACTION TAKEN BY THE CITY MANAGER DURING RECESS TO MODIFY A SOLE SOURCE CONTRACT (CONTRACT NO. 32200036) 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 2023 activities and beyond until the existing contract is modified to remove the not-to-exceed (NTE) contract amount; and

WHEREAS, payments due to Visit Berkeley as forecasted by the City's FYs 2022-23 budget revenue projections for TOT, equaled approximately \$700,000 of TOT funds for Visit Berkeley which set the contract's NTE amount in September 2021; and

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

WHEREAS, the actual revenues collected to date have exceeded the \$700,000 NTE amount of the contract and are now due to Visit 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 modify a sole source contract (Contract No. 32200036) 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.