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Attachments: 1. Performance Audit by TAP International on September 18, 2018, 2. Santa Clara Chamber of Commerce Response to Audit Findings and Concerns with City Actions, 3. Audit Implementation Plan Matrix, 4. Chamber Conflict of Interest Policy, 5. IRS Referral, 6. City letter to FPPC, 7. FPPC response letter to City, 8. POST MEETING MATERIAL

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REPORT TO COUNCIL

SUBJECT

Action on the City’s Response to the Performance Audit “Santa Clara Convention Center and Convention-Visitors Bureau: Restructuring Operations Can Strengthen Accountability, Performance and Revenue” and Analysis of the Chamber’s Response

BACKGROUND

On May 22, 2018, by Council direction, the City hired TAP International to complete a performance audit of the Santa Clara Convention Center (SCCC) and Convention-Visitors Bureau (CVB). On September 18, 2018, TAP International presented its audit scope, audit findings, and recommendations (Attachment 1) in its report, “Santa Clara Convention Center and Convention-Visitors Bureau: Restructuring Operations Can Strengthen Accountability, Performance and Revenue” (Audit).

The Audit found that the fiscal health of the SCCC and CVB is good when evaluated separately, but that the City could strengthen the financial performance of both entities when evaluated together. The CVB and SCCC also received high customer satisfaction scores by users. The Audit also revealed serious failures to manage public assets with appropriate stewardship, accountability and transparency by the Contractor (Santa Clara Chamber of Commerce, referred to as the Contractor in the Audit and “Chamber” in this staff report).

Additional key findings include: problematic accounting practices of public funds by the Chamber; Chamber’s apparent misuse of government assets; improper payment of commissions and bonuses without proper disclosure or transparency, which need further review; potential improper actions

relative to the Santa Clara Chamber of Commerce’s Political Action Committee (SCCCPAC); unmanaged conflicts of interests by Chamber staff and Board; and, City’s improper oversight of contracts for the SCCC and CVB.

On September 18, 2018, the Council directed the City Manager to issue a 180-day notice to terminate the Convention Center Management Agreement, while simultaneously engaging in a competitive procurement process for the management and operation of the Convention Center and take necessary actions to stabilize its operations and to minimize further impact to public resources and assets. On October 9, the Council approved a procurement strategy for a contract award to manage the Convention Center and related sales and marketing services as well as procurement process integrity and conflict of interest guidelines. These guidelines provide a fair opportunity to participants through a competitive process for the award of the future management contract. At the same meeting, the Chamber announced that it had posted to its website a document entitled “Santa Clara Chamber of Commerce Response to Audit Findings and Concerns with City Actions” (Chamber Response) (Attachment 2). Response from both TAP International (#18-699) and City staff (Discussion section below) are provided on the November 27, 2018 Council agenda.

DISCUSSION

This section of the report provides response to the City Council on the City actions taken to address this Audit, as well as response to the Chamber’s response to the Audit. Key to the Audit report is continued demonstration by the Chamber of its absence of basic working knowledge of management of public contracts, governance and authority, conflicts of interest, and the management of public assets and resources (that differ significantly from private sector practices). Equally absent was the City’s dedicated oversight and management of these contracts to ensure the public’s interest with dutifully managing this public assets and properly monitoring these contracts.

CITY ACTIONS TO SCCC/CVB AUDIT

(1) City Implementation of Audit Recommendations

Audit Recommendations & Tracking --Staff reviewed the 26 audit recommendations and developed an audit implementation plan matrix (Attachment 3). This plan lists the audit recommendations and the standard designation for the status of the recommendations such as Complete, Partially Complete and Not Implemented. The audit matrix is a conventional tool to track progress. Table 1 summarizes the current status of the recommendations grouped by RFP Related, Future Management Contract, and City Action Related.

Table 1: Summary of Audit Recommendations Status - November 2018

	RFP Related	Future Management Contract	City Action Related	Total
Complete	0	0	3	3
Partially Complete	11	0	0	11
Not Implemented	0	10	2	12
Total	11	10	5	26

Table 1 shows that 21 of 26 audit recommendations relate to the Request for Proposals (11

recommendations) or new operator contract (10 recommendations). These recommendations are intended to address the structural insufficiency of the current contracts. The audit recommendations categorized as "City Action Related" pertain to City actions required to address internal controls (Recommendation 2.G and 2.T), staff assignment for effective contract oversight (Recommendation 2.K), referral of audit findings to other public agencies (e.g., IRS and FPPC) (Recommendation 3), and CVB contract close-out activities (Recommendation 4).

City Staffing and Oversight -- Council has approved resources for staff to implement the SCCC audit and manage the new contracts (e.g., 1.0 FTE Assistant to the City Manager and 0.5 FTE Office Specialist III position). Recruitment is underway and the funding source is the SCCC and, possibly, the TID (see TID Audit regarding City responsibilities).

Referral of Audit Findings to State and Federal Agencies -- The Audit found that there were several instances in which referrals to other agencies should be made for possible investigations, specifically state and federal agencies. Based on the Audit recommendation, the City Attorney and City Manager referred the matters to the Internal Revenue Service (IRS) and California Fair Political Practices Commission (FPPC) (Attachments 4 and 5). On October 9, 2018, the FPPC provided a response and the matter is now with the District Attorney for review (Attachment 6).

CVB Contract Close-out Activities - At Council's direction, the City Manager executed an amendment to the TAP International's contract to provide: (1) Financial analysis and review of revenue and cost allocation by the Chamber of Commerce for the Convention-Visitors Bureau (CVB); (2) Reconciliation of the American Express credit card statements to review allocation of CVB-generated expenses; and, (3) Other contract close-out activities to ensure that all invoices submitted to the City contained proper support and that expenses were allowable and reasonable under the CVB contract. (City staff has reviewed allocation of expenses from Chamber credit card statements to either CVB or Convention Center accounts since May 2018.)

CITY COMMENTS ON CHAMBER'S SCCC/CVB AUDIT RESPONSE

(1) Public Sector Governance

Staff's analysis of the Chamber Response revealed a significant lack of understanding of several basic governance and contract principles, particularly with a public agency, which together form the root cause of the numerous inaccuracies and misstatements in the Chamber Response. These basic principles include: public sector governance and authority; distinction between public sector vs. private sector conventional business practices; budget, contracting, oversight, and contract authority; and, auditing standards and purpose.

City of Santa Clara Charter and Municipal Code provide that the City Council shall formulate policy and establish rules and regulations for the governing of the City through ordinances, resolutions and oral motions or orders duly passed and entered in the official minutes of its meetings. The City Manager, as the chief executive officer, is responsible to the Council for the proper administration of all affairs of the City and to that end, has the authority, among other items: 1) to prepare the budget annually for Council approval and manage its implementation upon adoption and 2) make investigations into the affairs of this City, or any department or division thereof, or any contract, or the proper performance of any obligation to the City.

All actions taken by the City staff regarding the Convention Center and CVB have been consistent with the City Council direction/strategic pillars, Charter authorities, existing Chamber contracts, and professional standards/ethics. The Chamber Response does not recognize that through its two public contracts for the SCCC and CVB, it is bound and responsible to the City's governing body, common public sector regulations and contract practices, and non-profit/tax exempt corporation fiduciary responsibilities. The fact that the Chamber's Response does not acknowledge these responsibilities, illustrates its inability to have correctly managed these contracted services where it sees itself as responsible to the public and City Council for the transparent and responsible use of these public resources. It is unfortunate for both the Chamber and City that the conditions went unrecognized for several decades, costing both the inappropriate expenditures of public funds, persistent mismanagement of a public asset, and an unstable relationship between both governing bodies, e.g., Chamber Board and City Council.

City Communications -- As one of its strategic pillars, Council adopted "Enhance Community Engagement and Transparency." Consistent with the Council's policy objective, open and frequent communication with the community has been an active effort of the Administration and has been embraced by the City Council and community. Open communication with the Santa Clara community regarding City issues and events has been promoted through the City Manager bi-weekly blog; robust launch of MySantaClara customer relations management system; regular press releases; more frequent social media posting of public services and activities; and, multiple open letters to the community on City matters. Chamber Response states its belief that the City misused its authority by inappropriately communicating on this matter as an attempt to harm the Chamber is simply not true.

It should not be a surprise, or unwelcomed, that the City would want to be transparent about matters surrounding SCCC and CVB given the magnitude of findings that both confirm the shortcomings of management by the Chamber and City. Further, as both the City Council's directions and actions of specific City Councilmembers were mischaracterized by the Chamber and local media, press releases and letters were mailed to increase the reach of the accurate communication to clarify the City's position. The City has always had, and will always maintain, the right to communicate broadly to the Santa Clara community and it is completely responsible and appropriate for the City to correctly communicate the City's position for the public purpose which the actions support. The investment of approximately \$7,000 per mailing to communicate to the Santa Clara community is appropriate to support the principle of an open and transparent government- these actions were neither political, harmful, nor fraudulent.

Public Sector vs. Private Sector Practices -- The Chamber Response reflects a lack of basic understanding about the differences between public sector and private sector business practices and governance, as well as a misunderstanding of its duty as a tax-exempt nonprofit. While the Chamber explains its actions of fee waivers, discounts and compensation bonuses as conventional practices in the industry, it fails to acknowledge that it is not a private sector provider/operator in this industry, rather a non-profit/tax exempt management company of a public facility using 100% of public funds through a public contract. As such, the Chamber is bound to conventional public sector practices required to manage public contracts, resources, and assets in a transparent manner where the Chamber is directly responsible to the City Council (which holds the ultimate fiduciary responsibility of these contracts, the public funds, and the public asset).

Moreover, it is not at all clear that a nonprofit corporation can legally provide undisclosed fee waivers, discounts, and compensation bonuses, as part of a private sector business practice, when these types of remuneration go to Boardmembers and their friends and family. No matter how these

practices are viewed, the Chamber had a fiduciary obligation to be transparent in its management and to ensure that no self-dealing took place; Chamber staff's booking the SCCC; and, to establish proper protocols for these disclosures to the City Council.

Given that the City's General Fund was the backstop for operational financial shortcomings, the Chamber should have been transparent about how its business practices impacted the larger public good and adhered strictly to its own discount/fee waiver policies-which the Audit found it did not. Had the Chamber properly managed these discounts and fee waivers, it would have (1) established a transparent process and established a segregated fund to issue and track discounts and subsidies so that public reports could be issued as part of required quarterly reports and (2) adhered to its own facility discount policy of 20 percent on rental charges. Figure 27 on page 39 of the Audit summarizes fee discounts in the amount of \$16.1 million granted during the audit period (FY 2011-2012 to FY 2017-2018 [April]), which constitute about 45% of the total gross facility charges in the amount of \$36 million. The Audit described that 53.6% of all bookings were discounted (Page 39 of Attachment 1). The Audit confirmed that the Chamber did not adhere to its own policy for issuing discounts and/or waivers. The Chamber Response attempts to express that the City doesn't understand the industry, but incorrectly uses a private sector methodology while completely out of compliance with its own policy, as its explanation to justify its lack of transparency in compliance with proper public sector contracts.

Public Sector Budget Appropriation -- As the governing body, decision of the Council are made at Council meetings by majority vote and only such action binds the City (unless expressly delegated to the City Manager by a formal action of the City Council or City Charter). It is a well-known fact that individual members of the City Council do not have authority to bind the City on funding, contracts, or other matters. In the private sector, there may be more authority granted to individuals to make these fiscal and policy commitments, but that is not the case in local government. To argue that Mayor Gillmor and Councilmember Davis "authorized" a nearly tripling of the Chamber's Management Fee, from a flat fee of \$50,000 in FY 2015/16 to 2% of gross revenue or \$136,699 in FY 2016/17, as described in Chamber internal emails, demonstrates a lack of understanding of the authority of individual Councilmembers and public sector governance. Councilmembers engaging in any discussion with the Chamber do not constitute a binding action of the City Council. The City Council is only authorized to take action when properly noticed topics, consistent with the Brown Act, are publicly presented at a City Council meeting and by an affirmative majority vote. This is the only way the City Council can act on behalf of the City. The Chamber Response shows a misunderstanding of public sector governance and how the City Council takes action.

Further, there was no authority for: the Chamber to insert an increase in its budget for a Management Fee based on conversation with two Councilmembers; authority for the City staff to process increased payments; or, to leave the matter undisclosed when the City Council was presented with a revised budget for SCCC operations. As such, the Chamber Response asserts that the City Council approved the increase is wrong, because it was not properly disclosed to and publicly approved by the City Council. Further, a budget appropriation does not legally bind the City. Budget appropriations reflect expenditure plans and limits, but do not authorize the City Manager to expend funds absent proper contracts or delegated authority. For example, if the City Council approves a project budget for a dog park, it does not authorize the City Manager to execute agreements to construct the dog park.

The City Manager must publicly and competitively procure contractual services and seek Council approval to (1) enter into a contract and (2) appropriate funds or disclose the availability of funds for

the specific contract purpose. It is a fact that neither actions took place with respect to the Management Fee increase (e.g., contract to issue payments); the Chamber cannot claim that an undisclosed budget increase appropriation and discussions with the Mayor and one Councilmember constitutes proper approval. In fact, the Mayor and Councilmember disagree with the Chamber's characterization of those meetings.

Public Sector Contracting & Existing Legal Obligations -- The Chamber Response also reveals a lack of understanding about contract scope and proper management of scope obligations. The Chamber held two public contracts, one to manage the SCCC and another in support of CVB activities. Each of these public contracts contains legal obligations for the Chamber to fulfill, yet the Chamber Response illustrates a lack of knowledge of their contractual requirements and legal relationship to these contracts.

For example, the City's contract with the Chamber provided funds for CVB services. The City did not hire CVB employees and they were/are employees of the Chamber-any statement by the Chamber, its Boardmembers, or local media that the City terminated CVB employees is simply not true. The Chamber took action to terminate their employees, before the date for which the City provided transition funding and before the Chamber could implement its own transition plan to comply with the SCCC contract obligations. This action reflects poorly on the Chamber because it could not meet its legal reporting requirements to the City Council, relative to the requirements for the SCCC contract, as demonstrated in its incomplete 4th quarter SCCC Performance Report and statement that it cannot sustain booking/marketing activity for the SCCC.

The CVB contract had been structured as a one-year contract requiring renewal annually. Council's consideration of the contract was discretionary, meaning Council could have chosen to approve or deny the funding request during any given year. In June 2018, the Council chose to allow the CVB contract to expire without a replacement contract for FY18/19. As with any other business that experiences a loss of revenue, it was up to the Chamber to establish a contingency plan for its needs, as well as determine how to best manage its own organization in response to the loss of funding. Nevertheless, understanding the potential human impact of the Council's decision, Council authorized payment of an amount equal to 60 days of salaries for CVB employees in order to provide some continuity and for the close-out transition for the Chamber and its employees with respect to CVB activities. The Council also authorized the City Manager to move funding for some employees to the SCCC contract for the purpose of maintaining compliance with the SCCC public contract. The Council's action did not change the status of the existing SCCC contractual legal requirements on the part of the Chamber. However, the Chamber's action revealed the following contract confusion:

- There were two companion contracts: 1) annual CVB contract and 2) Convention Center Management Agreement. The CVB contract included convention center sales and marketing as a core part of its scope of services. The scope of services under the SCCC Management Agreement provides that the Chamber would "market, advertise, and promote the convention center..." for the purpose of booking. The SCCC maintains some booking activity, as confirmed in the Audit.
- The expiration of the CVB contract did not modify the scope of services required under the SCCC Management Agreement. As explained at the July 16 and August 21 Council meetings, staff could not enter into an Agreement with a third party to provide these same services, because the Chamber (through the SCCC Management Agreement) was already contractually required to provide these same services. Despite the fact that the City Council and City

Manager authorized funding for some employees to be transferred over to the SCCC, it does not appear that any effort was made which impaired the Chamber's ability to uphold its legal obligations outlined in the SCCC Management Agreement. Had the Chamber better understood the Council's actions, it could have engaged in more meaningful conversations to transfer some of its CVB employees to the SCCC Management Agreement for proper and stable transition: instead the Chamber took broad action to destabilize the SCCC, terminate TID funded employees, and close out the CVB without proper actions.

- The Chamber Response correctly points out that the City (through Assistant City Manager Ruth Shikada) advised the Chamber that there was not an expectation that CVB services, under the CVB contract, continue to be provided beyond the expiration of the contract. However, the Chamber in error used this communication to relieve itself of SCCC contractual obligations requiring the Chamber to "market, advertise, and promote the convention center..." for the purpose of booking. The Chamber's lack of understanding of its existing SCCC contract obligation and, use of this direction to attempt to establish contradictory direction from the City, illustrates that the Chamber does not understand its contractual obligations under the SCCC Management Agreement and, through its own actions, created a much higher level of chaos within its organization and for its employees. In fact, on several occasions both public and private, the Chamber/Convention Center was advised by City staff that the Chamber could transfer some employees to the SCCC operations to sustain booking and other services (per SCCC Management Agreement), but the Chamber took no action to maintain these functions through its SCCC Management Agreement and at its own peril.
- The City made a payment to the Chamber consistent with Council direction (payment of 60 days of salaries) prior to the expiration of the CVB contract. The Chamber's broad sweeping actions to terminate TID employees jeopardized its TID "Fiscal Agent" obligations of the TID, unnecessarily. In fact, given that the TID employees were funded by non-CVB funds, for which the City Council has taken no action, the City advised the Chamber that it could move fundings for transfer of employees to the Convention Center Management Agreement for the purpose of continuity and sustainment of TID obligations. The Chamber, on its own, terminated its TID funded employees which further rendered itself unable to continue the services and obligations as Fiscal Agent of the TID. The Chamber's overly broad actions to terminate its employees (without regard to its legal obligations under the SCCC contract, CVB contract and Council transition action, and TID fiscal agent obligations), without regard to the Council's offer to fund some employees moving to the SCCC contract, has placed itself in a position where it is no longer able to fulfill its contractual obligations that still exist and, therefore, negatively impacting future bookings of events at the Convention Center and hotel room bookings within the TID and the City as described publicly by TID representatives. These actions demonstrate the Chamber's inability to distinguish its legal obligations for the various public agreements or obligations that it holds/held (e.g., CVB, TID fiscal agent, and SCCC operations).
- Since the Management Agreement requires marketing, advertising and promotion of SCCC, and the SCCC Management Agreement is still valid, there is a legal obligations that some form of these services are and will continue to be provided. CVB files were transferred by City staff to the SCCC staff after CVB offices closed. Since the Chamber remained the responsible entity for marketing, advertising and promotion of SCCC, it would have seemed prudent that after the Chamber made a decision to release CVB employees from employment, a transition of records and work effort between its own internal staff would have occurred in order to execute the organization's continuing responsibilities under the SCCC Management

Agreement. However, the City had to initiate this transfer of documents for the Chamber for the continuance of SCCC required services. This further illustrates the lack of knowledge on the part of the Chamber of its legal obligations within the existing management contract, but demonstrates how it removed itself of SCCC oversight when the CVB contract expired.

Chamber Contract Authority - The SCCC operates under an agreement between the City of Santa Clara and the Chamber. The 1984 Management Agreement only provides the Chamber with authority to operate the SCCC and to enter into agreements for operations. Particularly, the SCCC Management Agreement does not vest any property rights from the City of Santa Clara to the Chamber as part of operations, nor does it allow the Chamber to convey the City's property rights or part of the facility to a third party. Therefore the Chamber was not authorized to enter into leases for space at the Convention Center. Only the City Council, acting as the owner for City property, can authorize a transfer of the City's property rights. There was a complete absence of recognition by the Chamber when it allowed the Convention Center staff (who had no legal authority to bind the Chamber or City in such lease agreement) to a lease agreement with UPS. As the UPS Lease Agreement was not authorized by the City, there is not a legal relationship between the City, Chamber, and a third party for the UPS store in the SCCC-a public facility. Chamber Response does not reflect an understanding of two core contracting principles: 1) there was no contract authority for the Chamber, or SCCC operations, to enter into a Lease Agreement that binds the City of Santa Clara and 2) without a valid Lease Agreement that only the City Council can approve, there were never any legitimate rights to transfer from the previous UPS tenant to a new UPS tenant (the Chamber Boardmember). The absence of the Chamber's understanding of its contractual limits and obligations through the SCCC Management Agreement to operate the SCCC illustrates how several of these actions could have occurred.

Business and Industry Oversight -- Management of a publicly owned Convention Center and the public funds involved, requires an understanding of the public sector obligations and practices, as well as industry practices and business trends. The Chamber Response establishes that it does not understand the requirements to manage a public facility or funds and, instead, depends on "hand shake" deals as an explanation/justification for management shortcomings and oversight.

The Chamber was responsible for management oversight of the SCCC and CVB, which should have included business practices and models to maximize revenue and independence from the General Fund, versus dependence on the General Fund for operations and capital projects. The City requested, and the Chamber provided, one year of its Board meeting minutes to understand and substantiate the Board's extent of oversight at its regular meetings. A review of the minutes shows a shallow oversight role of the SCCC and CVB, both by way of oversight of operations and its review of business and industry practices and trends. The weaknesses in the model, identified by both Jones Lang LaSalle, a consultant company, and the Audit were never reflected in the Chamber meeting minutes and, in fact, its minutes show no focus/diligence on strategies to improve performance through critical analysis of their existing practices and industry trends. Had the Chamber conducted such evaluations, it would have discovered the Audit's finding of internal conflict between the CVB multi-day bookings and Convention Center one-day booking practices that disadvantaged the multi-day bookings over one-day bookings, as a loss of hotel bookings and potential greater revenue generation. The fact that the Chamber, as part of its management oversight of SCCC and CVB operations, did not recognize its own internal operational flaws and internal conflicts with bookings, illustrates its significant gaps in managing these services.

(2) Conflicts of Interests

The Chamber Response also demonstrated disturbing and unmanaged conflicts of interests; however, it positively acknowledges the Chamber's recent admission of efforts to implement conflict of interest training for its organization. The Chamber demonstrates a need for training, management of its "real" and/or "perceived" conflicts, and corrective action for inaccurately filing of its IRS Form 990: Exempt from Income Tax with respect to its maintenance of a conflict of interest policy.

