



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Nanci Klein

**SUBJECT: AMENDMENT TO THE
AGREEMENTS WITH TEAM
SAN JOSE**

DATE: June 4, 2024

Approved

Date

6/6/24

RECOMMENDATION

Adopt a resolution authorizing the City Manager or her designee to negotiate and execute the Third Amendment to an agreement with Team San Jose to operate the convention center and four cultural facilities and the Second Amendment to an agreement with Team San Jose to operate as the convention and visitor bureau, for the final five-year option term for the period of July 1, 2024 to June 30, 2029.

SUMMARY AND OUTCOME

Approval of this recommendation will enhance the partnership between the City of San José (City) and Team San Jose (TSJ), ensuring the efficient operation of the convention center and cultural facilities while optimizing TSJ's contribution to San José's economy and making San José a known, desirable destination for local, regional, national, and international visitors.

BACKGROUND

TSJ is a nonprofit organization unifying the San José Convention and Visitors Bureau (CVB), hotels, arts, labor, and venues to deliver a high-quality visitor experience. In 2014, the City and TSJ entered into two new agreements. The first was to manage the San Jose McEnery Convention Center, South Hall, and four City-owned theater venues, including the California Theatre, Center for the Performing Arts, Montgomery Theater, and the San Jose Civic Auditorium. The second agreement was to operate as the CVB. Per the San José Municipal Code, the City provides 4.5% of the collected 10% Transient Occupancy Tax to TSJ to operate the City-owned convention and cultural venues and manage the CVB. The Transient Occupancy Tax is collected from visitors to San José hotels.

The City and TSJ contracts require TSJ to submit its annual targets for the following performance measures to be weighted as follows: Economic Impact Measures 40%, Gross

Operating Results 40%, Theatre Performance 10%, and Customer Service Survey Results 10%. The level of the Incentive Fee, set at \$300,000 for its third and final five-year term beginning on July 1, 2024, is based on TSJ's achievement of these measures. The performance targets for TSJ are brought forward each year as a Manager's Budget Addendum for approval as part of the Mayor's June Budget Message. At the end of each calendar year, the City Auditor completes an audit of TSJ's performance for City Council's review and approval.

Both contracts entered in 2014 between the City and TSJ were for a term of five years, with two five-year options to extend. The second of the five-year terms will end on June 30, 2024. In advance of the next and final five-year term, the City and TSJ seek to amend each contract that will end on June 30, 2029. This memorandum identifies and outlines the tenets of the recommended amendments to the two contracts.

ANALYSIS

Since the contracts were first developed in 2014, operational and environmental conditions have evolved. The City seeks to update the two contracts with TSJ to reflect current conditions and goals. Staff from the City and TSJ have identified recommended contractual amendments, as outlined below.

Recommended Amendments to the Two Agreements Between the City and TSJ

Convention Center and Cultural Facilities Management Contract

Convention Center Parking Garage Maintenance and Service

- TSJ provides cleaning and maintenance to the convention center garage, security services, and a TSJ parking liaison staff member who submits event information to the City's Department of Transportation for estimated attendance and rates.
- To provide a safe, clean, and efficient experience for parking garage users, TSJ and the Department of Transportation have agreed to the maintenance and security services that TSJ currently provides. TSJ revisited costs of current and increased services that have been requested of TSJ associated with maintenance, security of, and parking coordination for the parking garage that the City will reimburse additional costs from the General Purpose Parking Fund in the next five-year term.
- These additional expenses are estimated at approximately \$140,000 in Fiscal Year 2024-2025 with annual Consumer Price Index adjustments over the remaining five-year option period.

Renaming the Management Fee and Incentive Fee to Better Describe the Purpose and Use

- TSJ receives an annual Fixed Management Fee of \$1.0 million, which is required to be reinvested into the operations and management of City-owned convention and cultural facilities. Funds may be used for salaries, benefits, insurance, utilities, equipment,

building maintenance, and other purposes necessary for the management and operation of the facilities. Although designated for the same uses, the Fixed Management Fee is structured as a separate, baseline payment to TSJ, distinguished from the residual costs to manage and operate the facilities that have historically been subsidized by the Convention and Cultural Affairs Fund through Transient Occupancy Tax revenues.

- To clarify, this distinction as a baseline level of funding apart from the net subsidized costs for facilities management and operation, the Fixed Management Fee is recommended to be renamed to “Fixed Minimum Guarantee of Funding.”
- Additionally, when TSJ meets City Council-approved performance targets, it receives a performance-based Incentive Fee that may be flexibly used for internal expenses, such as legal costs, employee holiday events, and sponsorships. These funds are deposited into TSJ’s corporate account and uses are subject to the TSJ board’s approval.
- To better reflect that funds are awarded based on actual performance relative to the approved performance metrics, the Incentive Fee is recommended to be renamed to “Performance-Based Fee.”

Addition of Force Majeure Language

- The COVID-19 pandemic revealed the need for a *force majeure* clause to be implemented during extraordinary operating conditions when TSJ’s operations and subsequent performance measures would be suspended.
- In the case of a *force majeure* qualifying event, TSJ will not default on its contracts due to suspended operations until the qualifying event has been resolved.