Apart from the Audit, and as directed by the City Council, staff's analysis found that the Chamber filed IRS Form 990 inaccurately by declaring under penalty of perjury for multiple years that it did not maintain a conflict of interest policy, when it affirmatively confirmed with the City, and produced such policy, that it did maintain a Conflict of Interest Policy. The likeliness that the Chamber did not manage conflicts of interest is more credible, as reflected in the actions of the Board and the significant delay in producing conflicts of interest documents when requested by the City (most of which were executed by Board members during the period of time for which the request was outstanding).

For example, the Chamber, through its own Conflict of Interest policy, holds itself to a threshold standard of avoiding a "perception" of a conflict of interest, let alone a "real" conflict. The Chamber Response incorrectly defends its actions regarding the findings of conflicts in the Audit, in that the Chamber did not meet its own standards to avoid even the "perception" of a conflict, nor did it correctly disclose the perception/real conflict to the "appropriate level of authority" which is the City Council given that the conflicts arise from certain Boardmember's inappropriate use of public assets and/or resources. The City Council is the appropriate authority because the Board is the governing body of the Chamber activities and it responsible for the implementation of the SCCC and CVB publicly funded contracts. The Chamber's Conflict of Interest Policy clearly states:

A conflict of interest exists when officers, board members or staff has a direct or indirect business, professional or personal situation or relationship that may influence or be perceived to influence the judgment or action of the officer, Board Member or staff when servicing the Santa Clara Chamber of Commerce & Convention-Visitors Bureau...***All real or perceived conflict of interest will be disclosed to the appropriate level of authority necessary*** for consideration, resolution and direction. [emphasis added]

The Chamber Response explains that there were no conflicts of interest when Mr. Miles Barber, owner of the Santa Clara Weekly and Boardmember of the Chamber, had the CVB marketing staff advertise in his local publication. The Chamber Response uses various irrelevant reasons to explain away the real conflict and focuses on the CVB's intentions to advertise for the purpose of booking the SCCC, e.g., targeting local corporations, decline of media publications, seasoned marketing staff making decisions, under market pricing by Mr. Barber. The Chamber Response also states the absence of a conflict as it was approved by various chain of command levels within the Chamber (e.g., CEO/President, Board Chair, and CVB Supervisor).

The explanation illustrates the Chamber's complete lack of knowledge of how to manage and avoid conflicts of interest, which do not take into consideration the intention of individual's actions to offset a violation. According to the Chamber Response, neither Mr. Barber declined to profit from CVB funds when approached for advertisements, which he should have done to avoid a "real" and "perception" of an economic interest resulting from profits to his personal business while concurrently holding a Boardmember role. If Mr. Barber had upheld the Chamber's Conflict of Interest Policy, he should have declined the CVB's request to advertise in the Santa Clara Weekly to prevent even the

“perception” of a conflict of interest-- the threshold established in the Chamber’s own policy. He did not.

More disturbing is that the Chamber explains the propriety of its actions by stating that the transaction between the CVB and Mr. Barber were reviewed and approved at various levels within the Chamber, e.g., CEO/President, Board Chair, and CVB Supervisor. This chain of command review and approval by the Chamber does not remedy or establish that there was no conflict; to make this matter worse, it does show that the “real” and “perception” of a conflict was not detected at multiple levels within the Chamber organization to prevent it from occurring, which instead of it serving as a correction to the conflict of interest, demonstrates a complete failure at all levels within the Chamber to uphold the Chamber’s Conflict of Interest Policy and prevent violations of it. This is disturbing because the Boardmember did not decline the advertising and profits and the Chamber staff did not detect the conflict.

In addition to its internal failures to prevent this conflict of interest, when the City did inquire about these events, the Chamber failed to provide a consistent response to the economic advantage afforded Mr. Barber through these violations. The Chamber has provided three responses to the actual value of publicly funded economic benefit that Mr. Barber received from these violations, for example:

- in June 26, 2018, Mr. Kasper stated at the City Council meeting that Mr. Barber charged “fair market price” for the advertisement suggesting that there was no conflict because the CVB received no discounted pricing,
- at that same meeting, the City Manager referenced Mr. Kasper’s correspondence which stated that Mr. Barber had provided the advertisement at a 30% discount from normal pricing after which Mr. Kasper acknowledged the correction that the price offered for CVB advertising was not “fair market price”, and
- the October 2018 Chamber response provides a third explanation that “the Santa Clara Weekly offered 6 full-page color advertisements to the CVB for an under market price of \$5,000 (each).” Appendix L to the Chamber Response provides an email from the Santa Clara Weekly sales manager which states that the quoted rates are at a “big discount”. The pricing for six ads quoted at \$4,284 each amounts to a total package cost of \$25,704 from the CVB to the Santa Clara Weekly.

Putting aside the multiple versions from the Chamber, disclosure to the City should have occurred consistent with the Chamber’s Conflict of Interest requirements, which states, “All real or perceived conflicts of interest will be disclosed to the **appropriate level of authority** necessary for consideration, resolution and direction.” The Chamber’s failure to understand how it created a completely avoidable conflict of interest and, once created, its failure to report it consistent with its own policy supports staff’s concern about the Chamber’s ability to manage conflicts. Further, it was only at the City’s inquiry about the Chamber’s conflict of interest policy and its practices of compliance, did the Chamber produce documents dated largely between February - May 2018, which did not satisfy proof that the Chamber actively managed conflicts or its Conflict of Interest Policy.

Similarly, the Chamber also failed to uphold its Conflict of Interest Policy when it allowed for a Boardmember to operate a UPS Store in the Convention Center, without any effort to manage the “perception” of a conflict of interest or disclose it to the City-the owner of the facility. The Chamber

focuses its response on an existing lease agreement between the Convention Center and the UPS Store and an invalid agreement provision that speaks to the transferability of the franchisee to another operator (e.g., a Chamber Boardmember), without any regard to the Chamber's lack of authority to lease out space (see earlier discussion under Public Sector Governance). This example, unfortunately, is much broader than the conflict of interest, because the:

1. SCCC Management Agreement does not authorize the Chamber to lease public facility space, which the Chamber erroneously allowed without any approval or disclosure to the City-the owner,
2. Chamber allowed a Boardmember to move in to the space and operate a private business without any disclosure to the City, the owner, per its Conflict of Interest Policy which states, "All real or perceived conflicts of interest will be disclosed to the **appropriate level of authority** necessary for consideration, resolution and direction." Had the Chamber disclosed this Lease Agreement, the Council could have approved it or advised the Chamber that it would not approve a lease agreement, thus avoiding the Conflict of Interest leading to a Boardmember occupying the space, and
3. To complicate the matter, the Chamber allowed a Boardmember to move into the space without proper completion of required legal paperwork, which had the Chamber done so, the inappropriateness of the action to lease out public space would have been detected (and corrected) and saving the Boardmember of the expectation to provide business at the SCCC under the UPS lease agreement and avoiding personal expenditure of his own funds. When the City inquired about the status of this matter, the SCCC General Manager stated that no transfer agreement had been executed to allow the Board member to operate, despite the fact that he has been operating at the UPS Store at the SCCC. Given the absence of City Council action to enter into a lease agreement with UPS Store to operate in the SCCC, City provided notice that any lease agreements, or transfers, should remain unexecuted until further notice.

Had the Chamber performed its obligations under the SCCC Management Agreement appropriately, it would have sought City approval to lease out public space, managed a competitive process with transparent and equal access to all vendors seeking to operate a private business in a public facility, and worked with the City to enter into a legally binding agreement for space in a publicly owned facility. The Chamber allowed for a "real" and "perception" of a conflict of interest to develop by authorizing the Boardmember to move into a public facility to operate his private business. The above illustrates the Chamber's lack of knowledge of operating a publicly owned facility, adhering to its own Conflict of Interest Policy, and its contractual obligations to the City as it managed a publicly owned facility using public funds. The Chamber Response does not address these issues in its response which cause concern.

(3) Tourism Improvement District Audit

As the fiscal agent, the Chamber Response also shows a lack of understanding of basic governance of the Tourism Improvement District (TID), a levied assessment approved by the City Council in accordance with state law. While the TID Advisory Board has bylaws, the TID is not a legal entity authorized to conduct business in the State of California: in fact, the TID is solely an advisory body that provides input on how to implement the funds collected through approved levied assessment action and recommend a budget outlining an expenditure plan to achieve the mission for which the funds are collected. The TID has no contracting authority and its recommended expenditures must adhere to the City Council approved budget, according to state law, and administered appropriately

by its Fiscal Agent (Chamber). As discussed at the August 28 Council meeting, although the TID was established in 2005, the TID has not enacted assessments in a manner consistent with State Law since 2006. The funds collected by the TID are public administered funds, not Chamber or hotel funds, and can only be used for limited purposes designated by state law and articulated in a Council approved Ordinance. The Council authorized and directed a performance audit of the TID on August 28, 2018.

The presentation of the audit and its findings is a separate item on the November 27, 2018 Council meeting agenda; however, related to the Convention Center audit by both its commingling of funds with CVB activity and as a reinforcement of the pattern of fiscal mismanagement by the Chamber.

The TID Audit makes similar findings of the Chamber management practices with respect to mismanagement of public funds, poor accounting practices, and lack of adherence to policy for which to apply fee discounts or waivers, and substantial expenditures that have no supporting documentation. Of concern is that the Chamber currently holds a \$600,000 TID Reserve for the City which it has not released, despite the fact that the TID Advisory Board took action to release it as Fiscal Agent. The audits of the Chamber's management of the Convention Center, CVB, and TID all reinforce the finding that the Chamber did not manage public facilities or funds properly and did not understand its legal obligations of how to manage public funds.

Additionally, the Chamber's assertion that the City directed the TID Advisory Board to stop conducting business with the Chamber is a complete misunderstanding of the TID Advisory Board's authority. The TID Advisory Board exists only by the City Council action to approve its creation and authority to levy revenue for a specific purpose. The levied funds are submitted to the City, who in turn distributes the funds to the TID Advisory Board's Fiscal Agent for implementing the Council approved budget and expenditure plan. The Chamber's role as Fiscal Agent was responsible for the proper expenditure of funds, per the budget and expenditure plans, and both the City and Fiscal Agent were responsible for complying with state laws. The TID is a business activity of the City, permissible under state law and for specific purpose, for which the City serves as the governing body annually authorizing the levied assessments, budget approval, expenditure authorization, and authority to continue with its activity. The City acted appropriately when advising the TID Advisory Body of the City's concern regarding the Chamber's fiscal mismanagement of public funds, as proven true in the TID Audit which demonstrated additional fiscal mismanagement by the Chamber as Fiscal Agent. The City has full authority to inquire of the TID Advisory Body about its Fiscal Agent and how it is managing levied public funds under the City Council's authority.

Last, while working on this Audit and the TID Audit, City staff received a copy of the Chamber's TID Management Letter which reinforced the importance of proper fiscal management and accounting. Specifically, the October 25, 2017 Management Letter (Chamber Commissioned Independent Financial Audit by Johanson & Yau, Accountancy Corporation) states:

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and, therefore, material weaknesses or significant deficiencies may exist that were not identified. However, as discussed below, ***we identified certain deficiencies in internal control that we consider to be material weaknesses and other deficiencies that we consider to be significant deficiencies.***

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency or a combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the Organization's financial statements will not be prevented, or detected and corrected, on a timely basis.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. ***We consider the deficiencies in Santa Clara Tourism Improvement District's internal control presented on page 2 of this letter to be significant deficiencies. [Emphasis Added]***

While the Chamber has denied adamantly its poor fiscal controls and management of public contracts or funds, the Chamber's own internal documentation by their commissioned professional accountants to produce independent financial audits of its financial statements serve as evidence that they were made aware of their "significant deficiencies" with managing public funds (e.g., TID funds). Instead, the Chamber has taken a different route by attempting to discredit TAP International, City staff, and/or assign the City's intent as political motivation. The Chamber should have been more transparent with the City Council, City staff, and public of its own evidence documenting its "significant deficiencies" with respect to financial mismanagement and accounting.

(4) Obligations to Report: Preliminary Observations & Staff Findings

Performance auditing is an important part of the accountability process because it provides an independent view on the extent to which government officials are faithfully, efficiently, and effectively carrying out their responsibilities. As a public agency, the City is expected to uphold itself to high standard regarding disclosure of information to ensure transparency and accountability and earn the public's trust. Auditors of governmental entities hold themselves to similar standards.

The Chamber Response takes issue with both the Auditor and City staff for its public disclosures of preliminary audit observations and staff's research findings. In fact, the Chamber has publicly criticized the City for disclosing preliminary audit observations and staff findings in advance of the final audit report, characterizing such actions as politically motivated or unprofessional. The Chamber's position further demonstrate that it completely misunderstands the role of audit, governance, Council direction to staff and follow-up reporting, and how critical these matters are with respect to the use of a public facility and resources. Suggesting that the Auditor or City staff are politically motivated, while convenient for the Chamber to use as an explanation during an election and during their own political activities, is an illustration of how unprepared the Chamber is to manage a public facility. An Auditor and City staff always maintains the right to report directly to the City Council on its activities with respect to implementing City Council action.

In July 2018, City staff explained in writing of the requirements to release preliminary observations by the Auditor, as well as staff findings, the Chamber finds other attributions to explain simple City Council direction and professional standards. In fact, the July 2018 memo specifically quotes the Auditor's purpose for releasing the preliminary observations, "***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.

Specifically, auditing standards used by TAP and other government auditors are documented in the *United States Government Accountability Office Government Auditing Standards*, also known as the “Yellow Book”. The Yellow Book is used by auditors of government entities, entities that receive government awards, and other audit organizations performing Yellow Book audits. The Yellow Book outlines the requirements for audit reports, professional qualifications for auditors, and audit organization quality control. Auditors of federal, state, and local government programs use these standards to perform their audits and produce their reports. Yellow Book Section 6.78 provides that:

Auditors report deficiencies in internal control, fraud, noncompliance with provisions of laws, regulations, contracts, or grant agreements, or abuse. **For some matters, early communication to those charged with governance or management may be important because of their relative significance and the urgency for corrective follow-up action.** Further, when a control deficiency results in noncompliance with provisions of laws, regulations, contracts or grant agreements, or abuse, early communication is important to allow management to take prompt corrective action to prevent further noncompliance.

Yellow Book Section 6.49 also provides that “Determining the form, content, and frequency of the communication is a matter of professional judgment, although written communication is preferred.” As stated in the July 17, 2018 Informational Memo to Council, TAP International was required to inform the City Council, via the City Manager, of its preliminary audit findings per professional standards. TAP’s report on preliminary observations included:

- Chamber members were provided discounts for use of the Convention Center without an established City policy or City approval
- Free use of the Convention Center by Chamber and others without an established City policy or City approval

In fact, prior to the public disclosure of the above preliminary audit findings, the Council was presented in Closed Session with additional Auditor preliminary observations, but the Auditor worked with City staff to establish how to provide disclosure in public session. Disclosure of these preliminary observations led to the change in the SCCC’s practices regarding free or discounted use for public presentation at the City Council meeting. Additionally, disclosure of staff’s findings resulted in changed practices of the Convention Center’s access to the City’s general checking account and established greater due diligence for disbursement of public funds.

The Chamber Response objects to the information provided in the Audit and its findings. The Auditor made multiple requests for information, both at a staff level and by City Council, and provided the Chamber with a draft copy of the audit for review and correction of facts. According to TAP International, the Chamber requested many changes and had full access to the information in the Audit. As articulated in the Yellow Book, the charge of an Auditor is to conduct high-quality engagements with competence, integrity, objectivity, and independence. Changes in the audit were made when appropriate documentation supporting the change was submitted by the requestor (e.g., Chamber). To preserve the independence and integrity of the Auditor and Audit itself, requested changes modifying interpretation and or presentation of information without supporting documentation were not made. The Chamber was never denied time to review the Audit in draft or final form, and the Chamber attempted to characterize the postponement of the report to the City Council as a political effort in complete disregard to the Auditor’s unavailability resulting from a

personal matter.

The Chamber Response also takes issue with the Administration's disclosure and reporting of the preliminary observations and execution of actions recommended in the audit report. Again, the Chamber lacks an understanding of public sector governance and practices. With the Council's policy decision to commission an audit, the Council became the client of the auditor and the City Manager had to report preliminary audit observations to the City Council, as well as report Council directed research and related findings on the part of staff. The City's actions appropriately support the principles of transparency and openness, as well as the authority of the City Council to initiate an Audit and to receive updates of the audit per professional standards.

The Chamber was well aware of the City's request for IRS Form 990s and Conflict of Interest forms and that the City staff evaluation was underway, by several requests for this information over weeks or months which were discussed publicly and even requested by Councilmember Davis at a City Council meeting. There is not another forum, other than a City Council meeting, to report the staff findings based on our review or the Auditor's preliminary observations. The Chamber's attempts to characterize staff's actions as unprofessional or politically motivated on the part of TAP International or City staff are simply a meritless attempt to deflect attention from its own misdeeds. These audits at City Council direction were an exercise in fiscal responsibility over public funds and assets; TAP International was adhering to its professional ethics/practices in providing its preliminary research and observations. Ultimately, the public is entitled to know what is going on with its money and property. City staff should not be faulted for being too transparent or too early in reporting on serious risks to the City.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

There is no additional cost to the City associated with this report other than staff time and expense.

COORDINATION

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

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Action on 1) the City's Response to and 2) Analysis of the Chamber's Response related to the Performance Audit "Santa Clara Convention Center and Convention-Visitors Bureau: Restructuring Operations Can Strengthen Accountability, Performance and Revenue"

Reviewed by: Ruth Shikada, Assistant City Manager
Approved by: Deanna R. Santana, City Manager

ATTACHMENTS

1. Performance Audit by TAP International on September 18, 2018
2. Santa Clara Chamber of Commerce Response to Audit Findings and Concerns with City Actions
3. Audit Implementation Plan Matrix
4. Chamber Conflict of Interest Policy
5. IRS Referral
6. City letter to FPPC
7. FPPC response letter to City



TAPInternational

SANTA CLARA CONVENTION CENTER AND
CONVENTION-VISITORS BUREAU:
RESTRUCTURING OPERATIONS CAN
STRENGTHEN ACCOUNTABILITY,
PERFORMANCE AND REVENUE

FINAL REPORT

September 18, 2018

ACKNOWLEDGEMENTS

TAP International, Inc. appreciates the assistance and cooperation received by City staff and all of the Contractor's CVB and SCCC employees who contributed to this review.

CONTACT

Denise Callahan, President & Principal Consultant

TAP International, Inc.

3436 American River Avenue, Suite 9

Sacramento, CA 95864

Denise@tapinternational.org

www.tapinternational.org

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Report Brief

Why the Assessment was Conducted

The City of Santa Clara (City) has contracted with a local non-profit business organization (Contractor) since 1975 to operate and manage the Convention and Visitors Bureau (CVB) and since 1984 to manage the Santa Clara Convention Center (SCCC) that opened in 1986. The City raised concerns about the Contractor's operations, practices, and financial performance of the CVB and the SCCC. Other concerns include delays in information submitted to the City by the Contractor, hindering the City's ability to perform its own full assessment of the Contractor's operations of the CVB and the SCCC.

In May 2018, the City contracted with TAP International, Inc. to conduct an assessment of the Contractor-operated SCCC and the CVB. This review did not encompass all operations or all financial management activities of these entities. This report describes the fiscal health of each entity, the nature of revenues collected, and their spending. This report also assesses the adequacy of structures, systems, operations, and the processes in place by the Contractor and finally, evaluates the potential changes needed to enhance the SCCC's sustainability and overall performance.

Summary of Key Results

The SCCC has satisfactory fiscal health because it can support operations using its own operating revenues. Across a ten-year period ending in FY 2016-17, revenues cumulatively totaled about \$60.4M¹ and expenses cumulatively totaled about \$55.8M, resulting in net income levels of \$4.7M. Had the SCCC assume responsibility for the CVB's operation, the SCCC could not have supported itself, resulting in a \$9.4M net income loss by the end of the ten-year time period. By factoring into the analysis other sources of revenue that other cities allocated to convention centers and visitors bureaus, such as Transient Occupancy Taxes (TOT), Tourism Improvement District (TID) fees, and Sales Tax, then the SCCC may have had mixed financial performance, ending the nine-year period² with about \$310,000 net income.³ The fiscal health of the SCCC could have been stronger if it had reduced the frequency and the amount of the discounts offered to event sponsors. Facility discounts totaled \$14.7M between FYs 2011-12 to 2016-17. Issuing discounts is allowable under some circumstances in accordance with SCCC's booking policies.

The CVB's year-end fiscal performance was satisfactory. While losses occurred in six of the past ten years, none of the losses exceeded ten percent of its budget. In the past ten years, total revenues cumulatively totaled \$15.8M and expenses cumulatively totaled \$15.5M, resulting in

¹ Excludes Restricted Revenue

² Nine-year period was used as Capital expenditure information from FY 2007-08 was unavailable.

³ TOT tax, TID fees, and Sales Tax projections based on CVB revenue estimates. It would be assumed that sales tax generated from Convention Center partners would be included in Sales Tax estimates.

excess revenue of about \$278,000. The CVB reported revenue surpluses in four of ten years – FYs 2011-12, 2012-13, 2015-16, and 2016-17.

While the types of revenues and expenses incurred by the SCCC and the CVB are aligned with their mission and purpose, each entity paid added compensation to its sales staff that needs further review. The SCCC paid commissions and the CVB paid bonuses, referred to as incentive pay. The sales industry uses this form of compensation. However, the City Council should have provided approval of the commissions because the added pay was not addressed in the City's agreement with the Contractor nor clearly identified in the SCCC's operating budget. Further review is needed for the incentive payments to the CVB staff because the payments were funded by the Santa Clara Tourism Improvement District without a formal contract or agreement.

The Contractor could have had better structures, systems, controls, and processes to support the SCCC and the CVB operations. The Contractor's governance structures and business activities have created the appearance of, and actual, conflicts of interests, mis-use of government assets, and mis-use of government-sponsored resources while other concerns present may need further review by other agencies. In addition, the Contractor's financial management of the CVB's operations has weaknesses in its internal controls, especially in the area of bill payment, while its information management activities have structural gaps that if addressed, could enhance managerial decision-making. The Contractor and the City each share responsibility for the issues described in this report. The City, which is responsible for ensuring that outsourced operations provide services in a transparent and accountable manner, did not have strong agreements in place nor implemented effective contract oversight until recently with the hiring of a new City Manager. The Contractor's implementation of operations led to accountability and compliance concerns.

A key change needed to increase the SCCC's operational sustainability and performance is to update the overall marketing strategy. Several operational challenges hinder the ability of the CVB to enhance their own overall performance and to increase the financial performance of the SCCC. These challenges include: (1) scheduling more events that last less than a day versus scheduling events longer in duration that would also need hotel room nights; (2) the rising number of potential clients (also known as leads) required to schedule an event, as the total number of leads received has declined; (3) inefficient utilization of staff time to work leads because an inordinate amount of time is spent entering information into various databases; (4) not dedicating multiple sales staff in successful target areas, such as the corporate sector; and (5) a limited advertising budget. Both the SCCC and the CVB operate as separate entities and could benefit from an integrated and comprehensive marketing plan.

In June 2018, the Santa Clara City Council directed City management to retain assistance in the development of options for the provision of convention and visitor services. The development of these options should include analysis of varying business structures to operate the SCCC that would result in the strongest level of accountability over operations. Business structures used in other California convention centers and CVB's differed. These business structures included a city-

established nonprofit organization, city-established districts, authorities, and out-sourcing operations to a third-party.

Conclusions

The City's Contractor was instrumental over 40 years ago in working with the City to establish the CVB and to serve as the first operator of the SCCC. The Contractor had key successes, especially with the overall satisfaction of the CVB and the SCCC employees and the financial performance of the SCCC. The Contractor, however, also had key accountability problems and could have had implemented a better strategy to maximize the SCCC's financial potential. Should the City implement changes to the SCCC's and the CVB's operations, including how the City conducts contract oversight over these operations, the potential changes should include sound governance coupled with effective and strong leadership that would ensure administration of a transparent and accountable business environment.

Recommendations

1. The City Manager, in response to prior City Council direction to develop options for the SCCC and the CVB operations, should include a feasibility study to assess the advantages and disadvantages of various business structures to run each or both operations. The feasibility study should include analysis of financial projections in the short and long term for each option.
2. Regardless of any change in the business structure, the City Manager should consider implementing the following activities to ensure better accountability of operations and to build on the financial performance of the SCCC:
 - a. Develop a comprehensive and integrated business and marketing strategy.
 - b. Develop better event scheduling policies that address renting SCCC facilities to nonprofit organizations, the use of discounts, and document specific criteria for prioritizing event scheduling.
 - c. Transition into booking more same day events to area hotels to allow greater availability of calendar time for multi-day events at the SCCC.
 - d. Reduce the SCCC's scheduling of events to six months in advance.
 - e. Strategically align more sales staff to industries that frequently rent the SCCC.
 - f. Integrate all marketing and sales activities between the SCCC and the CVB.
 - g. Consolidate accounting systems used between the SCCC and the CVB.
 - h. Consider elimination of Sales Commissions.
 - i. Modernize the SCCC.
 - j. Prohibit comingling of City funds with other nongovernmental revenue sources.
 - k. Establish a clear leadership structure and team to administer effective City oversight of operations.
 - l. Establish requirements to avoid, disclose, and mitigate conflict of interests.

- m. Establish financial disclosure requirements for the SCCC and the CVB contractors who make decisions on the behalf of the City.
 - n. Establish requirements that describe and define appropriate and reasonable expenditures.
 - o. Establish requirements and controls for purchasing, including the use of the credit cards and purchase cards.
 - p. Establish contracting and contract management requirements for the SCCC and the CVB.
 - q. Establish stronger requirements for financial reporting on operations.
 - r. Establish the requirement to develop, track, and report on progress in meeting key performance benchmarks for the SCCC and the CVB operations.
 - s. Establish employee compensation policies.
 - t. Establish controls that ensure accuracy and completeness of the SCCC and the CVB performance reporting.
 - u. Establish requirements for the storage and archiving of financial and operational data.
 - v. Conduct ethics and conflicts of interest training to the SCCC and the CVB employees.
 - w. Conduct training on the principles of good governance to the SCCC and the CVB employees.
3. The City Manager should review the accountability issues and concerns described in this report and refer them, if needed, for further review by the City or by other agencies.
4. The City should conduct contract oversight activities by reconciling (a) the Contractor's allocation of CVB's revenues and expenses and (b) the Contractor's credit card statements.

Background

City Agreements Guide Operations at the Convention Visitor's Bureau and the Santa Clara Convention Center

The City did not have a CVB organization until a local nonprofit organization approached the City with the concept as a way to help area businesses. Since 1975, the City authorized the local nonprofit organization (referred to herein as the Contractor) to operate the Convention and Visitors Bureau (CVB). The CVB is a destination marketing, sales and service organization whose purpose is to promote the City of Santa Clara as a destination point and to promote the City's hotels and convention center. The agreement, referred to as the CVB Agreement, was updated in 2017. According to the CVB agreement, the City expects the CVB to increase City revenues by increasing visitor and convention spending in hotels, the Convention Center, visitor attractions, restaurants, and other businesses in the City as measured by Transient Occupancy Tax (TOT), Tourism Improvement District (TID), and retail sales tax.⁴

The City also expects the Contractor to:

- Target sales and promotion efforts to various market sectors (e.g. corporate business, association and SMERF (social, military, educational, religious, fraternal) and sports groups)
- Generate "mid-week" for the Convention center and hotels that will pay the mid-week hotel room rates, including holiday and weekend business in selected months
- Attract City-wide groups as newly defined by the CVB as needing 750 hotel room nights per event at the event's peak. (City-wide groups were historically defined as needing 600 hotel room nights at the event's peak).
- Perform sales calls and city bid presentations to prospective businesses and organizations
- Conduct city site inspections showcasing the City of Santa Clara, hotels, convention center, stadium, entertainment and attraction venues, and local businesses
- Sponsor exhibits in key tradeshows, attend industry related meetings and sponsor special industry related events
- Implement direct mail, e-marketing/social media and e-blasts
- Advertise in key trade publications, newsletters, directories, and social media platforms

⁴ The City requires that any person or business engaged in the renting of any number of rooms for lodging, dwelling, or sleeping purposes, must collect, report and remit 9.5 percent of the lodging fee per night. In FY 2016-17, the City collected about \$20M in TOT tax. The City assesses an added \$1 per room night among the eight (at the time of our review) participating hotels that comprise the Tourism Improvement District. These same hotels contribute an extra two percent to help pay off \$40M used by the Community Facilities District for infrastructure to facility the Stadium project.

- Develop convention sales and marketing materials
- Advertise and promote the City and Convention Center.

The City also works with the same Contractor to manage the SCCC. Owned by the City of Santa Clara, the SCCC is located on just over 25 acres and provides 302,000 square feet of meeting and exhibit space. The SCCC hosts conventions, trade shows, weddings, receptions, corporate meetings, banquets, and any type of special occasion. The SCCC’s purpose is to maximize revenue and economic impact to the City of Santa Clara.

In 1984, a contract (referred to as the Management Agreement) was entered between the City and the Contractor to manage the SCCC. The contract required the Contractor, among other activities, to:

- Operate and maintain the SCCC in a first-class matter
- Advertise and promote the Convention Center
- Coordinate the use of the SCCC
- Book events, theatre performances, shows, conventions, exhibitions, and meetings
- Schedule and administer daily operations as required.

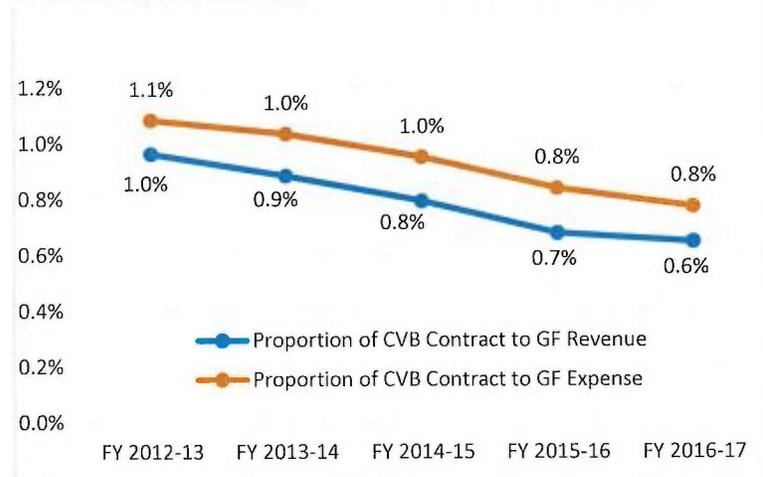
Any excess operating revenues generated from the SCCC operations are deposited to a City enterprise fund account.

City’s General Fund Supports Contractor’s Activities

Under the terms of the 1984 Management Agreement, the City is to pay the Contractor for the management of the SCCC. The fee ranged from \$45,000 to \$50,000 annually. The increase in this fee is later discussed in this report. Under the 2017 CVB agreement, the City is to pay the Contractor no more than nearly \$1.5M annually for its operations of the CVB.

City funds supporting the Contractor’s activities equal less than one percent of the City’s General Fund revenues and expenses, as shown in Figure 1. Over time, as the City’s revenue and expenses increased, the proportion of all General Fund revenues appropriated to the Contractor has declined. Figure 1 shows only the direct financial impact of the contractual agreements and excludes the City’s funding for maintenance

Figure 1. Proportion of General Fund Revenues and Expenses to Fund the CVB Contract



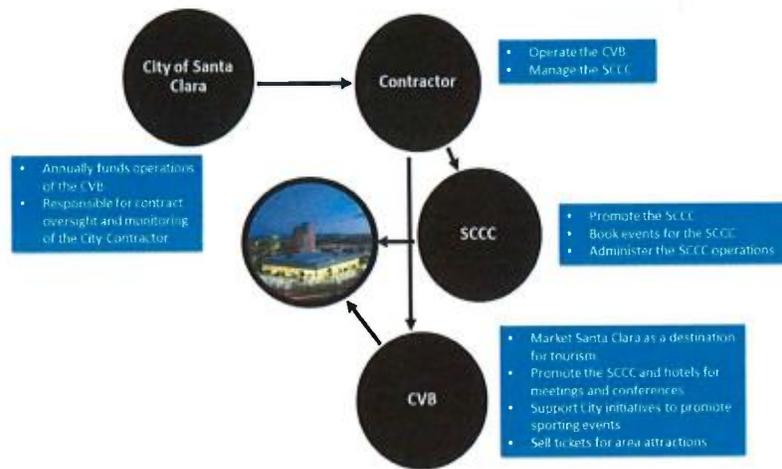
Source of data: TAP International, Inc. analysis based on the CVB and City of Santa Clara financial data.

district expenses and other capital project improvement plans.

The CVB and the SCCC are Managed Separately

Organizationally, the CVB has two Vice-Presidents (VPs) who serve as National Sales Managers. One National Sales Manager oversees convention sales and marketing while the other oversees marketing and advertising. These two VPs are supported by 11 other Contractor/CVB employees. The SCCC has a General Manager/CEO overseeing its operations supported by 43 other Contractor/SCCC employees.

Figure 2: Role of the City, Contractor, the SCCC and the CVB



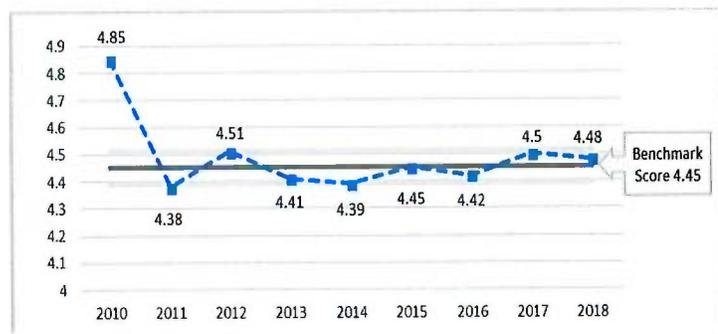
The President and Chief Executive Officer (CEO) of the Contractor's organizations is responsible for operations of the CVB and the SCCC. In recent years, the Contractor's CEO position has experienced frequent turnover. In 2017, the SCCC's General Manager/CEO assumed management of the CVB until the Contractor's Board formally hired a new Executive Director, who accepted the position in June 2018.

Figure 2 illustrates the roles and relationships between the City, the Contractor, the CVB and the SCCC.

The CVB and the SCCC Receive High Customer Satisfaction Scores

Guests of the SCCC and clients of the CVB have high satisfaction over operations. Based on a total of 322 surveys spanning from 2010 to date, the average annual performance is a satisfaction score of 4.45, as illustrated in Figure 3. A score of "1" is low satisfaction and a score of "5" is high satisfaction. The SCCC and CVB met or exceeded its own

Figure 3: Average Annual Customer Satisfaction Score



Source of data: TAP International, Inc. analysis of 322 customer satisfaction surveys administered by the SCCC, 2010 to date.

performance benchmark in five of the ten years.

As described in Figure 4, guests gave their **highest scores** to the SCCC and the CVB Professionalism. Although high marks, guests gave their **lowest scores** to:

- SCCC facility (condition)⁵
- Catering Services (pricing and food quality).

Figure 4: Annual Guest Satisfaction Score, SCCC and CVB

Survey Category	Average Score
Convention Center Administration	4.66
Convention Visitor Bureau	4.64
Int'l Alliance of Theatrical & Stage Employee's (Local 134)	4.62
Event Management	4.58
Telecommunications	4.58
Booking & Scheduling	4.57
Room Set Up & Housekeeping	4.52
Audio/Visual Services	4.47
Engineering Services	4.45
The UPS Store	4.43
Building Security	4.39
Facility	4.31
Catering Services	4.28
Grand Total	4.49

Source of Data: TAP International, Inc. analysis of 322 individual customer satisfaction surveys administered by the SCCC, 2010 to date.

Recent City Council Action Stopped Contractor Payments

In recent City Council meetings, the Santa Clara City Council acted to temporarily end Contractor payments. In May 2018, the Santa Clara City Council (City Council) directed the City Manager to suspend the Contractor's management fee for the SCCC. In June 2018, the City Council did not approve a \$1.5M request to fund a FY 2018-19 contract with the Contractor to operate the CVB, and instead, directed the City Manager to provide funds to the Contractor for the sole purpose of funding salaries and specific related costs for up to 60 days. In July 2018, the Contractor's Executive Director addressed the revenue cuts by requesting the CVB employees to vacate the Contractor's office and then issuing termination notices.

⁵ The Management Agreement states the Contractor is to maintain the Convention Center, the equipment and furniture situated therein, and related facilities in good order and repair and to request such repairs in the SCCC's annual budget or separate City Council action.

Objective, Scope and Methodology

Objectives

The City contracted with TAP International to address the following questions:

- (1) Assess the fiscal health, including the nature of revenues and spending by the SCCC and the CVB.
- (2) Assess the adequacy of structures, systems, controls, and processes that affect financial management of the Convention Center, especially whether the City reviewed and approved the contract increases.
- (3) Determine the types of changes needed, if any, to enhance Convention Center sustainability and performance.

Scope

The time period covered by this review varied depending on the type of analysis. Where data was available, TAP International analyzed data based on the prior Fiscal Year (FY) only or up to ten years of operations, beginning in FY 2007-08. We describe throughout this report, the time period covered in our analysis. The availability of complete and reliable information determined the time period of analysis.

For our review of structures, systems, controls and processes, the business functions reviewed included governance, financial management, information management, and contract management..

Our scope of work did not include an assessment of the operations of the TID. A separate performance audit of the TID is underway.

The scope of work did not include:

- An assessment of the SCCC's security operations. In FY 2017-18, the SCCC had 62 total incidents, or about five per month related to visitor health issues, fire alarms, visitor and worker injuries, and parking lot related thefts. The low level of incidents precluded further review.
- An assessment of human resources management by the Contractor or on the staffing assignment and reassignment decisions by the Contractor's Board of Directors.
- An assessment of contract compliance with the Management Agreement and the CVB Agreement.
- An evaluation of how the Contractor serves its members and member organizations. Where necessary, transaction activity resulting from the Contractor's core services were reviewed to assess the effectiveness of internal controls governing the CVB.

Methodology

To assess the fiscal health of the Convention Center and the CVB, TAP International computed and analyzed eight key metrics: quick ratio, current ratio, operating margin, net income ratio, days cash on hand, days payable outstanding, debt service coverage ratio, and operating cash flow. These metrics assess the ability of these entities to generate revenue and pay bills and debt, and their ability to generate a profit including cash flow. The sources of data relied upon for the analysis included the City's consolidated audited financial statements and the Contractor's audited financial statements from Fiscal Years (FYs) 2007-08 to 2016-17. Because the Contractor's audited financial statements combines its financial reporting with that of the CVB, we further analyzed the ability of the Contractor to manage the CVB within the contract amount provided by the City. The sources of data relied upon for this analysis were the Contractor's audited financial statements and other financial reports generated by the Contractor from FYs 2007-08 to 2016-17.

To assess the nature of revenues and spending by the SCCC and the CVB, TAP International examined each entity's check register and general ledger, which show in detail the payments made to vendors. The period of the review covered was FYs 2007-08 through 2016-17. We further examined the Contractor's core organization and the CVB documentation to verify the accuracy of the CVB's financial transactions reported in its financial system.

To assess the adequacy of structures, systems, controls, and processes of the Convention Center and the CVB, TAP International analyzed data and conducted interviews with key City, SCCC, CVB, and Contractor staff to discuss operation related to:

- Governance structure and activities
- Use of information systems
- Internal control structure to ensure compliance and effective information sharing, fiscal monitoring, and review and authorization
- Purchasing and contracting activities to ensure compliance to policies and procedure.

TAP International reviewed City documents and interviewed City employees to assess internal controls, contract management, and oversight activities of the City's Contractor.

For all audit activities, TAP International collected and analyzed:

- Advertisements
- Contracts
- Guest satisfaction surveys
- Organizational charts
- Marketing materials
- Performance measurement reports
- Policies and procedures for financial management, procurement, and contracting

- Purchase orders
- Strategy and marketing plans
- Training programs
- Reports and data given to the City by the entities.

To determine the types of changes needed, if any, to enhance the sustainability of the SCCC, TAP International reviewed the SCCC's and the CVB's marketing operations and performance. We independently computed various performance metrics using leads, bookings, and cancellation data provided by the Convention Center and the CVB. Finally, we collected information on the business structures of other convention centers and convention-visitors bureaus in California. The convention centers selected for this analysis were the Cities of San Jose, Sacramento, Stockton, San Francisco, Fresno, and Oakland.

Finally, to adhere to generally accepted government auditing standards, TAP International assessed the reliability of the financial and marketing data collected by the SCCC and the CVB. Data that was reliable is included in this report.

This audit is known as a performance audit. A performance audit evaluates the economy, efficiency and effectiveness of programs, services, and operations. We conducted this performance audit from May through July 2018, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. A draft report was provided to the City and the Contractor for review. Comments were incorporated as applicable throughout the report.

Principle Results

Section 1A: The City Can Build on the Financial Performance of the SCCC and the CVB

SCCC's Fiscal Health is Good Although can be Made Stronger

A fiscal health assessment serves to determine whether it is a self-sustaining operation. As an enterprise operation of the City, the SCCC needs to generate enough revenues to fully cover its expenses. If an enterprise operation has a healthy operating position, then fee increases are not needed. Conversely, if an enterprise operation cannot sustain itself, then fee increases may be needed, or the City may need to provide added financial support. TAP International analyzed the fiscal health of the Convention Center using four different approaches: (1) calculating the Convention Center's fiscal health based on its own operating revenues and expenses; (2) comparing trends in operating revenues and expenses; (3) determining the impact on the SCCC's net income if it assumed responsibility for the CVB's operations; and (4) forecasting SCCC's future fiscal health. It is important to note that the convention center industry is influenced by the general economy.

Under the first approach—assessment of fiscal health indicators—the SCCC is a self-sustaining operation and performs well among seven of eight fiscal health indicators across each of the five years from FY 2012-13 to 2016-17, as shown in Figure 5. The most recent five-year period was used in order to provide a more current assessment of fiscal performance. Periods beyond five years may incorporate business operations and environments that are no longer a factor to current performance. These eight indicators measure fiscal health of enterprise operations. Most notably, the SCCC increased its profit level to 18 percent, the highest level among the five years examined and more than nine times the common benchmark. The SCCC also has cash available to pay its bills for more than six months (193 days) if operations were to suddenly shut down. The SCCC continued to perform well financially in FY 2017-18 with over \$2.2M in net income.