Deadlines for TSJ Capital and Operating Budget Submissions to the City

- It is recommended that the annual deadlines for TSJ’s budget submissions be aligned to reflect the below current budget development timelines and operational realities:
 - Revising the submission date for new capital improvement project requests and TSJ’s initial capital improvement plan recommendations to January 15 of each year; and
 - Revising the submission date for TSJ’s proposed operating budget for convention and cultural facilities to March 15 of each year, to align with the annual release of the City’s Five-Year Forecast and Revenue Projections and most recent projections of Transient Occupancy Tax funding, affording adequate time for TSJ response.

Revisit Estimated Economic Impact Formulas

- Per the contract, TSJ has been using a formula from an outdated 2009 study to calculate the Estimated Economic Impact of performing arts events. The 2009 study identified the per attendee spending amount as \$18.01 per event day.
- Released in November 2023, the most recent Americans for the Arts’ Arts and Economic Prosperity in San José Study identified the average amount spent for all attendees at \$43.88 per event day. This study is updated every five years.

- It is recommended that the contract be amended to a daily rate of \$43.88 per event day to accurately represent the economic impact of the arts sector at TSJ-managed theaters attracting regional audiences.

Updating Language Related to Current Practices

- In some instances, the agreements reference out-of-date committees, names, working groups, and practices within the City Auditor's Office.
- The Administration, City Auditor's Office, and TSJ seek to update these sections to reflect current conditions and practices.

Further Detailed Reporting on TSJ-managed Theater Attendance

- As part of the recommended changes to the convention and cultural facilities management agreement, while maintaining a singular performance measure for the estimated economic impact, TSJ will also report further details on how that economic impact is distributed between convention center events and theater events.
- These details will be part of the semi-annual reports to the City's Community and Economic Development Committee.

CVB Contract

Marketing: TSJ to Lead a New Collaborative Marketing Effort to Bring Visitors to San José

- As a new service in the CVB contract, Visit San Jose will lead a new collaborative marketing group comprised of stakeholders, such as the San Jose Downtown Association, San Jose Sports Authority, the San José Mineta International Airport, the Hotel Business Improvement District, and others, as appropriate. This group will collectively develop a coordinated (or jointly informed) destination, regional, and local marketing effort that will be executed by the different stakeholders.
- Meetings will be convened at least quarterly. An outcome may include collaboration on collateral, imagery, and strategic marketing initiatives.
- TSJ will present this coordinated approach at its semi-annual updates to the City's Community and Economic Development Committee.
- TSJ campaign information will be shared with partners as developed to maximize opportunities to leverage marketing resources.
- TSJ will meet twice a year with local businesses to hear directly how businesses can prepare for and benefit from TSJ/CVB activities. For example, in anticipation of increased demand for hospitality services, when a large convention is scheduled, employers may choose to increase staffing.
- TSJ brings people from outside the area and fills hotel rooms as well as local and regional visitors to the theaters and facilities managed by TSJ. As such, factors that calculate some performance metric(s), such as the Estimated Economic Impact measure, adopted annually as part of the Operating Budget, will be further disaggregated to demonstrate local and regional activity to the four City-owned theaters managed by TSJ to highlight TSJ's efforts in the areas of international, national, regional, and local visitor attraction.

- TSJ will report on technology-informed data, such as cell phone and credit card usage, to track visitor trends and compare them over time. This information will assist TSJ in targeting customers and visitors. These details will be part of the semi-annual reports to the City's Community and Economic Development Committee.

Designate TSJ as the CVB through a Grant of Authority Clause

- While TSJ is the designated CVB for the City, the CVB contract does not explicitly state this. In this role, doing business as Visit San Jose, TSJ is responsible for promoting San José and attracting visitors, conventions, meetings, and events.
- TSJ provides information, assistance, and resources to visitors and event planners to enhance tourism and economic development in San José.
- This does not preclude the City from investing in additional efforts to bring people to San José to experience its offerings, such as events and venues.

EVALUATION AND FOLLOW-UP

In addition to the semi-annual presentation to the Community and Economic Development Committee, the City Auditor will annually audit TSJ's performance and report findings to the City Council.

COST SUMMARY/IMPLICATIONS

The recommended amendments are estimated to increase costs reimbursed to TSJ from the General Purpose Parking Fund by \$140,000 in Fiscal Year 2024-2025. These costs are currently incurred by TSJ as a component of convention center operations, subsidized by the Convention and Cultural Affairs Fund. Barring a change in the scope and cost of these activities, the increased reimbursement from the General Purpose Parking Fund results in a corresponding decrease in the level of subsidy required from the Convention and Cultural Affairs Fund.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, and the Department of Transportation.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 18, 2024 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
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and Cultural Affairs

For more information, please contact Kerry Adams Hapner, Assistant Director of Economic Development and Cultural Affairs, at kerry.adams-hapner@sanjoseca.gov.