Figure 5: SCCC Fiscal Health Indicators**

	FY 2012- 13	FY 2013- 14	FY 2014- 15	FY 2015- 16	FY 2016- 17	Benchmark Performance	
Ability to pay short-term bills (Current Ratio)	2.6	2.2	1.0	1.7	3.1	> 1.0	
Ability to pay short term bills with available cash (Quick Ratio)	202	1.9	0.8	1.5	2.3	> 1.0	
Profit margin (Operating Margin using operating revenues and expense)*	16%	16%	12%	14%	18%	> 2%	

Net Income Ratio (Same as Profit Margin/Operating Margin)*	16%	16%	12%	14%	18%	> 2%	●
Number of days cash available to pay bills	135	149	21	120	193	60-90	●
Number of days it takes to pay bills	24	44	17	21	19	< 30	●
Ability to pay debt (Debt Service Coverage Ratio)	No debt	> 1.0	●				
Operating Cash Flow Ratio*	1.0	0.7	0.7	0.7	0.8	> 1.0	●

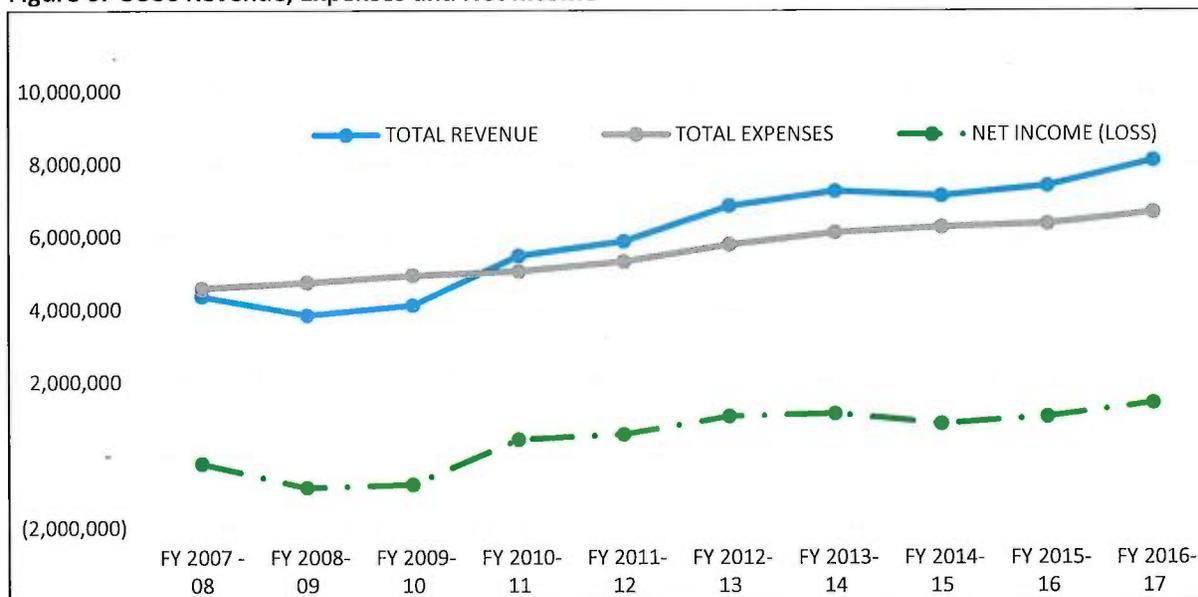
*Excludes restricted income.

** A five-year trend analysis is customarily used in fiscal health analysis because it provides a better assessment of current fiscal health versus examining fiscal health over a 10 year period.

Source: TAP International, Inc. analysis based on the SCCC financial data.

We further examined net income levels for SCCC over a ten-year period to provide a long-term historical look back at SCCC’s fiscal health. As shown in Figure 6, the SCCC has slowly improved on its net income levels over a long period of time after three years of profit losses beginning in FY 2007-08.

Figure 6: SCCC Revenue, Expenses and Net Income



Source: TAP International, Inc. analysis based on the SCCC financial data.

At the end of the ten-year period, the SCCC’s collected cumulative total revenues of about \$60.4M and spent about \$55.8M, resulting in net income of nearly \$4.7M, as shown in Figure 7.

Figure 7: SCCC Net Income Analysis

	SCCC TOTAL REVENUE	SCCC TOTAL EXPENSES	SCCC TOTAL NET INCOME
FY 2007-08	4,365,268	4,588,650	(223,383)
FY 2008-09	3,856,929	4,744,350	(887,421)
FY 2009-10	4,135,023	4,937,619	(802,597)
FY 2010-11	5,482,042	5,045,617	436,425
FY 2011-12	5,881,508	5,313,299	568,209
FY 2012-13	6,849,158	5,783,261	1,065,897
FY 2013-14	7,254,188	6,106,561	1,147,627
FY 2014-15	7,122,815	6,260,284	862,531
FY 2015-16	7,406,668	6,350,233	1,056,435
FY 2016-17	8,093,763	6,662,438	1,431,326
Cumulative Total	\$60,447,363	\$55,792,312	\$4,655,050

Source: TAP International, Inc. analysis based on the SCCC financial data.

Under the second approach—comparing trends in operating revenues and expenses—TAP International assessed two other measures of fiscal health. The first measure compares the change over time in operating revenues to the change over time in operating expenses. Over the past ten years, the SCCC has sufficiently increased its operating revenue to fully cover the growth in operating expenses. Since FY 2007-08, operating revenues increased by 85 percent to outpace the SCCC’s 45 percent increase in operating expenses as shown in Figure 8.⁶

Figure 8: Percent Change in SCCC Operating Revenue and Expenses

	FY 2007-08	FY 2016-17	% Change
Total Revenues	4,365,268	8,093,764**	85%
Total Expenses*	4,588,650	6,662,438	45%
Revenue Less Expenses	(\$223,383)	\$1,431,326	741%

*Includes City Admin Fee

**Excluding restricted revenue

Source: TAP International, Inc. analysis based on the SCCC financial reports.

Under the third approach—determining the impact on net income if the SCCC assumed responsibility for the CVB’s operations—the SCCC’s fiscal health would have been poor. As shown in Figure 9, if the SCCC had assumed CVB operations, then the SCCC would have operated within its means only for the most recent fiscal year (2016-17),⁷ incurring losses of \$9.4M over the ten-year period. SCCC’s financial performance could have been stronger if it had reduced the amount

⁶ Another City-sponsored report that analyzed the fiscal impact of the SCCC showed net losses for most of the last ten years because the report used a different method of analysis that included the City’s Maintenance District expenses.

⁷ The financial analysis excludes the fees paid to the City’s Contractor for operation of the CVB and the management of the SCCC.

and the frequency of facility discounts given to SCCC customers. The discounts totaled \$14.7M between FYs 2010-11 and 2016-17,⁸ which is discussed in detail later in this report. SCCC management explained that the use of discounts is a marketing tool and that business may have been lost to other convention centers if discounts were not provided.

Figure 9: SCCC and CVB Net Income Analysis

	TOTAL SCCC NET INCOME*	CVB TOTAL REVENUE**	CVB TOTAL EXPENSE	CONSOLIDATED SCCC and CVB NET INCOME
FY 2007-08	(178,383)	163,205	1,608,754	(1,623,932)
FY 2008-09	(842,421)	125,256	1,641,564	(2,358,729)
FY 2009-10	(757,596)	159,875	1,727,812	(2,325,533)
FY 2010-11	481,425	191,344	1,655,725	(982,956)
FY 2011-12	613,209	55,331	1,573,924	(905,384)
FY 2012-13	1,110,897	46,256	1,526,693	(369,540)
FY 2013-14	1,192,627	45,065	1,598,128	(360,436)
FY 2014-15	909,781	42,673	1,605,055	(652,601)
FY 2015-16	1,106,435	62,929	1,218,106	(48,742)
FY 2016-17	1,568,024	21,591	1,360,207	229,408
Cumulative Total	\$5,203,999	\$913,525	\$15,515,968	(\$9,398,444)

*Less City Admin Fee expense

**Less City Contract revenue

Source: TAP International, Inc. analysis based on the SCCC and the CVB financial reports.

Other cities and counties dedicate a portion of the tax revenue generated by out-of-town visitors attending convention center events to fund their local convention and visitor's bureau. The sources of tax revenues and fees are from transient occupancy taxes (TOT), Tourism Improvement District (TID) fees, and sales taxes. Presently, the City does not allocate (TOT) revenue, sales tax revenue, or (TID) fees to the SCCC or to the CVB.

In the City of Santa Clara, hotel lodging expenses include a 9.5 percent transient occupancy tax (TOT) paid by hotel guests staying overnight. Eight hotels participating in the Tourism Improvement District at the time our review also pay \$1 per lodging night to the City. Had the City allocated a portion of these taxes and fees been to the SCCC based on the number of hotel lodgings generated for SCCC and hotel events, the SCCC would have made a small profit of about \$310,000, as shown in Figure 10 below. This analysis of fiscal health assumes that trends in operating revenues and expenses would continue with operating expenses growing much slower than operating revenues.

⁸ Only years in which data was available.

Figure 10: SCCC and CVB Financial Value Analysis

	CONSOLIDATED SCCC and CVB NET INCOME	TOT REVENUE	TID FEES	CITY SALES TAX	GENERAL FUND CAPITAL EXPENSES	TOTAL FINANCIAL VALUE
FY 2008-09	(2,358,729)	571,716	49,930	60,181	222,065	(1,898,967)
FY 2009-10	(2,325,533)	568,589	49,297	59,851	59,629	(1,707,426)
FY 2010-11	(982,956)	719,750	56,071	75,763	202,642	(334,014)
FY 2011-12	(905,384)	842,820	60,299	88,718	222,508	(136,055)
FY 2012-13	(369,540)	1,089,660	69,398	129,039	165,059	753,498
FY 2013-14	(360,436)	1,241,427	70,260	163,346	573,225	541,372
FY 2014-15	(652,601)	1,547,325	76,457	203,595	431,966	742,810
FY 2015-16	(48,742)	1,244,804	59,791	163,790	7,426	1,412,217
FY 2016-17	229,408	995,760	45,640	131,021	464,687	937,142
Cumulative Total	(\$7,774,513)	\$8,821,851	\$537,143	\$1,075,304	\$2,349,207	\$310,578

Source: TAP International, Inc. analysis based on the SCCC and the CVB financial reports.

Note: The time period of FY 2008-09 to 2016-17 was used as General Fund Capital Expense information was not available prior to FY 2008-09.

Under the fourth approach – forecasting the SCCC’s future fiscal health – TAP International forecasted net income based on two different scenarios.

Under the first scenario, which forecasts net income based on the SCCC’s own operating revenue and expenses, the projections forecast between \$2.2M and \$3.5M over the next four years, as shown Figure 11. Both operating revenues and expenses are expected to grow over the next four years with operating revenue projected to grow at 24 percent over the four years compared to 12 percent for expenses, if operations continue with the same level of service.

Under the second scenario, the analysis includes capital expenditure estimates and projections of potential allocations of TOT tax and TID revenues if the CVB continues its same level of bookings for hotel rooms. As shown in Figure 11 below, projections show an estimated net income between \$1.5M and \$2.2M across the four-year projections. A four-year time horizon was selected to provide a reasonable projection period without introducing unknown variables. The greater the projection period, the increased likelihood of a changing business economy and environment.

Figure 11: SCCC Fiscal Forecasts

Scenario 1	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	Cumulative Four-Year Forecast
Convention Center Revenue	9,047,604	9,726,174	10,455,637	11,239,810	40,469,226
Convention Center Expenses	6,820,238	7,086,227	7,362,590	7,649,731	28,918,787
Projected Net Income	\$2,227,366	\$2,639,947	\$3,093,047	\$3,590,079	\$11,550,439

Scenario 2	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	Cumulative Four-Year Forecast
Convention Center Revenue	9,047,604	9,726,174	10,455,637	11,239,810	40,469,226
Convention Center Expenses	6,820,238	7,086,227	7,362,590	7,649,731	28,918,787
CVB Expenses	1,545,246	1,605,511	1,668,126	1,733,182	6,552,065
TOT Revenue	995,760	995,760	995,760	995,760	3,983,040
TID Revenue	45,640	45,640	45,640	45,640	182,560
City Sales Tax Revenue	131,021	131,021	131,021	131,021	524,084
Capital Expenditures-GF Expense	304,000	131,800	4,292,000	800,000	5,527,800
Projected Net Income	\$1,550,541	\$2,075,057	(\$1,694,657)	\$2,229,318	\$4,160,259

Source: TAP International, Inc. analysis based on SCCC financial data.

Table notes:

1. Projections for Convention Center revenue and expenses are based on ten-year averages, discounting the high and low values.
2. TAP International applied the same rate of expense increase by the SCCC to the CVB. The actual average CVB rate of expense increase was not applied because of the value variability and the overall decrease in expenses experienced over the past ten years.
3. TAP International applied the same forecast for TOT, TID, and sales tax revenue, which expect to remain constant. Actual rates of change varied between -20% to +45%.
4. Capital Expenditures are based on City budget forecasts. Projected capital project expenditure of \$4.3M in FY 2019-20 is primarily for exhibit halls and grand ballroom air wall replacements and carpet replacement.

Contractor/CVB Fiscal Health is Satisfactory Although Cost Allocation Activities Need Attention

The CVB's revenues and expenses are captured in the Contractor's consolidated financial statement. The results of six fiscal health indicators show the Contractor/CVB meets industry benchmarks for five of them, as shown in Figure 12. Warning signs are present because the strength of Contractor's operating cash flow ratio fell below the benchmark between FYs 2015-16 and 2016-17 because of larger than expected spending by the Contractor's core organization. The Contractor/CVB also had declining financial performance across four other indicators. The Contractor/CVB did reduce the number of days it takes to pay bills to under the benchmark of 30 days.

Figure 12: Fiscal Health Indicators of the City's Contractor/CVB

	FY 2015-16	FY 2016-17	Benchmark	Performance
Ability to pay short term bills with available cash (Quick Ratio)	2.3	0.9	> 1.0	
Ability to pay short-term bills (Current Ratio)	2.8	0.9	> 1.0	
Number of days cash is available to pay bills (Cash on Hand)	123	110	60-90	
Number of days it takes to pay bills (Days Payable Outstanding)	31	22	< 30	
Ability to pay debt (Debt Service Coverage Ratio)	9.6	2.2	> 1.0	
Operating Cash Flow Ratio	1.8	0.03	> 1.0	

Source of Data: TAP International, Inc. analysis based on Contractor's audited financial statements.

Table Note:

1. Financial data required to calculate the fiscal ratios was not provided by the Contractor prior to FY 2015-16.

CVB's Year End Fiscal Performance Varied but Within Ten Percent of Total Budget

The Contractor had satisfactory performance in fiscally managing the CVB's total revenue, comprised of the City's contract, ticket sales, and other service fees. As shown in Figure 13, the Contractor's CVB operations had positive net income for four of the past ten years and incurred year-end losses for the remaining six years. None of these year-end deficits exceeded ten percent of the total budget.

Over the ten-year period, revenues for the CVB totaled about \$15.8M and expenses totaled about \$15.5M, showing that the Contractor was ultimately successful in accomplishing a \$278K revenue surplus because the Contractor reduced the CVB's operating expenses at a rate greater than the reductions in its revenues.

Figure 13: Comparison of CVB Operating Revenues and Expenses

	CVB OPERATING REVENUES	CVB OPERATING EXPENSES	CVB NET INCOME
FY 2007-08	1,575,000	1,609,000	(34,000)
FY 2008- 09	1,572,000	1,642,000	(69,000)
FY 2009- 10	1,628,000	1,728,000	(99,000)
FY 2010- 11	1,648,000	1,656,000	(8,000)
FY 2011- 12	1,577,000	1,574,000	3,000
FY 2012- 13	1,568,000	1,527,000	41,000
FY 2013- 14	1,567,000	1,598,000	(32,000)
FY 2014- 15	1,564,000	1,605,000	(41,000)
FY 2015- 16	1,584,000	1,218,000	366,000
FY 2016- 17	1,511,000	1,360,000	151,000
Total for the ten year period*	\$15,794,000	\$15,516,000	\$278,000
Percent Change**	(4.1%)	(15.4%)	545%

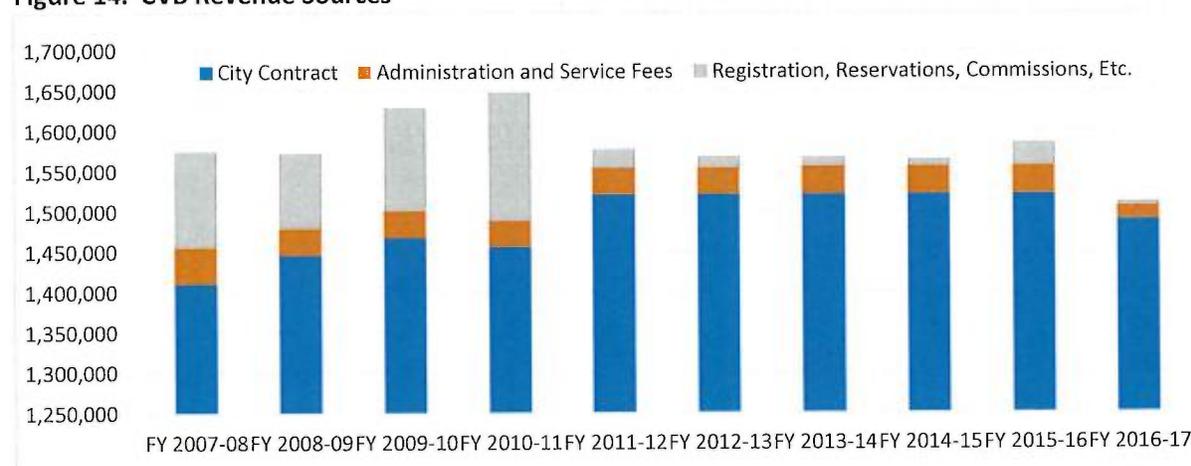
Note: *Revenue and expense amounts rounded to the nearest thousand. **Percent Change based on actual values from CVB financial statements.

Source: TAP International, Inc. analysis based on CVB financial data.

Contractor Opted Against Continuing Conference Registration Services

As illustrated in Figure 14, the CVB’s primary source of revenue is the City’s contract payments to support operations. Another large source of revenue was registration services. Allowing event sponsors to register their participants for conferences generated up to \$149,000 for the CVB until FY 2010-11 when the CVB chose not to renew services. The City had offset the loss in revenue but not at an amount to fully compensate the loss. The SCCC did not assume event registration operations for its clients.

Figure 14. CVB Revenue Sources



Source: TAP International, Inc. analysis based on CVB financial data.

The CVB's Revenue and Expense Allocations Need Reconciliation

Generally, when administrative services are shared among entities or different business functions, the expenses incurred from performing these services are allocated and charged to each entity or business function. The allocation of these expenses is usually based on a cost accounting study or a corporate policy that shows a reasonable basis for the allocations.

While the contractor does not have a written cost allocation policy, in practice, the allocations differed depending on the type of expense. The Contractor's SCCC and CVB staff reported that it has been a long-standing practice to allocate 80 percent of overhead expenses to the CVB and 20 percent to the Contractor. Our analysis, however, shows that the CVB paid between 70 and 85 percent of the expenses for office supplies and maintenance and between 79 and 86

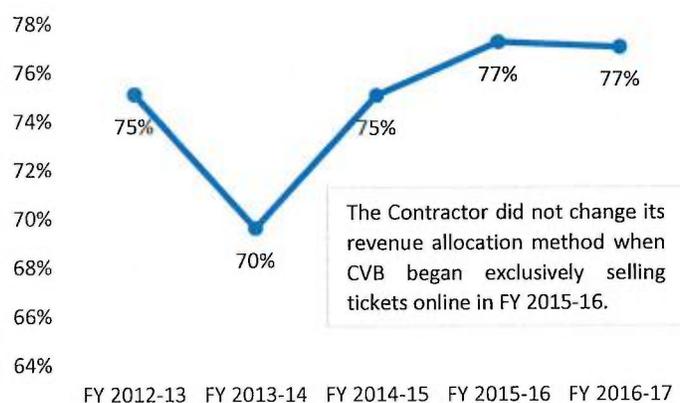
percent of telephone expenses over the past five years. For accounting services, the Contractor reportedly allocates 85 percent of these expenses to the CVB. However, the Contractor's staff reported that the CVB's accounting activities require less time to complete than the accounting activities for the Contractor's own organization.

When the CVB generates revenue involving Contractor resources, then cost allocation policies can include methods for dividing revenue. Similarly, the contractor does not have a documented policy for revenue allocations, but the Contractor's CVB officials reported that prior to FY 2015-16, the CVB was to retain 70 percent of revenue from ticket sales for area attractions while the Contractor was to retain the remaining 30 percent. In practice, however, as shown in Figure 15, the Contractor allocated between 70 and 77 percent to the CVB. The Contractor's CVB officials explained that beginning in FY 2015-16 when the CVB began selling tickets online exclusively, the CVB should have received all \$4,626 in fees collected, but the CVB received \$3,569 from FYs 2015-16 to 2016-17.

The CVB's Value is Generating Tax Revenue for the City

One of the key's goals of the CVB is to promote the SCCC and the City as a destination area. These efforts result in generating several types of tax revenue when visitors use the SCCC, area hotels, businesses, and restaurants. These taxes include transient occupancy taxes that collect 9.5 percent on hotel lodgings; sales tax of nine percent when purchases are made; and other revenue

Figure 15: CVB Ticket Sales Allocation Percentage



Source of Data: TAP International, Inc. analysis based on the CVB financial data.

in the form of TID fees which assess \$1 per room night among eight participating hotels in the Tourism Improvement District.

The CVB's marketing and promotion efforts on behalf of the City directly led to 441,716 hotel room nights between FYs 2010-11 and 2016-17, resulting in added tax revenue and fees for the City. Had the City allocated a performance-based portion of TOT tax, TID fees, and sales tax to the CVB, the CVB's net financial impact over ten years could have been an estimated \$11.5M, as shown in Figure 16.

Figure 16: Net CVB Financial Impact

	TOTAL CVB REVENUES	TOTAL CVB EXPENSES	CVB NET INCOME (LOSS)	TOT REVENUE	TID REVENUE	CITY SALES TAX REVENUE	NET CVB IMPACT
FY 2007- 08	1,574,883	1,608,754	(33,871)	710,498	51,117	74,789	802,533
FY 2008- 09	1,572,218	1,641,564	(69,346)	571,716	49,930	60,181	612,481
FY 2009- 10	1,628,401	1,727,812	(99,411)	568,589	49,297	59,851	578,326
FY 2010- 11	1,647,870	1,655,725	(7,855)	719,750	56,071	75,763	843,729
FY 2011- 12	1,576,857	1,573,924	2,933	842,820	60,299	88,718	994,770
FY 2012- 13	1,567,782	1,526,693	41,089	1,089,660	69,398	129,039	1,329,186
FY 2013- 14	1,566,591	1,598,128	(31,537)	1,241,427	70,260	163,346	1,443,496
FY 2014- 15	1,564,199	1,605,055	(40,856)	1,547,325	76,457	203,595	1,786,521
FY 2015- 16	1,584,455	1,218,106	366,349	1,244,804	59,791	163,790	1,834,734
FY 2016- 17	1,510,906	1,360,207	150,699	995,760	45,640	131,021	1,323,120
Total for the ten year period	\$15,794,162	\$15,515,968	\$278,194	\$9,532,349	\$588,260	\$1,150,093	\$11,548,896

Source: TAP International, Inc. analysis based on SCCC and CVB financial data. It is assumed that SCCC partner's sales tax is included in the City Sales Tax Revenue.

Section 1B: SCCC's and CVB's Revenue Sources and Spending Generally Align with Missions

The SCCC and the CVB Have Customary Revenue Sources

The SCCC generates income customary for their mission, collecting revenue from 23 general sources. As highlighted in Figure 17, the SCCC's largest revenue sources are:

- Space Rentals (Exhibit Halls, Ballrooms, Meeting Rooms, Great America, and Theater)
- Catering Commissions
- Audio-Visual Commissions
- Telecommunication Commissions.

Since FY 2007-08, 16 of the 23 revenue sources experienced an increase in revenue, ranging from 4 to 515 percent. Another six revenue sources experienced declines, ranging from -4 to -68 percent.

Figure 17: SCCC Revenue Sources

Revenue Source	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	% Change FY 2008-09 to 2016-17
Space-Exhibit Halls	1,265,660	1,194,129	1,113,905	1,090,620	1,142,031	1,352,496	1,261,166	1,337,354	1,416,000	1,353,372	7%
Space-Ballrooms	209,948	221,195	488,060	622,105	598,929	711,857	823,143	801,308	873,944	915,085	336%
Space-Meeting Rooms	207,984	194,893	180,207	219,685	207,900	239,957	237,630	237,580	262,125	275,466	32%
Space-Great America	286,623	271,593	220,997	214,889	274,632	291,742	360,661	385,969	358,770	404,850	41%
Space-Theater	193,640	189,026	151,590	208,620	203,376	211,483	218,644	200,892	208,720	201,000	4%
Space-Cancellation	63,650	163,594	76,138	24,641	15,899	111,523	72,799	77,641	95,995	60,810	(4%)
Merchant Fees			(25,191)	(34,347)	(38,468)	(54,177)	(60,668)	(58,205)	(63,372)	(79,196)	---
Labor-Miscellaneous	10,933	8,915	9,565	19,270	11,168	6,825	5,420	9,139	8,655	8,400	(23%)
Equipment Rental	64,854	58,374	55,466	99,048	55,400	92,744	76,773	120,308	106,638	123,897	91%
Electrical Comm.	107,391	159,844	105,585	140,410	192,214	222,042	184,879	222,373	203,486	277,045	158%
Electrical Services In-House	94,506	53,573	66,840	164,515	156,749	117,605	107,866	111,470	133,650	58,485	(38%)
Audio-Visual Comm.	270,992	271,929	362,512	395,825	411,300	462,273	605,755	594,217	609,736	638,611	136%
Services - Misc.	5,810	18,472	4,360	6,525	5,773	5,658	7,100	639	3,930	3,495	(40%)
Incoming Freight	3,690	3,675	3,175	6,065	9,543	3,764	3,314	2,631	3,423	6,649	80%
Cell Site Revenue	23,009	17,794	17,794	17,794	17,980	18,233	18,936	18,090	26,236	33,039	44%
Telecomm Commission	175,127	127,363	175,520	295,797	327,993	447,915	446,187	432,566	527,971	638,933	265%
Catering Commission	1,262,009	800,499	1,037,616	1,900,070	2,195,799	2,509,846	2,809,971	2,566,610	2,572,066	3,060,064	142%
Insurance Revenue	2,610	2,245	2,085	2,170	2,135	2,853	3,115	1,995	1,750	2,030	(22%)
Interest Revenue	72,998	65,877	57,670	42,934	43,423	20,004	14,025	10,752	7,175	23,689	(68%)
Advertising Comm.	25,154	26,015	15,976	26,009	32,254	32,536	30,449	26,983	29,658	35,644	42%
Sponsorship Revenue	2,300	1,600	1,800	5,550	5,700	16,500	10,950	4,000	2,800	14,150	515%
Business Center Comm.	5,324	4,123	4,481	5,220	5,645	6,710	12,502	14,802	12,682	10,088	89%
Other Income	11,057	2,204	8,874	8,629	4,134	18,771	3,572	3,702	4,629	28,158	155%
TOTAL	4,365,268	3,856,929	4,135,023	5,482,042	5,881,508	6,849,158	7,254,188	7,122,815	7,406,668	8,093,763	85%
TOTAL FY 2007-08 to 2016-17											\$60,447,362

Source: TAP International, Inc. analysis based on CVB financial data.

The CVB also generates income customary for their mission, collecting revenue from nine general sources between FYs 2007-08 and 2016-17. Total revenues from these sources declined by four percent over a ten-year period, as shown in Figure 18. The CVB's Admin and Service Fees include TID revenue, which declined in FY 2016-17. TID revenues received should be reported under a separate income account for better transparency.

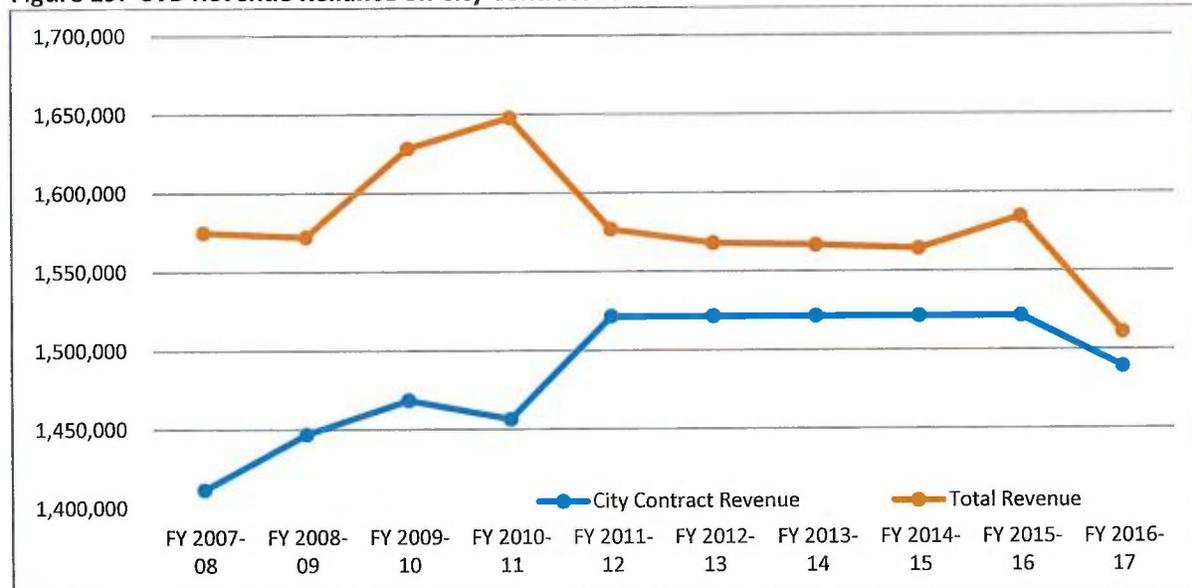
Figure 18: CVB Revenue Sources

Revenue Source	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	% Change FY 2008-09 to 2016-17
Admin and Service Fees	44,580	32,882	32,893	32,265	32,265	32,160	34,500	34,500	34,500	16,750	(62%)
Program Services									50	300	---
On-Line Hotel Reservations	8,111	6,467	2,071	2,261	2,443	2,284	2,625	1,856	1,987	1,047	(87%)
City Contract	1,411,678	1,446,962	1,468,526	1,456,526	1,521,526	1,521,526	1,521,526	1,521,526	1,521,526	1,489,315	5%
Discount Ticket Sales	2,099	3,529	1,983	7,195	13,049	11,274	7,149	5,812	2,114	1,455	(31%)
Registration Services	107,393	81,731	122,351	149,400	7,389	399	735	458			(100%)
Commission Revenue									22,431	1,946	---
Banner Ads									1,800		---
Interest Income	1,022	647	577	223	185	139	56	47	47	93	(91%)
TOTAL	1,574,883	1,572,218	1,628,401	1,647,870	1,576,857	1,567,782	1,566,591	1,564,199	1,584,455	1,510,906	(4%)
TOTAL FY 2007-08 to 2016-17											\$15,794,162

Source: TAP International, Inc. analysis based on SCCC financial data.

Figure 19 highlights that the Contractor by FY 2016-17 became dependent on the contract funds to support operations.

Figure 19: CVB Revenue Reliance on City Contract Funds



Source: TAP International, Inc. analysis based on CVB financial data.

Nearly All SCCC and the CVB Expenses are Customary, Except for Bonuses and Commissions

The SCCC has customary expenses for its mission. As highlighted in Figure 20, the SCCC spent the most on salaries and benefits (reported under labor) at about \$5M followed by utilities at \$732,000. Labor and utility expenses rose the most in comparison to other expenses. The SCCC reduced its spending in four areas – professional association dues, advertising and promotion activities, telephone charges, and parking fees.

Figure 20: Changes in SCCC Spending

Convention Center Expenses	FY 2007-08	FY 2016-17	\$ Increase (Decrease)	% Change
Labor Related	3,530,564	4,983,964	1,453,400	41%
Parking Fees	16,165	8,550	(7,615)	(47%)
City Admin Fee	45,000	136,699	91,699	204%
Other Operating	2,297	39,500	37,203	1620%
Professional Associations	9,525	9,152	(373)	(4%)
Advertising and Promotion	6,447	970	(5,477)	(85%)
Telephone	38,317	8,568	(29,749)	(78%)
Office Expense	55,708	111,525	55,817	100%
Insurance	86,365	169,206	82,841	96%
Employee Expenses (payroll, training, etc.)	41,998	72,780	30,782	73%
Maintenance	135,467	244,576	109,109	81%
Janitorial and Cleaning	90,082	144,713	54,631	61%
Utilities	530,715	732,235	201,520	38%
Total Expense	\$4,588,650	\$6,662,438	\$2,073,788	45%

Source: TAP International, Inc. analysis based on the SCCC's financial data.

The CVB also has customary expenses for its mission. As highlighted in Figure 21, the CVB spent the most on salaries and wages at nearly \$790,000 followed by advertising and marketing related expenses for the SCCC and the CVB totaling about \$179,000 in FY 2016-17. Over time, the CVB reduced its spending in 17 areas with its largest declines in Salaries and Wages and Employee Benefits, respectively.

Figure 21: Changes in CVB Spending

CVB Expenses	FY 2007-08	FY 2016-17	\$ Increase (Decrease)	% Change
Salaries and Wages	937,383	787,658	(149,725)	(16%)
Payroll Taxes	76,040	55,347	(20,693)	(27%)
Employee Benefits	174,188	102,194	(71,994)	(41%)
Depreciation/Amort.	10,300	5,093	(5,207)	(51%)
Office Supplies/Maintenance	27,639	17,143	(10,496)	(38%)
Computer Service/Maintenance	0	33,500	33,500	---
Accounting and Audit	27,845	35,320	7,475	27%
Legal Fees	0	10,174	10,174	---
Office Equipment.	1,228	1,356	128	10%
Rent	88,575	91,232	2,657	3%
Telephone	22,292	17,039	(5,253)	(24%)
Insurance and Taxes	7,874	3,448	(4,426)	(56%)
Administrative Meeting	2,893	1,981	(912)	(32%)
Postage	18,590	6,298	(12,292)	(66%)
Mileage	3,059	1,443	(1,616)	(53%)
Payroll Service fee	4,499	5,854	1,355	30%
Inside Santa Clara Newsletter	10,500	7,949	(2,551)	(24%)
Advertising-Convention Marketing	0	4,204	4,204	---
Advertising-Travel Marketing	19,709	17,914	(1,795)	(9%)
Marketing-Servicing	550	0	(550)	(100%)
Marketing-Convention Center Marketing/Sales	103,799	99,086	(4,713)	(5%)
Marketing-Visitors Bureau	52,571	49,620	(2,951)	(6%)
Outside Services	6,242	0	(6,242)	(100%)
Expense Reimbursement	11,015	0	(11,015)	(100%)
Miscellaneous	1,963	6,354	4,391	224%
Total Expense	\$1,608,754	\$1,360,207	(\$248,547)	(15%)

Source: TAP International, Inc. analysis based on the Contractor's audited financial statements.

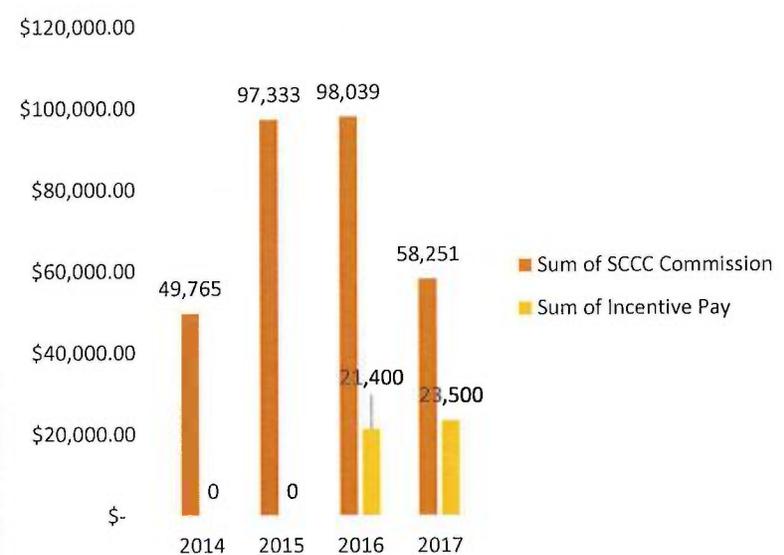
The Contractor Improperly Paid Commissions

Although the Management Agreement does not contain terms or conditions governing the payment of sales commissions, the SCCC Sales Director received commissions based on the number of events scheduled at the Convention Center, the services sold, and the level of new and repeat business that was brought to the facility. In two full calendar years and another two partial years between 2014 and 2017, the SCCC paid its Sales Director approximately \$303,000 in commissions in addition to a low base annual salary. Generally, in a sale driven environment, sales staff are provided financial incentives to meet sales goals and targets that can be in the

form of commissions or bonuses. The added compensation can be viewed as opportunity costs for businesses if it leads to revenue growth. Because commissions are not offered in publicly funded operations, the commissions should have been included in the Contractor’s formal agreement with the City for subsequent review and approval by the City Council. SCCC management explained that there was no direction by the City to submit employment-related decisions to City Management or City Council for approval.

SCCC management said that the use of commissions has been a long-time practice. The Contractor included the commissions in the SCCC’s operating budget under a General Management category although the commission appropriations should have been presented as Commissions in a separate budget category. This absence of transparency led the City Council to inadvertently approve the appropriations for the commissions without policy deliberations. Moreover, offering commissions prevented the full coordination and cooperation between the SCCC and CVB sales staff. CVB sales staff reported that the scheduling of events with lower economic value by SCCC staff received preference over higher valued events. SCCC management disagrees with CVB’s assertion. Event scheduling is later discussed in this report.

Figure 22: SCCC Commission and CVB Incentive Pay Expenses



Source of Date: TAP International, Inc. analysis based on SCCC salary reports and CVB incentive pay computation reports.

Table Note: Data was available only for the SCCC Commission payments for six months only for calendar year 2014 and for 2017

Bonus Payments Need Further Review

The Contractor’s CVB staff was paid bonuses, referred to as incentive pay, that needs further review. The Contractor paid the CVB’s sales staff incentive pay provided that the employees met individual quarterly sales goals and targets. The amount of incentive pay varied by sales manager. We did not have complete data to determine the full amount of incentive pay paid to the Contractor’s CVB employees, but for calendar year 2017, incentive pay totaled \$23,500. Included

in the payments were amounts for events scheduled in future years like in 2021, but offsets in incentive payments did not occur if events were cancelled. CVB staff explained that event sponsors are required to pay a deposit in the event of a future cancellation, and thus fees are available for the incentive payments.⁹ The absence of pay offsets for cancelled events contradicts the purpose of giving performance bonuses. In FY 2016-17, the SCCC collected about \$60,000 in cancellation fees.

How the Contractor paid for the incentive payments is of concern. The incentive payments were not paid for by the City's monthly contractual payments, but instead were paid for by funds from another public entity – the Santa Clara Tourism Improvement District (TID)¹⁰ – without a formal contract or written legal agreement in place. Incentives payments could be appropriate if the TID competitively bid for marketing and promotion services and then entered into a formal agreement that contained provisions to pay performance incentives if goals were met. In the absence of a formal agreement, the funds appropriated to the Contractor by the TID need further examination by the City to determine if the TID was in violation of public law that prohibits the giving or lending of public to any person or entity, public or private organizations, except under certain circumstances.¹¹

There were no disclosures about the use of incentive pay although the City had imposed oversight requirements on the TID that provided some accountability and transparency over operations. These requirements include submissions of annual reports and an annual financial audit. The TID's operating budget did contain funds for bonuses in its annual operating budget but no disclosure was evident that the bonuses were for another organization. As the City did not require the TID to submit budget documents for review, incentive pay provided to the Contractor's organization would have remained unknown unless direct communication occurred. None of the current City management staff were aware of the incentive pay or of the commission payments.

⁹ Incentive payments are actually paid by the TID. The point made by the CVB staff is that when events are cancelled, revenue is recovered, so there is no direct revenue loss to the City.

¹⁰ The TID, established to promote tourism and enhance marketing activities, received \$1 per room night from eight participating hotels that comprise the TID. In FY 2016-17, TID estimated fees totaled \$759,009. The Contractor for the SCCC and CVB also managed the TID.

¹¹ California's Constitution Article XVI, Section 6.

Section 2: Structures, Systems, and Operations Need Strengthening

Contractor Does Not Implement Strong Financial Management Activities

This section describes the activities of the Contractor to administer financial management of the SCCC and CVB.

Financial Management Policies and Procedures Need to Address Content Gaps

Important to an effective financial management structure is the development of policies and procedures. Policies and procedures serve the purpose of:

- Protecting the assets of the organization
- Providing a framework for the organization's financial decision making
- Establishing operating standards and behavioral expectations
- Ensuring compliance with regulations.

In the two agreements between the Contractor and the City, the City required that the Contractor separate its accounting activities for the SCCC and CVB operations and perform other financial management related tasks. The City did not require the development of financial management policies. However, the Contractor had developed two sets of financial management policies. One set governs the CVB and the other governs the SCCC.

TAP International evaluated the content of the SCCC's financial management policies and procedures against guidance issued by the Government Finance Officers Association (GFOA) because SCCC is an enterprise operation and publicly owned. Of 11 financial management areas most applicable to the SCCC, the SCCC had gaps in content among six of them, as shown in Figure 23.

The five areas that need policy development include:

- Reserves
- Contract
- Risk Management and Internal Controls
- Long Term Financial Management Planning
- Capital Management Policies.

Figure 23: SCCC Financial Policies and Procedures Development

Policy Area	Policy Developed by SCCC
Reserves in other funds. Policies that set how much revenue to set aside for later use.	No
Contract: Policies that deal with the administration of contract revenue.	No
Accounting: Policies that address the basis of accounting, the process for implementing journal entries, requirements for bank reconciliation, monthly closing, and recordkeeping.	Partially ¹²
Financial reporting: Address procedures and controls for internal financial reporting, tax compliance and tax returns, and payroll reporting.	Partially ¹³
Risk management and internal controls: Policies that address risk management and internal control.	No
Procurement: Policies to encourage efficient, effective, and fair procurement.	Partially ¹⁴
Long-term financial planning: A policy that commits the organization to taking a long-term approach to financial health.	No ¹⁵
Capital: Policies that cover the lifecycle of capital assets, including capital improvement planning, capital budgeting, project management, and asset maintenance.	No
Revenues: Policy guidance through the designing of efficient and effective revenue systems that guarantee the generation of adequate public resources to meet expenses.	Partially ¹⁶
Expenditures: Policies addressing a range of issues around how the money is expended, including personnel, outsourcing, and funding long-term liabilities.	Partially ¹⁷
Operating budget: Policies that describe essential features of the budget development process and form, as well as principles that guide budgetary decision making.	Partially ¹⁸

Source: TAP International, Inc. analysis of SCCC financial policies.

TAP International evaluated the content of the CVB’s financial management policies and procedures against guidance issued by the National Council for Nonprofits for six key areas for

¹² SCCC policy does not define responsible parties to conduct activities and oversight controls.

¹³ SCCC policy does not define procedures or controls to ensure accuracy and completeness of internal financial reports.

¹⁴ SCCC policy does not address proposal and bid process that should ensure fair purchasing and contracting, only Purchase Orders

¹⁵ SCCC policy address bi-annual budget process, but not long-term planning.

¹⁶ SCCC policies have been developed for Revenue Recognition and Cash Receipting, but revenue generation systems and controls are not defined.

¹⁷ SCCC policy address the cash disbursement process, but not management long term liabilities, which is currently not applicable to the SCCC because it does not have long term debt on its accountings records.

¹⁸ SCCC policy does not include a description of budget assumptions to be used the preparation of the budget or the type of budgeting methodology to use.

nonprofit organizations, as described in Figure 24. The CVB’s financial policies also had some gaps in each area.

Figure 24: Contractor development of Financial Policies for the CVB

Policy Area	Policy developed for CVB
Accounting: Address the basis of accounting, the process for implementing journal entries, requirements for bank reconciliations, monthly closing, and recordkeeping.	Partially ¹⁹
Financial Planning & Reporting: Address procedures and controls for internal financial reporting, tax compliance and tax returns, and payroll reporting.	Partially ²⁰
Budgeting Process: Policies that describe essential features of the budget development process and form, as well as principles that guide budgetary decision making.	Partially ²¹
Revenue and Accounts Receivable: Policies guiding invoice preparation, revenue recognition, cash receipts, and deposits.	Partially ²²
Expense and Accounts Payable: Policies describing Purchases & Procurement and the use of Independent Contractors.	Partially ²³
Invoice Approval and Processing: Procedures describing how cash will be disbursed, petty cash procedures and amounts, use of credit card, and employee reimbursements.	Partially ²⁴

Source: TAP International, Inc. analysis of CVB financial policies.

SCCC and CVB Could Benefit from an Integrated Financial Accounting System

An important financial management tool is the use of accounting systems to collect, store, and process financial and accounting data and produce informational reports for managerial review and decision-making. The Contractor uses two different accounting systems – one for the CVB and the other for the SCCC. Without an integrated accounting system, financial reports must be

¹⁹ CVB policy does not define responsible parties to conduct activities and oversight controls.

²⁰ CVB policy does not define procedures or controls to ensure accuracy and completeness of internal financial reports.

²¹ CVB policy does not include a description of budget assumptions to be used the preparation of the budget or the type of budgeting method to use.

²² CVB policies defines payment types and bank deposits but does not address invoice preparation or how information is used to create journal entries.

²³ CVB cash disbursement policy provides overview of payment types and check processing but does not address use of independent contractors.

²⁴ CVB policy does not define spending limits and authorization for use of credit cards.

prepared and reviewed separately, and errors must be manually identified and corrected.²⁵ Our review found CVB financial reports did not include adequate detail about transaction history. For example, the CVB did not have explanations of gaps in check numbers or check numbers found out of sequence. The Contractor explained that the printer damaged the subject check numbers. In comparison, the SCCC's financial data system kept a detailed record of all voided checks even those destroyed by printing—a standard internal control activity. The SCCC's General Manager/CEO sought to integrate the two accounting systems in FY 2016-17 without success after a Board member of the Contractor's organization opted against system integration.

“Separate Accounting” Activities between the Contractor’s Organization and the CVB Needs Stronger Internal Controls

The updated 2017 CVB agreement between the City and the Contractor requires “separate accounting” between the CVB and the Contractor. The agreement does not include a definition of “separate accounting” or clarifies the City’s intent on whether the City intended to require separate accounting systems or separate bank accounts. The absence of specificity in the agreements has led the Contractor to deposit into the same bank account all revenues received for its own organization (including member dues and donations), the City’s contract revenue, other CVB revenue, TID revenue, and SCCC payroll payments into one bank account. In FY 2016-17, the SCCC’s General Manager/CEO, sought to appropriately establish separate checking accounts for the CVB and for the Tourism Improvement District. A former Board member of the Contractor’s organization gave authorization only to set up a separate bank account for the Tourism Improvement District.

To comply with the requirement to provide “separate accounting”, the Contractor records financial transactions on either the CVB’s General Ledger or on the Contractor’s own General Ledger depending on which entity incurred the expense. A general ledger holds account information on individual financial transactions and contains data on revenues, expenses, assets, liabilities, and equity for use in financial reporting. The recording of these transactions on the correct general ledger is vital to ensuring accounting financial reporting.

Our review of 49 financial transactions between FY 2006-2007 and FY 2017-2018 showed that the Contractor recorded about half (24) of the transactions correctly. Another 11 transactions had some type of exception. For these exceptions, the Contractor did not effectively implement internal controls. The exceptions we noted are as follows:

- The absence of an account code that would describe whether to post the expense on the CVB or the Contractor’s ledger

²⁵ SCCC’s financial reports and disbursements are provided to the City for the City to manually perform enterprise accounting activities. The accounting of fixed assets for the SCCC is captured separately on an MS Excel spreadsheet.

- Different expense amounts shown on the General Ledger in comparison to payment documentation and the invoice amount
- Approval of purchase orders after incurring the expense. A purchase order describes the purpose of the expected expense and the proposed vendor so that management can review and approve the expense prior to its occurrence.

For the remaining 14 transactions, it was not possible to determine whether the Contractor posted the expenses to the correct general ledger because of the unavailability of invoices and records that show accounting instructions. The weaknesses in internal controls did not materially affect the Contractor's audited financial statements because these statements combined the CVB's and the Contractor's financial position.

Our sample of SCCC financial transactions did not find exceptions to internal controls.

TAP International further examined the Contractor's controls governing the use of credit cards. The Contractor managed one credit card account for use by seven employees working for the Contractor, CVB staff, and SCCC staff. Using the same credit card account for three entities needs to have strong business processes to reconcile receipts to the expenses on a timely and accurate basis. However, the Contractor did not implement uniform credit card reconciliation processes or implement other internal controls, as follows.

- The SCCC requires receipts to be given to its accounting department immediately after the purchase but the Contractor does not consistently collect these receipts for the CVB. Missing receipts were clear across the three credit card statements selected for review. Without receipts, the Contractor cannot review the allowability of the expenses incurred.
- Travel request forms that show the planned dates of the trip, the purpose of the trip, and expected expenditures can allow Contractor staff to cross-check dates of approved travel with corresponding credit card expenses. Neither the SCCC nor the CVB require travel requests to be prepared so that credit cards could be effectively reconciled. Without the approved travel requests, Contractor staff do not have a basis to determine whether executive management had given approval of the travel related charge prior to its

An effective internal control requires submission of receipts or expense reports immediately after purchases or at month-end.

Another control is to prepare travel request forms for pre-approval of expected expenses.

A third control is to prepare purchase orders. A purchase order describes the purpose of the expense and the estimated costs for review and approval by management prior to incurring the expense.

occurrence. SCCC management explained that their employees do not perform out of town travel and would not need to prepare travel orders. However, travel to attend future training, seminars or conferences should be authorized through a travel order.

- While the SCCC requires purchase orders for internal needs such as printing, office supplies, and small equipment items; the CVB did not consistently use them. Without purchase orders, the CVB staff are making purchases without advance knowledge by management. The Contractor's financial policies do not comprehensively address credit card use or identify spending limits subject to purchase orders.

Information Management Could be Used More Effectively

This section describes how well the CVB and SCCC manage and uses the information it collects on performance.

The SCCC Has an Opportunity to Fully Leverage the Information it Collects

Information management is the planning, organizing, collecting, analyzing, evaluation, and reporting of information. Vital to information management is performance measurement, which allows development and reporting on key metrics using operational information collected by an organization. The information, when analyzed, can identify when work processes break down or where work processes can be improved for better service delivery. Performance measures can address the timeliness of program activities conducted (process), the direct products and services delivered by the process (outputs), or the results of those processes (outcomes).²⁶ Effective information management supports better and quicker managerial decisions that increase overall operating effectiveness.

The CVB implements a satisfactory information management system in place. The CVB routinely tracks, collects, and reviews its progress at selling and marketing both the SCCC and area hotels. In addition, the CVB routinely reviews the accuracy of the data captured in its computer systems. The CVB management staff analyzes output measures to identify trends, compute performance bonuses, and to assess progress at meeting annual performance targets.

Examples of the types of performance measures tracked by the CVB are primarily output measures, such as:

- Number of leads
- Number of leads lost
- Number of events booked
- Number of events cancelled
- Number of room nights
- Number of guests.

²⁶ MANAGING FOR RESULTS: Data-Driven Performance Reviews Show Promise but Agencies Should Explore How to Involve Other Relevant Agencies, February 2013. U.S. Government Accountability Office
PERFORMANCE MEASUREMENT AND EVALUATION, May 2011, US. Government Accountability Office.

The CVB also collects and monitors a key outcome measure – economic impact – to assess the effectiveness of its sales and marketing efforts. The CVB computes this metric using an industry formula that considers lodging revenue, TOT revenue, TID revenue, sales tax, and tourism activities among other things. In FY 2016-17, the total economic impact for SCCC events totaled \$122.3M, exceeding its annual performance benchmark of \$88M.²⁷

The SCCC collects multiple types of data but could do more to analyze the information to assess overall performance. For example, the SCCC administers customer satisfaction surveys, but it does not collectively analyze the surveys to assess overall performance effectiveness and efficiency. In another area, the SCCC collects information on event bookings but does not routinely use the data to assess booking patterns and trends.

The SCCC does not have same level of information management in comparison to the CVB.

Neither the CVB nor the SCCC have developed benchmarks from which to assess their own annual performance. Benchmarks are a standard of performance using the SCCC’s and the CVB’s own information. Having this information available could allow the Contractor to align sales and promotion efforts with the SCCC rental needs.

Examples of benchmarks and performance measures include:

5-year Average Benchmark	Annual Performance Measure
Facility use rate	% of calendar days that the Convention Center facilities are used
Space utilization	% of SCCC square footage used
Revenue per event	Average direct revenue per event
Total events booked	Total events booked
# of same day bookings	Annual # of same day bookings
# of multi-day bookings	Annual # of multi-day bookings
Total events booked by partner	Average Total events booked by CVB Total events booked by SCCC Total events booked by SCCC partners

The Contractor could benefit from other information to measure business process efficiency. For example, the CVB implements business processes to work leads and to book events with its clients. The CVB staff said that the time required to complete these activities consume about three hours to prepare required forms; time that could be spent working other leads. Changes could be made with how their activities are administered, such as having support staff prepare required forms, but the CVB requests for support staff have been denied. Tracking the efficiency

²⁷ TAP International, Inc analysis of 10 years of CVB booking data.

or cost-effectiveness of the SCCC and the CVB operations can drive changes to increase productivity.

Another business process that could have better cost data and performance information is how the SCCC administers maintenance operations. Presently, tracking and monitoring of maintenance operations is a manual process that require supervisors to prepare a one-page log for each shift, describing all the items that need repair. For FY 2017-18, the logs contained 2,893 items across two shifts per day. The completion status of each items described on the log was unknown because the SCCC does not record when a work order is completed, or what was done to repair the item. Better information management, including implementation of a formal work order system that can track individual work items, the amount of time and resources spent on each work item, and the completion status of each item could facilitate effective management of maintenance operations.

Contractor’s Governance and Other Activities Do Not Facilitate Public Trust

The National Council of Nonprofits states there is no cookie cutter approach to governance of nonprofit organizations, but there are basic activities that help nonprofit organizations accomplish good governance. Good governance in the nonprofit sector promotes the proper use of resources consistent with the organization’s mission and applicable laws and it is about maintaining trust and confidence of those the organization serves. This section describes the activities of the Contractor to provide a compliant and accountable operations for the SCCC and the CVB.

The Contractor Had Not Developed Key Governance Policies and Procedures

The Contractor is organized as a 501(c)(6). The U.S. Internal Revenue Services (IRS) describe basic governance activities it desires for nonprofit organizations. Basic governance activities are those described on the IRS Form 990, which is subject to annual filing by nonprofit organizations. Six areas described on the Form 990 assess governance activities. TAP International found the Contractor implemented three of the six activities recommended, as shown in Figure 25.

Figure 25: Contractor Implementation of Basic Governance Activities

Requirements	Implemented
Maintain minutes of all board meetings (and committee meetings for committees that are authorized to act on behalf of the board, such as an executive committee). (See IRS Form 990, Part VI, Section A, line 8)	Yes
Complete a questionnaire about conflicts of interest. (See IRS Form 990, Part VI, Section B, Line 12)	Yes
Disclose to the public the nonprofit’s three most recently filed annual returns with the IRS, as well as its application for tax-exemption and related correspondence and attachments.	Yes
Maintain a written whistleblower protection policy (Part VI, Section B, line 13)	No

Maintain a written document retention/destruction policy (Part VI, Section B, line 14)	No
Maintain a written gift acceptance policy to govern the receipt of "non-cash" gifts, such as gifts-in-kind, and unusual gifts (land, vehicles, artwork etc.)	No

Source: TAP International, Inc. analysis of Contractor Form 990 Filings

The Contractor Has Several Self-Disclosed Conflicts of Interests

We further examined the effectiveness of the Contractor’s efforts to implement one of the three basic governance activities – conflict of interest forms. For any organization, officials and employees are expected to use good judgment, to adhere to high ethical standards, and to act in such a manner as to avoid any actual or potential conflict of interest. A conflict of interest occurs when the personal, professional, or business interests of an employee or Board member conflict with the interests of the organization. Both the fact and the appearance of a conflict of interest should be avoided.

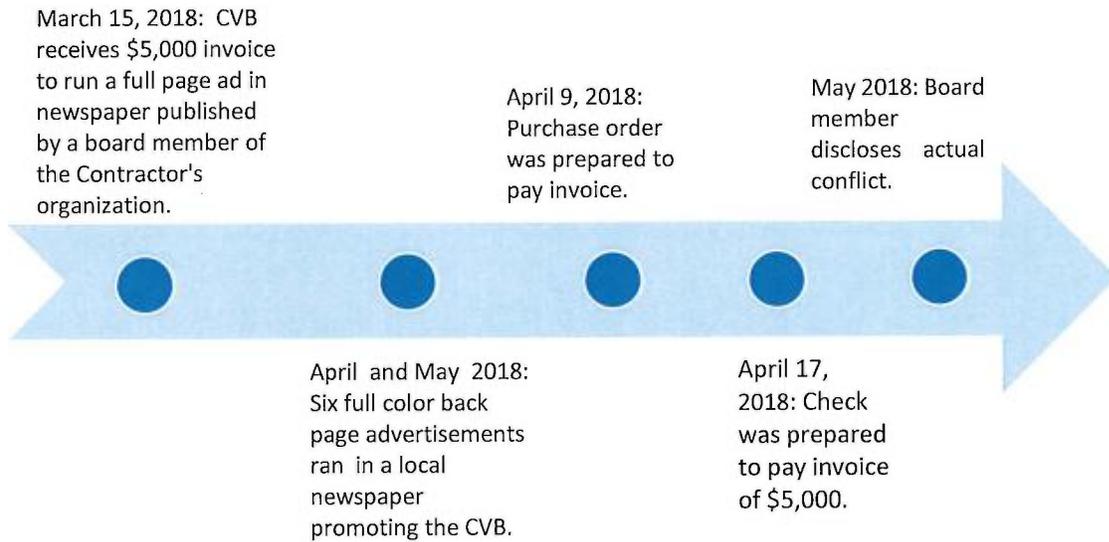
Our review of 19 conflict of interest forms submitted by Contractor officers and employees identified the following:

- The Contractor’s employees working for the CVB and the SCCC, and who make decisions on behalf of the City, did not complete the forms because they were not requested to do so by the Contractor.
- Of the 19 forms submitted, three had contained disclosures of conflicts of interest. One of these forms, submitted by a Board Director who is also serving on the Contractor’s committee overseeing the CVB, disclosed an actual conflict of interest regarding a business relationship between his company, a local newspaper, and the Contractor’s organization. The disclosure occurred in May 2018, after a conflict had occurred, preventing the Contractor’s Board or Executive Director from resolving the issue. As shown in Figure 26, the conflict was related to ads purchased in a local newspaper by the CVB.

“A conflict of interest exists when officers, board members, and staff has a direct or indirect business, professional, or personal relationship that may influence or be perceived to influence the judgement or action of the Officer, Board member, or staff serving the Santa Clara Chamber of Commerce and Convention Visitors Bureau. Such conflict of interests include, but are not limited to, personal and professional affiliations, and business dealings. All real and perceived conflicts of interest will be disclosed to the appropriate level necessary for consideration, resolution, and direction.”

Source: Contractor Conflict of Interest Statement

Figure 26: Timeline on Conflict of Interest Disclosure



Although the CVB's National Advertising Manager raised concern about the value of running the ads in that particular local newspaper, the Contractor stated that the CVB staff, without influence from the Board of Directors, believed that it was better business decision to advertise in a more cost-effective media outlet that targets Santa Clara corporations.

In another example of a self-disclosed conflict of interest, a current Board member, reported in April 2018 of future plans to replace a current SCCC vendor responsible for mailing and shipping services. The SCCC General Manager/CEO explained that the current vendor did not comply with contract terms and conditions and the vendor contacted the Board member to serve a replacement, who was subsequently brought to the SCCC's attention.

The SCCC General Manager/CEO further reported the Board member is currently in the process of purchasing the contract from the current vendor. The SCCC did not issue a competitive bid and has not prepared a new contract, noting that it was important to resume business. The lack of an open and competitive bidding process puts SCCC at risk of not securing the lowest pricing for the services. In addition, this practice puts SCCC at cross purposes with public operated entities. The standard practice for publicly supported operations is to prepare new contracts upon changes in corporate ownership requiring a new vendor to complete tax forms, business requirements and insurance requirements.

The Management Agreement does not require the Contractor to follow City procurement policies. However, allowing a Board member of the Contractor's organization to assume mailing and shipping operations gives the appearance of financial self-dealing on a personal and organizational level. It also raises questions about the strength of the Contractor's contracting processes and related decision-making. Going forward, the Contractor's CEO reported that the Board member would have to abstain from any future decisions regarding the SCCC only and

disagreed with our assessment that allowing a Board member to assume the contract without a competitive bid gives the appearance of financial self-dealing.

Other members (and former members) of the Contractor's organization had key²⁸ contracts for services with the SCCC. One SCCC partner, who has not paid membership dues since 2016 but is still listed on the Contractor's membership directory, provides catering services. The caterer has been a partner for the SCCC since 2008. Another member of the Contractor's organizations provides audio-visual services. Catering and audio-visual are two of the revenue producing services for the SCCC. The SCCC bidding documents we reviewed did not contain any preference of vendors being members of the Contractor's organization, as appropriate. SCCC management explained that these businesses became a member of the Contractor's organization as a business choice on their behalf.

For a third disclosed conflict, an employee of the Contractor, which is not the current or former Executive Director, reported in May 2018 serving as an officer in a risk management association. There was no other information documented on the form that described the circumstances of the reported conflict.

Finally, one of the 19 forms reviewed and submitted by the (former) Chair of the Contractor's Board of Directors in April 2018 was partially completed, neither confirming or denying that a conflict of interest is present.

According to the National Council of Nonprofits, a key part in implementing conflict of interest activities is to manage the conflict. After the Board member and officer made the Contractor aware of their conflicts, consideration should be documented on what action, if any, was taken to resolve the conflict. The Contractor's (new) Executive Director had no prior knowledge if action was taken.

A goal of many organizations when addressing potential or actual conflicts of interests is to raise awareness of the types of situations that may be a conflict and the steps needed to encourage transparency with management when situations arise. The Contractor's CVB and SCCC employees had not received conflict of interest training although the Contractor's newly hired Executive Director began a training on basic governance for nonprofit organizations for the organization's Board of Directors.

The Contractor Appears to Have Misused Government Assets

Our review of the Contractor's conflict of interest activities led to the identification of other serious concerns about its management of the SCCC. The first concern is the Contractor's

²⁸ (As defined by largest generation of revenue at the SCCC from its vendors.)

frequency and extent of applying discounts on facility charges for use of the SCCC.²⁹ The Contractor's SCCC management staff explained that the use discounts largely serve to attract events and to be competitive with other convention centers. Offering discounts is common for the convention center industry.

As shown in Figure 27, from FY 2011-12 through April FY 2017-18, the SCCC discounted (i.e. adjusted fees) for more than half of all events that occurred at the SCCC. Throughout the six plus years, the value of the adjustments totaled \$16.1M, about half of the \$36M gross facility charges. The SCCC's Assistant General Manager approves of all financial adjustments given to event sponsors.

Figure 27: Number of SCCC events (aka bookings) with Fee Discounts (Adjustments)*

Year	Total Scheduled Events	# of Bookings with Discounts	% of Bookings with Discounts	Total Value of Discounts (Adjustments)
FY 2011-12	465	273	59%	(2,756,338.40)
FY 2012-13	513	294	58%	(3,031,425.75)
FY 2013-14	501	287	57%	(2,358,153.08)
FY 2014-15	464	227	49%	(2,385,939.00)
FY 2015-16	422	217	51%	(2,067,983.50)
FY 2016-17	447	228	51%	(2,051,815.12)
FY 2017-18 (April)	395	194	49%	(1,463,526.00)
Total	3,207	1,720		(16,115,180.85)

Source: TAP International, Inc. analysis of SCCC booking data.

*SCCC management explained that discounts are applied to some event sponsors if food and beverage sales or hotel room exceed a minimum level of purchases.

Per the SCCC's booking policy, discounts can be applied when charges from catering services reach a specified level. However, the SCCC did not fully comply with its own policy because the SCCC allowed use of the SCCC facilities to organizations that did not purchase catering services. For instance, in 2012, 2013, and 2015, the SCCC allowed a summer-long event sponsored by a faith-based organization that did not purchase catering services, or any other services offered by the SCCC, and therefore should not have been eligible for a discount. Across the three years, the gross charges totaled about \$1.1M and discounts given to the faith-based organization totaled about \$1.02M. The Contractor's SCCC staff explained that even though the organization did not purchase catering services, the event came with a substantial need for hotel rooms (450 rooms at the conference's peak) at a time when the hotel industry was suffering from an economic downturn. The TID paid the Contractor \$51,000 in subsidies to help offset the facility

²⁹ When the SCCC facilities are used for events, the related charges are public revenues because the SCCC is a publicly owned facility.

rental charges lost by the SCCC. Further review is needed to determine the allowability of the TID payment. The City should assess legal compliance with laws governing prohibition of gifts of public funds.³⁰ SCCC management reported that coordination between the SCCC and the TID is an important component in booking future business.

The SCCC's booking policy does not state that the SCCC is prohibited from fully discounting facility rental charges. However, as shown in Figure 28, event sponsors hosting a total of 353 events (or 11 percent of all SCCC events) received a full adjustment on gross charges equaling \$2.8M. Allowing full rental facility discounts on a publicly owned facility without official City authorization is potentially misusing government owned assets.

Figure 28: Number of SCCC Events Without Facility Rental Fees

Year	Number of Events with 100% Discount on Rental Fees	Total Discounts Applied
FY 2011-12	64	651,125
FY 2012-13	75	595,848
FY 2013-14	56	319,785
FY 2014-15	42	377,380
FY 2015-16	40	456,140
FY 2016-17	46	226,025
FY 2017-18 (April)	30	205,500
Total	353	\$2,831,803

Source of Data: TAP International, Inc. analysis on SCCC booking data.

On average, the Contractor fully discounted facility charges about 50 times per year and over a long period of time which led to a direct financial loss to the City on facility rental charges. We could not determine the full loss of rental revenue because some organizations that received a full discount on rental facilities in any one year and used the facility the following year, had gross charges applied of \$0; therefore, technically, no discount was applied. This happened 31 times in a six year plus period of our analysis.

The types of event sponsors that used the SCCC facilities with no facility charge include:

- City agencies³¹
- Contractor's employees
- Contractor's organization
- County agencies
- Local businesses

³⁰ There was no violation of the SCCC collective bargaining agreement in allowing the event sponsor to perform their own set up and cleaning of meeting facilities.

³¹ City of Santa Clara should pay a fee or a service charge to use the SCCC's facilities given that the convention center is a public enterprise operation.

- Nonprofit organizations that are members of the Contractor’s organization
- Individuals and organizations that are members of or who have business ties to the Contractor’s organization
- Political action committee associated with the contractor’s organization³²
- SCCC contracted vendors.

The nature of events that took place were birthday parties, wedding receptions, general meetings, parties, and networking events. SCCC management also reported its contracted vendors sometimes use space for employee training.

Finally, when the SCCC applied full discounts to the Contractor’s members and member organizations, the SCCC did not comply with the Contractor’s own policy of applying a 20 percent discount up to \$1,000 per member. The SCCC management said that full discounts were applied to incentivize membership enrollment to the Contractor’s organization and began at the direction of the Contractor’s (former) Executive Director although TAP International could not verify this statement. The Contractor does not presently advertise or promote the discount on its website or other materials.

Further legal analysis is needed to determine if the Contractor: (1) violated its 501(c)(6) tax exempt status when it provided full facility discounts to its members, and (2) engaged in self-dealing when it used its personal or organizational relationships to offer free use of publicly owned facilities, and allowed the Contractor’s Board member to assume SCCC services without implementing a competitive bid.

Investigation is needed by the California Fair Political Practices Commission to determine if violation of state law occurred when the Contractor allowed the Santa Clara Chamber Political Action Committee to use SCCC facilities free of rental charges.

The Contractor’s CVB Improperly Issued a Donation Check to a Political Action Committee

In 2012, the Contractor sponsored a web-based fundraising event for a political action committee. During the campaign, the Contractor received checks that totaled about \$8,000 made payable to the CVB. Rather than returning the political donors’ checks, the Contractor deposited the checks and recorded the deposit on the CVB’s accounting records. The Contractor then recorded and issued a check on May 8, 2012 under the CVB accounting records for about \$8,000 to the Political Action Committee. Contractor management attributed the problem to donor confusion about to whom to make the check payable. When the CVB sent the payment to the Political Action Committee, it provided a gift for political purposes that needs further review by the California Fair Political Practices Commissions for potential violation of State law. In addition,

³² The SCCC reported that the Political Action Committee (PAC) received discounts for its food and beverage purchases. Our analysis shows that the PAC was a member of the Contractor’s organization and per the Contractor’s policy should have received a 20 percent discount on rental charges only.

because the Contractor facilitated the fundraising activity for the Political Action Committee, it may have jeopardized its 501(c)(6) tax exempt status.

The Contractor Misused Government Sponsored Resources

Under California Government Code 8314, using public resources for either personal or political purposes is illegal. Public resources can be classified as: money, staff time, equipment, technology, telephones, furniture, computers, and office supplies, if public funds were used in their purchase. The use of public resources would need to be enough to result in a gain for the user and a loss to the agency that can be estimated as a monetary value. As previously discussed in the report, the City virtually funds all of the operations of the CVB, paying about \$1.5M annually to the Contractor.

The CVB shares the same web domain name—santaclara.org—with the Contractor’s organization and the City pays for 80 percent of its share of costs although the Contractor does not provide detailed financial reporting on the costs for computer and related services. In early and mid-2018, the Contractor sent email blasts and newsletters (using the web domain name) to the surrounding community in support of its organization’s core mission. The newsletters also contained promotional ads for fundraising events by the Santa Clara Chamber Political Action Committee. The shared use of the domain name sent mixed messages to the public because the Contractor is holding the CVB name out to the public as its own entity, thereby benefitting from the lack of distinction between the private and public supported resource.

The Contractor is primarily responsible for the issues described in this section, jeopardizing the level of trust that Contractor decisions are made in the City’s best interest. The issues could have been prevented had the Contractor’s Board members and Contractor employees received training on the governance, ethics, conflict of interest, use of public resources, and proper internal controls. In July 2018, the Contractor’s new Executive Director, implemented a training program in place that is a good first step in conveying the basics of nonprofit governance.

Other Business and Marketing Structures Govern Local Convention Centers and Visitors Bureaus

In June 2018, the City Council directed the City Manager to develop options for the provision of convention and visitor services. Of the six convention and event centers located within a 250 miles range of the SCCC whose cities also have visitors’ bureaus, none are managed by a Chamber of Commerce. These cities have used other types of business structures, such as a City formed nonprofit organization, third-party corporation, and formation of a district or authority to operate both the CVB and the convention center.

The fact that other convention centers and CVBs are not operated by a Chamber of Commerce does not necessarily mean that the City should change contractors because other considerations should be factored in, such as overall operating and financial performance, City satisfaction with services, and cost. Nevertheless, the CVB and the SCCC management said that alternative business structures could work well for their operations. The CVB Sales Director explained that the CVB has always operated as a separate entity even though it was under the umbrella of the Contractor's organizational structure and should be organized as a separate entity in the future to fully promote the City as a destination area. The SCCC management reported that integrating the CVB with the Convention Center would work well, promoting coordination between the CVB and the SCCC. Both the CVB and the SCCC management reported that the Contractor's role in their operations had no influence over their performance because of the separation by each from the Contractor's core business.

Contract Management Needs Reform by Both the City and the Contractor

This section describes the level of Contractor oversight by the City and the Contractor's use of the City's budget policies to increase its fees.

The City and the Contractor Share Responsibility for Contractor Issues

Cities routinely contract with vendors to provide services to its residents and taxpayers. The International City Manager's Association (ICMA) writes that public contract management should include key activities, such as the development of metrics to check, track and report on vendor performance.³³ When the City originally drafted the agreements with its Contractor, in the 1970's and 1980's, the agreements primarily addressed financial requirements.³⁴ The two agreements, however, do not have other key terms and conditions, such as:

- Accomplishment of clear financial and operating performance benchmarks. This information allows the City to monitor the Contractor's progress towards its financial and operational goals and to identify early warning signs of negative performance trends.
- Implementation of key internal controls. These internal controls include (1) prohibition on co-mingling of public and private funds; (2) City review of financial transactions; (3) safe data storage,³⁵ and (4) development of facility use policies.
- Implementation of financial disclosures rules. Presently, the City does not require the Contractor to submit financial disclosure forms that help identify and to avoid any potential or appearance of a conflict of interest.³⁶ The Contractor and its employees, who make decisions about on behalf of the City, have not been required to file the California

The two agreements between the City and the Contractor did not contain key terms and conditions. The absence of these requirements coupled with City's lack of past oversight of the Contractor allowed the Contractor to make questionable decision-making about the CVB's and the SCCC's operations.

³³ Contract Management: A Risk-Based Approach for Local Governments, January 2018, by Kyle O'Rourke, Baker Tilly Virchow Krause, LLP, and Frank Girgenti.

³⁴ The two agreements have provisions for the Contractor to administer separate accounting activities between the CVB and the SCCC and from its core operations, proper documentation for reimbursements, budget submissions, and annual financial audits.

³⁵ Both the City's Management Agreement and the CVB Agreement state that the Contractor shall maintain accounting records for the life of the agreement and for three beyond the term of the agreement upon its expiration. However, the agreements do not include requirements for the safeguarding of information. Protecting financial records ensures that the information and data they hold is available any time for review and evaluation. The contractor's absence of strong controls over the maintenance of financial records pose a high risk for the City because the Contractor does not safely safeguard CVB accounting records, storing records below a water pipe that had previously leaked and damaged some of the accounting records. We did not determine the extent of the damage.

³⁶ The California Fair Political Practices Act requires that a city's conflict of interest code reflect the current structure of the organization and properly identify officials, consultants, and employees who should be filing Statements of Economic Interests (Form 700s). The Form 700 provides necessary information to the public about an officials or consultant's (contractor) personal financial interests to ensure that they are making decisions in the best interest of the public and not enhancing their personal finances. Consultants and contractors must file Form 700s if they make or participate in making governmental decisions.

Form 700 – Statement of Economic Interest – because the City did not identify in its conflict of interest policy that the Contractor would be subject to annual filing.

Without these requirements, the City does not have assurance of proper risk mitigation, which had partly led to the issues described in this report. The Contractor’s lack of effective administration over operations discussed throughout this report is also a primary factor.

The absence of key contract requirements can be addressed, in part, by active contract monitoring. The City Manager’s Office is responsible for contract oversight although there are no documents available to support any historical activities.³⁷ Without active contract oversight by the City, the City had historically placed too much reliance on the Contractor to deliver services efficiently and effectively, and in compliance with applicable laws and regulations.

In 2017 and 2018, the City’s newly hired City Manager implemented efforts to strengthen the City’s contract oversight activities, assigning the City’s Finance Director as Contracts Manager, recruiting for a City-wide contracts manager, and implementing activities to enhance and assess the Contractor’s performance. These activities include hiring a consultant to enhance marketing activities, implementing monthly oversight of the SCCC accounting activities, and requesting this audit.

Former City Officials Did Not Use the Contracting Process to Change Management Fees

Under the terms of the Management Agreement, the City is to provide an annual management fee to be included in the SCCC’s annual operating budget. The payment amount ranged from \$45,000 to \$50,000 until 2016 when the management fee was increased to two percent of the SCCC’s gross sales revenues. In FY 2016-17, these fees totaled \$136,699.

Changes in payment terms, like the one requested by the Contractor, are typically subject to contract amendments. Contractor documents show that in March 2017, the City provided instructions to the Contractor to use the budgeting process to change its management fees. However, in April 2017, the City met with the Contractor in budget meetings and a decision was reached that a formal amendment was needed. The Contractor’s Board of Directors was to draft an amendment/letter regarding the management fee and that the City would prepare a letter establishing the new payment term of two percent of gross sales. There was no information provided that either the Contractor or the City followed through on these tasks. Having a contract amendment would have allowed for proper discussion and deliberation by the City Council on the merit of the fee increase. The City Council, upon learning that it inadvertently approved the fee increase through the City’s budgeting process, voted to suspend payment of the management fee.

³⁷ The Contractor’s CVB management said that City management had historically held frequent progress meetings with a former and long-time Executive Director. These weekly meetings reportedly stopped after the Contractor’s Executive Director left the organization in 2015.

Section 3: Changes are Needed to Enhance SCCC Sustainability and Overall Performance

This section discusses three areas of the Convention Center and the CVB operations that have hampered the CVB efforts to enhance sustainability and overall performance. These areas are:

1. Event Scheduling
2. Marketing and Sales Operations
3. Facility Needs

New Strategies are Needed for Event Scheduling

More Multi-Day Events Should Fill Convention Center Calendar

An important measure to assess marketing effectiveness includes monitoring the number of available dates for potential events. In FY 2016-17, the SCCC event calendar was nearly filled, with few dates available throughout the year to book events. Only about ten percent of the SCCC's calendar was available for events, showing the popularity of the facility.

Another measure is the monitoring of facility space available for potential events. However, the SCCC does not maintain this data to determine the percentage of space available to potentially schedule other events. Monitoring these types of measures can allow the SCCC and the CVB staff to tailor their marketing activities to fully maximize the space offered by the SCCC.

The SCCC, nonetheless, collects other data to assess marketing effectiveness, such as the number of events scheduled, the duration and type of each scheduled event, and gross and net charges resulting from the event. However, as previously discussed in this report, the SCCC does not routinely analyze the information it collects to monitor performance. Our analysis, however, examined the presence of patterns in event scheduling. For instance, as shown in Figure 29, the number of events scheduled at the SCCC has not increased over time other than some fluctuations up and down. However, as shown in Figure 30, the total net financial value of the SCCC events scheduled increased over time.

Same day events average \$1,865 in fees per event between FY 2011-12 and FY 2016-17.

Multi-day events averaged \$12,000 in fees per event between FY 2011-12 and FY 2016-17.

Figure 29: Total Events Scheduled at the SCCC

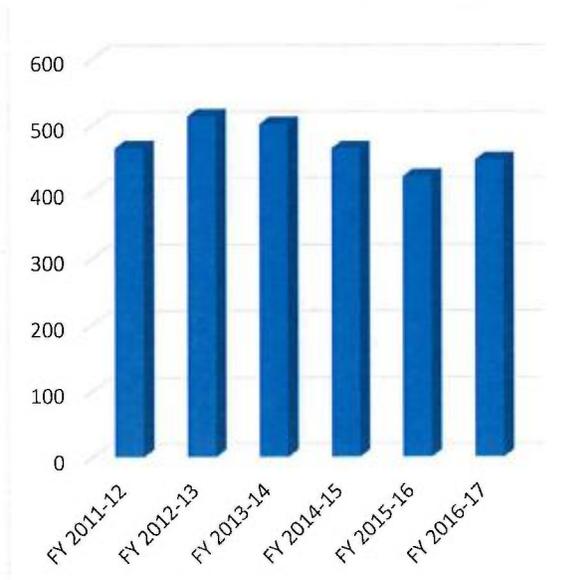
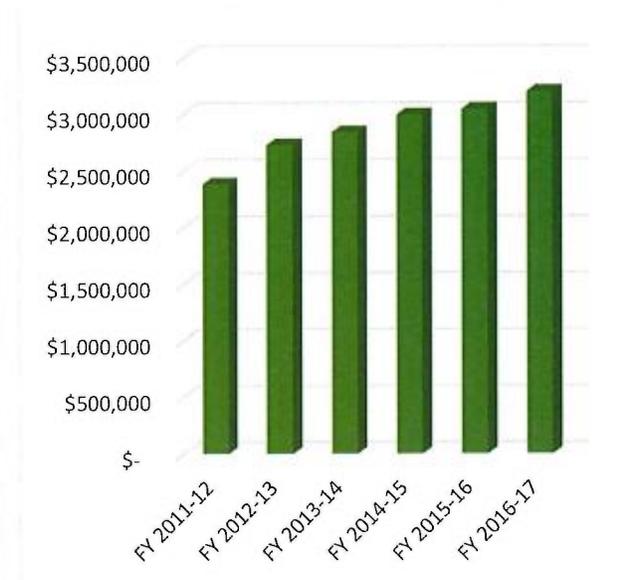


Figure 30: Net Financial Value of Events Scheduled at the SCCC

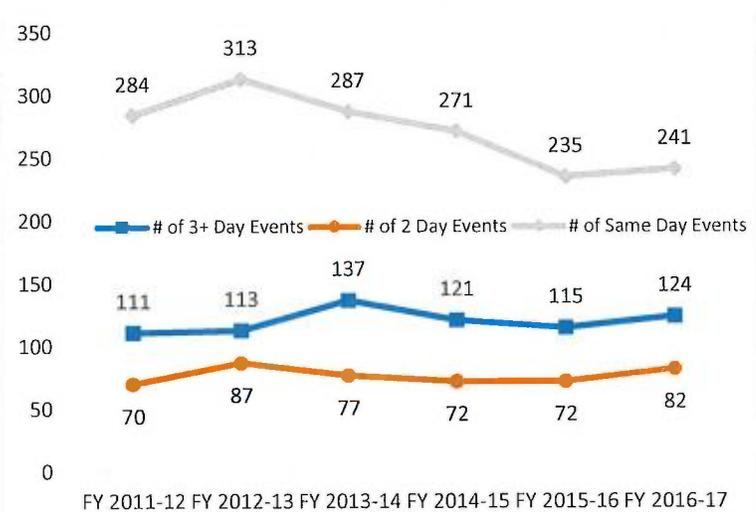


Source: TAP International, Inc. analysis of SCCC booking data

In addition, of the 2,812 total events hosted by the SCCC in the past six years, 58 percent of them began and ended on the same day (herein referred to as same day events). Same day events result in less revenue for the City in comparison to events that span several days.

Nearly 42 percent of the total events hosted over the past six years by the SCCC required two or more days (herein referred to as multi-day events). As shown in Figure 31, events that require three or more days occur more often than events that require two days. The CVB staff have primary responsibility for scheduling multi-day events at the SCCC because these types of events generally need hotel lodging.

Figure 31: Total Convention Center Events by Event Length and Fiscal Year



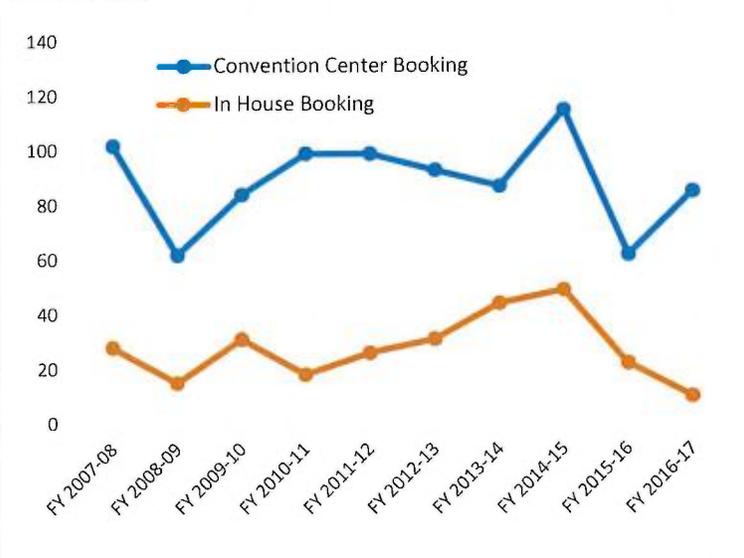
Source of Data: TAP International, Inc. analysis of SCCC booking data.

Our analysis of data further shows the CVB has increased its activities to scheduled SCCC events while its scheduling of hotel meeting space (herein referred to as in-house bookings) has declined. Figure 32 suggests that hotels may have the space available to host one-day events that are generally scheduled at the SCCC.

Better Guidance is Needed in Scheduling Events

The SCCC, SCCC partners, and the CVB are all responsible for scheduling events at the SCCC. With the involvement of multiple entities, guidance should be available to help in decision-making on the types of events to receive priority scheduling. Although the SCCC has available booking policies, the policies do not address event coordination. SCCC management explained that the practice is for CVB’s multi-day events to receive priority scheduling and the SCCC to fill the gaps in the event calendar with same-day events. It is unclear whether the SCCC consistently applies this guidance because the SCCC can schedule same day events up to 18 months in advance. The SCCC also reserves the month of December for its clients because SCCC management explained it was a profitable time of year for them, but that it would accommodate if CVB presented a substantial piece of business. CVB staff reported multiple instances of multi-day events that were turned down by the SCCC over the years. In FY 2017-18, there were 32 potential multi-day events with over 55,000 participants (see Figure 33) that had to look elsewhere because proposed dates were unavailable at the SCCC, creating lost economic opportunities for the City (based on the assumption that at least three of 32 potential multi-day events could have been scheduled if the dates were available).

Figure 32: Number of CVB Events Scheduled at the SCCC and at Area Hotels



Source of Data: TAP International, Inc. analysis of CVB booking data.

Figure 33: Top Reasons for Losing Multi-Day Events at the SCCC, FY 2017-18

	Meetings	Attendees	Requested Rooms
Convention Center dates unavailable	32	55,168	42,544
Convention Center too small	12	48,816	56,536
Better attendance in another city	45	42,065	40,291
Rates too high	50	36,776	39,178
Event postponed/cancelled	30	30,942	15,467

Source of Data: TAP International, Inc. analysis of CVB Lead and Booking Reports

In addition, the SCCC could develop policies that guide scheduling events requested by nonprofit organizations. For example, some convention centers set aside a limited number of dates to offer facilities at discounted rates or set aside dates that historically have had low facility utilization. Without established guidance, the City does not have assurance that the SCCC event space is leveraged to the maximum economic benefit possible.

In the absence of guidance for scheduling events by nonprofit organizations, the review and approval of potential events takes on greater importance. The review process could consider any number of factors all with the purpose of maximizing potential convention center revenue. For the CVB to successfully confirm a multi-day event, the Contractor's CVB employees prepare a multiple page letter of intent that describes the nature of the event, the services requested, and a preliminary financial analysis. The CVB staff reported that the approval process for each potential booking requires up to three hours. The Contractor's SCCC employees, however, are not subject to the same process even though same-day events have lower potential for revenue generation. The absence of implementing parallel processes raised questions by some CVB employees about whether the SCCC was effectively making decisions on event scheduling. Without documentation on why the SCCC or the CVB events were approved or denied, TAP International had no basis to determine if booking principles regarding allowing priority booking to the highest revenue generating events were consistently applied by the SCCC management. However, given that same-day bookings comprise over half of SCCC events, the City does not have assurance that the review process gives top priority to events with greater economic benefit.

Marketing and Sales Operations can be Enhanced

Marketing Plans Need to be Comprehensive and Integrated

The purpose of a comprehensive marketing plan is to give strategic direction for the success of the SCCC and the CVB. It serves to describe the leadership role for the marketing of meetings and conventions, leisure travelers, and business and cultural events that lead to economic growth for

the City and the surrounding region, including describing how the SCCC and the CVB can distinguish itself from its competitors.

The City hired an industry consultant to determine how best to shape the SCCC and the CVB for the future. The industry consultant, among other activities, held meetings with the CVB and the SCCC to establish new strategies for generating leads and sales goals. In addition, the Contractor had set up its own committee to offer leadership direction for marketing activities. In 2018, the Contractor's committee discussed the need for an updated marketing strategy, but a comprehensive and integrated marketing plan has not yet been prepared. In lieu of an integrated plan, the CVB had developed its own five-year strategic plan and other annual business plans to market and promote the city. These plans included analysis of strengths and weaknesses, development of sales goals, and description of action plans for each market sector. Without a marketing plan that addresses the sales and marketing activities of both the SCCC and the CVB, effective coordination was hampered. The Contractor allowed each entity to generally operate independent of each other.

Staffing Could Be Re-Structured

Staffing is an essential function in any organization. Hiring staff with the right skills, knowledge, and abilities for the role to be performed can contribute to the organization's success. At the CVB, the Contractor hired five sales managers with extensive experience in the tourism and hotel industry. The CVB's two Vice-Presidents also possess extensive experience in the Convention and Visitors Bureau industry. In comparison, the SCCC hired one Sales Director who does not have the same level of experience as the CVB staff at the time of hiring. Experience was developed on the job because the Contractor did not invest in continuous professional training to either the CVB or the SCCC sales staff nor did the City require professional development.

The differences in experience levels did not result in significant differences in performance levels relative to total event bookings by each entity. The CVB books about 42 percent of the events held at the SCCC while the SCCC staff book the remaining 58 percent of all events, on average. It takes the CVB more work and effort to book multi-day events, thus the need for more employees.

The Contractor for the CVB and the SCCC divided the supervision of sales activities. The SCCC's Assistant General Manager oversees its one Sales Director. Two CVB Vice-Presidents oversee five sales managers and six other support staff. The CVB and the SCCC staff reported the absence of effective communication and other information sharing activities because of the fragmented structures. As a result, none of the entities were fully aware of how well the others performed relative to meeting sales goals and targets.

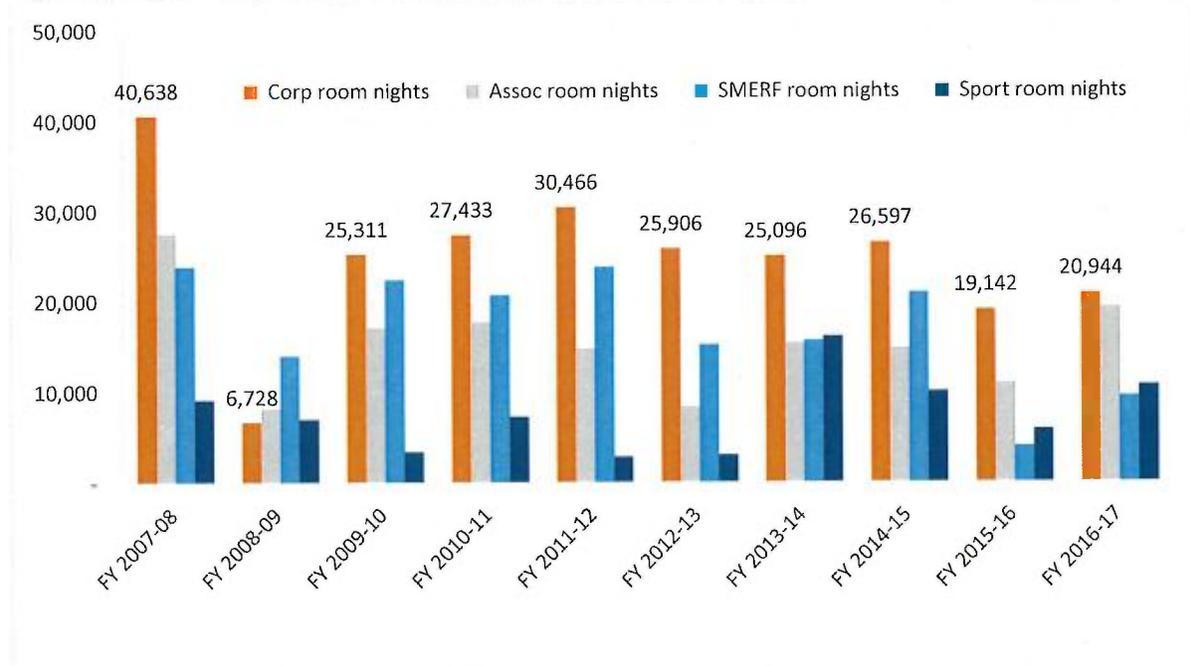
Given that the CVB employs five sales managers, we examined the extent that the CVB strategically utilizes these resources to maximize its performance. Each Sales Manager is

responsible for one of five market areas included in the Contractor’s scope of work with the City. These market areas are:

- Corporations
- Social, military, education, religious, and fraternal associations (SMERFs)
- Sports
- Associations
- City-wide events

As illustrated in Figure 34, the CVB books more corporate events in comparison to its other market areas. Given that corporate scheduled events represent the most common type of multi-day event hosted at the SCCC, assigning more staff in this area to work leads could likely result in more events. The CVB could also assign a sales manager to more than one market area that have fewer potential leads and events, such as the Sports and SMERF areas. The CVB management explained that sales managers are reassigned when workloads increase among other managers, but that the CVB needs more support staff to generate and process leads, freeing sales manager to devote their attention to working with the potential client directly. While additional staff have been requested in the budget, the contractor’s CVB management explained there was low likelihood the positions would be approved. In FY 2015-16 and FY 2016-17, the CVB did not spend all of its contract funds from the City, leaving up to \$517,000 on the balance and enough to hire support personnel.

Figure 34: Type of Events and Hotel Room Nights Secured by the CVB



Source of Data: TAP International, Inc. analysis of CVB booking

More Leads are Needed to Successfully Book One Event

California has 20 Convention and Event Centers with seven of them located within a 200-mile radius of the SCCC, creating a competitive environment for the CVB to book multi-day events. A key success factor in scheduling the SCCC is generating enough interest, or leads, from potential clients that could result in a scheduled event. A large availability of leads provides ample opportunity for staff to promote the SCCC and area hotels to potential clients. The CVB's own benchmark

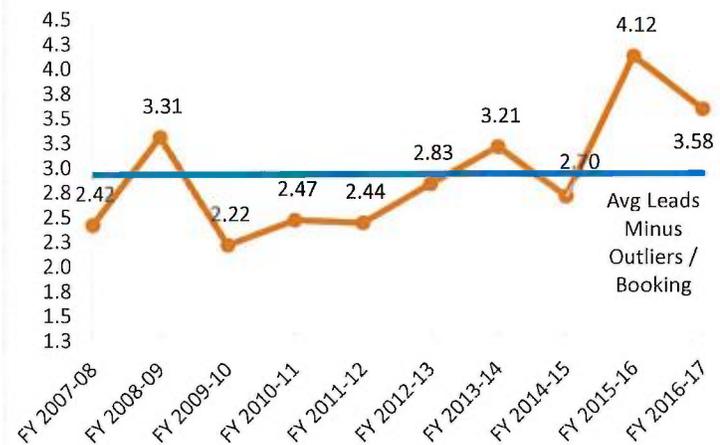
over a ten-year history averages three leads to schedule one event, but recently, the CVB needs more leads to do so (See Figure 35). Complicating matters is the slight downward trend in total

leads available for the CVB in recent years. (See Figure 36). The CVB management reported efforts to pursue other types of lead generation activities that could result in city-wide events, at the recommendation of a City consultant hired to develop enhancements to CVB operations. A city-wide event was originally defined by the CVB as a goal of scheduling events that need 600 room nights at the event's peak. CVB staff explained that this goal was ultimately adjusted to 750 room nights at the time of our review.

Leads that involve a substantial amount of room nights require more time to identify and to pursue, said CVB management. At the time of our review, the CVB scheduled two of 22 "city-wide" events targeted.

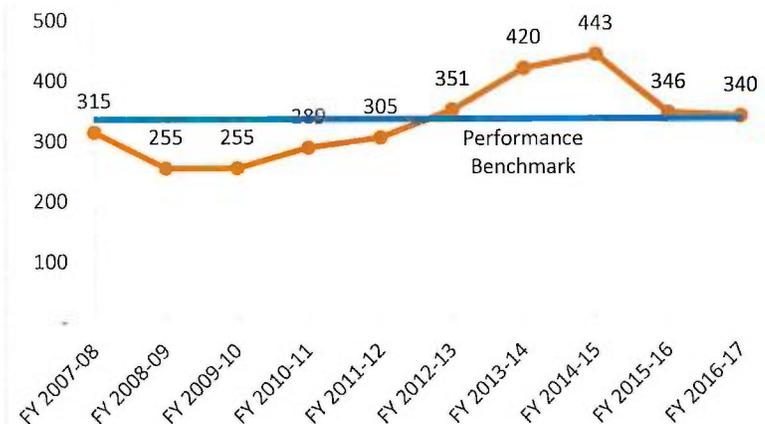
It is uncertain as to whether the CVB can meet its "city-wide" event goal. Assuming that the SCCC and the CVB operations remain unchanged, three challenges are present. First, as shown in Figure 37, the CVB, historically exceeded its new city-wide goal of 750 room nights per event in one of the last ten years, suggesting that establishing 22 "city-wide" events with 750 room nights at its

Figure 35: Number of Leads per CVB Booking, Ten-year History



Source of Data: TAP International, Inc. analysis of CVB booking

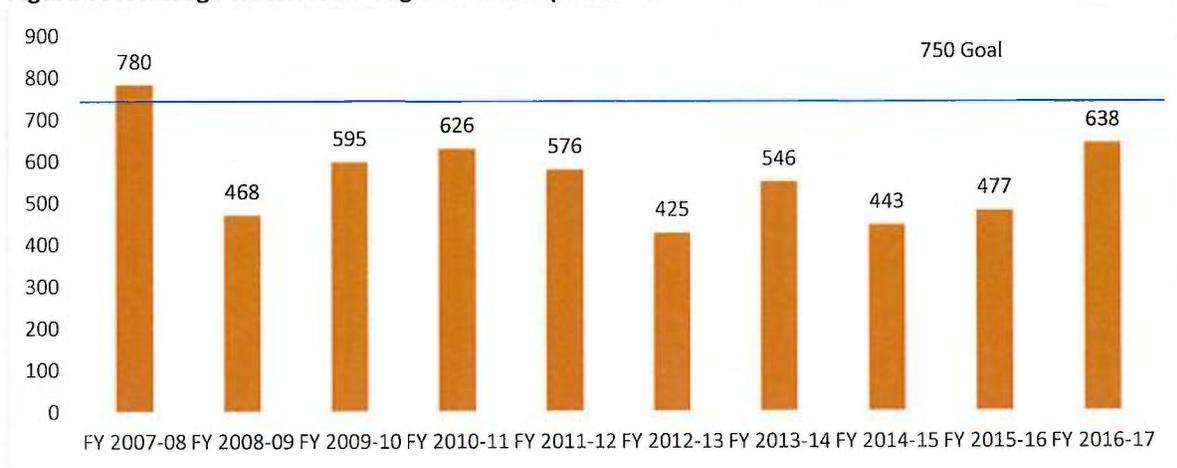
Figure 36: Number of Total CVB Leads, Ten-Year History



Source of Data: TAP International, Inc. analysis of CVB booking

peak may be an ambitious goal. Second, CVB employees reported that the surrounding area has a total of 3,800 hotel rooms. To have 750 of these rooms, or 20 percent of all City hotel rooms, available at the same time for any one event, is challenging. Third, the SCCC calendar is nearly full and may not have available dates for these very large events.

Figure 37: Average Hotel Room Nights Utilized per Event



Source of Data: TAP International, Inc. analysis of CVB financial data.

The CVB may not have to focus efforts on scheduling city-wide events. Our analysis of Figure 31 and 32, the SCCC could work towards shifting its one-day events to area hotels resulting in more available dates to schedule multi-day events. The SCCC could also schedule one-day events when needed at the SCCC six months in advance versus 18 months. Had at least three of the 32 potential events that were lost due to unavailable dates (See Figure 33) been successfully scheduled, it could have led up to an additional 4,000 room nights that could have (1) increased the annual overall average per booking for the SCCC; (2) helped the CVB meet its city-wide goal; and, (3) increased the economic impact to the City.

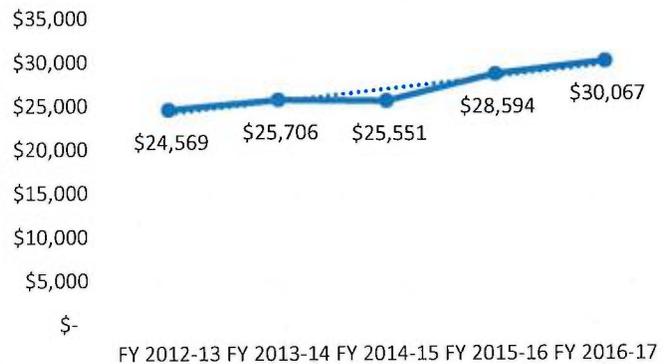
Robust and Strategic Advertising Is Needed

The International Association of Venue Planners state that event planners and attendees are looking for centers that offer unique features, reporting that differentiation is key to attracting more business and larger events. The CVB is implementing current industry marketing strategies to promote the surrounding areas by highlighting restaurants and nightlife, local tours, museums, shops, and outdoor activities, largely through its website. Technology is also leading the way for the SCCC to market itself on the web, by incorporating an interactive map and virtual tour platform, providing useful resources to help in the planning process, making the selection process experience easier for potential clients. Through interactive digital mapping, potential guests can familiarize themselves with the center, as well as the surrounding area, before they arrive.

The CVB also implements direct advertising. While no benchmarks have been established on suggested advertising budgets, the CVB’s advertising expenditures ranged between \$24,569 to \$30,067, as illustrated in Figure 38.³⁸ Having a small budget for advertising and marketing requires strategic decision-making to leverage limited resources. CVB management explained that it had two goals for advertising and marketing activities: (1) to make the CVB known as a local resource for area businesses to handle its event needs, and (2) to promote the area as a destination for local businesses. At the time of our review, the CVB had:

- Subscribed to various publications and trade tools as well as enrolled in trade and industry associations to help receive leads on prospective clients.
- Performed its own online marketing of the City as a destination area, providing vast information on potential tourist attractions in the local area.
- Received local news coverage to promote its activities.
- Dedicated some of its limited budget to direct advertising and promotion.³⁹

Figure 38: Advertising Dollars of the CVB Expenditures



Source of Data: TAP International, Inc. analysis of CVB financial data.

A potential outcome from these activities would be the generation of leads and/or scheduling of events at area hotels or the SCCC. Figure 29 and Figure 36 largely shows an unchanged performed in bookings and in lead generation over time with some fluctuation between the years, suggesting are needed in marketing and advertising strategies.

SCCC Needs Modernizing

The International Association of Venue Planners report that planners do a lot of research before deciding on the best venue, considering factors such as catering services, technology, facility size, and building modernization. As evidenced by Figure 33, the CVB has lost potential clients because the SCCC is too small and both the SCCC and the CVB staff said that condition of the facility needs attention.⁴⁰ Figure 39 shows the condition of SCCC’s carpeting in place throughout the facility.

³⁸ TAP International, Inc. could not develop an apples to apples comparison of CVB’s advertising budget with other convention centers.

³⁹ In the Spring 2018, the CVB spent \$5,000 to run six full-page ads in a local newspaper that we discussed earlier in this report as a self-reported conflict of interest.

⁴⁰ The Management Agreement states the Contractor is to maintain the Convention Center, the equipment and furniture situated therein, and related facilities in good order and repair and to request such repairs in the SCCC’s annual budget or separate City Council action.

The SCCC management explained that the carpeting needs replacement and the kitchen in the Mission City Ballroom requires repair and updating.

The City recognized the need for facility modernization and commissioned a facility assessment in 2017. The facility assessment identified 11 areas that require immediate replacement or modernization.

These areas are:

1. Redesign location of Mission City Ballroom, HVAC equipment so that the MCG kitchen becomes functional
2. Replace carpets (Main Building and Great America)
3. Replace tile at base of columns
4. Replace acoustic tile ceiling finishes (Main Building and Great America)
5. Replace fabric faced interior finished (Main Building and Great America)
6. Redesign functionality and replace “air walls”
7. Install reflective coating on flat roofs
8. Provide weather protection for south facing MCG exterior doors
9. Complete replacement of HVAC system
10. Modernization of elevators
11. Provide safety railing at roof perimeters

Figure 39: SCCC Carpet Condition



Photograph by TAP International, Inc.

The 2017 study estimated replacement and modernization costs for these short-term repairs at \$5.3M and other long-term repair costs at \$57.7M over the next ten years. The City and the SCCC budgeted over \$1M to replace the carpeting and budgeted over \$4M to update the kitchen in FY 2020-21. Updating the kitchen will likely lead to deficit spending for that year if the SCCC cannot better leverage its bookings. However, in the absence of modernizing the facility, the CVB would be hampered in its ability to attract large events that would require at least 750 room nights.

Appendix A: CVB Revenue, Expenses and Net Income

Figure A1. CVB Revenue, Expenses and Net Income

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
CVB Revenue										
Admin and Service Fees	44,580	32,882	32,893	32,265	32,265	32,160	34,500	34,500	34,500	16,750
Program Services									50	300
On-Line Hotel Reservations	8,111	6,467	2,071	2,261	2,443	2,284	2,625	1,856	1,987	1,047
City Contract	1,411,678	1,446,962	1,468,526	1,456,526	1,521,526	1,521,526	1,521,526	1,521,526	1,521,526	1,489,315
Discount Ticket Sales	2,099	3,529	1,983	7,195	13,049	11,274	7,149	5,812	2,114	1,455
Registration Services	107,393	81,731	122,351	149,400	7,389	399	735	458		
Commission Revenue									22,431	1,946
Banner Ads									1,800	
Interest Income	1,022	647	577	223	185	139	56	47	47	93
All Other Program Services										
CVB TOTAL REVENUE	1,574,883	1,572,218	1,628,401	1,647,870	1,576,857	1,567,782	1,566,591	1,564,199	1,584,455	1,510,906
CVB Expenses										
Salaries and Wages	937,383	945,167	1,006,243	1,018,335	900,904	888,877	937,577	918,150	651,150	787,658
Payroll Taxes	76,040	76,234	81,779	83,422	72,967	69,595	70,925	74,100	51,603	55,347
Employee Benefits	174,188	194,517	207,536	202,165	200,299	194,472	208,035	220,383	126,274	102,194
Depreciation/Amort.	10,300	14,994	16,043	9,213	5,963	5,093	5,900	5,093	5,093	5,093
Office Supplies/Maint.	27,639	25,756	24,035	26,104	27,268	26,036	28,207	29,911	25,168	17,143
Computer Service/Maint			1,750	1,094	1,269	958	240	21,810	41,575	33,500
Accounting and Audit	27,845	30,640	31,520	31,150	31,520	32,815	32,656	33,430	34,395	35,320
Legal Fees								35,080	42,894	10,174
Office Equip.	1,228	885	95	722	1,807	360	1,050	1,063		1,356
Rent	88,575	91,232	91,232	91,232	91,232	91,232	91,232	91,232	91,232	91,232
Telephone	22,292	18,899	21,147	21,879	20,079	18,391	17,994	18,634	18,591	17,039

Insurance and Taxes	7,874	10,572	10,904	14,949	17,275	7,994	14,444	11,776	4,633	3,448
Administrative Meeting	2,893	1,952	1,809	1,307	2,479	2,345	1,482	1,739	2,500	1,981
Postage	18,590	15,284	16,660	11,445	13,043	13,283	12,169	14,128	8,176	6,298
Mileage	3,059	3,021	3,102	2,915	2,997	3,192	2,719	2,593	2,332	1,443
Payroll Service fee	4,499	4,347	3,673	7,047	5,896	5,408	6,472	7,091	12,194	5,854
Inside Santa Clara Newsletter	10,500	10,500	10,500	8,000	8,000	8,000	8,000	8,000	6,275	7,949
Advertising-Convention Marketing		17,150	13,177	9,664	3,557	450	3,309	2,951	3,813	4,204
Advertising-Travel Marketing	19,709	17,007	17,461	14,883	15,833	16,119	14,397	14,600	18,506	17,914
Marketing-Servicing	550	330			250					
Marketing-CC Marketing/Sales	103,799	112,744	100,916	50,009	97,735	85,416	90,808	48,895	35,046	99,086
Marketing-Visitors Bureau	52,571	47,626	52,610	48,421	49,102	53,435	47,932	40,335	32,912	49,620
Loss on Disposal of Equipment			8,117							
Outside Services	6,242	200	6,849							
Expense Reimbursements	11,015									
Miscellaneous	1,963	2,507	654	1,769	4,449	3,222	2,580	4,061	3,744	6,354
CVB TOTAL EXPENSES	1,608,754	1,641,564	1,727,812	1,655,725	1,573,924	1,526,693	1,598,128	1,605,055	1,218,106	1,360,207
CVB TOTAL NET INCOME (LOSS)	(33,871)	(69,346)	(99,411)	(7,855)	2,933	41,089	(31,537)	(40,856)	366,349	150,699
TOTAL FY 2007-08 TO 2016-17										\$278,194

Appendix B: SCCC Revenue, Expenses and Net Income

Figure B1. SCCC Revenue, Expenses and Net Income

	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
SCCC Revenue										
Space-Exhibit Halls	1,265,660	1,194,129	1,113,905	1,090,620	1,142,031	1,352,496	1,261,166	1,337,354	1,416,000	1,353,372
Space-Ballrooms	209,948	221,195	488,060	622,105	598,929	711,857	823,143	801,308	873,944	915,085
Space-Meeting Rooms	207,984	194,893	180,207	219,685	207,900	239,957	237,630	237,580	262,125	275,466
Space-Great America	286,623	271,593	220,997	214,889	274,632	291,742	360,661	385,969	358,770	404,850
Space-Theater	193,640	189,026	151,590	208,620	203,376	211,483	218,644	200,892	208,720	201,000
Space-Cancellation	63,650	163,594	76,138	24,641	15,899	111,523	72,799	77,641	95,995	60,810
Merchant Fees			(25,191)	(34,347)	(38,468)	(54,177)	(60,668)	(58,205)	(63,372)	(79,196)
Labor-Miscellaneous	10,933	8,915	9,565	19,270	11,168	6,825	5,420	9,139	8,655	8,400
Equipment Rental	64,854	58,374	55,466	99,048	55,400	92,744	76,773	120,308	106,638	123,897
Electrical Comm.	107,391	159,844	105,585	140,410	192,214	222,042	184,879	222,373	203,486	277,045
Electrical Services In-House	94,506	53,573	66,840	164,515	156,749	117,605	107,866	111,470	133,650	58,485
Audio-Visual Comm.	270,992	271,929	362,512	395,825	411,300	462,273	605,755	594,217	609,736	638,611
Services - Misc.	5,810	18,472	4,360	6,525	5,773	5,658	7,100	639	3,930	3,495
Incoming Freight	3,690	3,675	3,175	6,065	9,543	3,764	3,314	2,631	3,423	6,649
Cell Site Revenue	23,009	17,794	17,794	17,794	17,980	18,233	18,936	18,090	26,236	33,039
Telecomm Commission	175,127	127,363	175,520	295,797	327,993	447,915	446,187	432,566	527,971	638,933
Catering Commission	1,262,009	800,499	1,037,616	1,900,070	2,195,799	2,509,846	2,809,971	2,566,610	2,572,066	3,060,064
Insurance Revenue	2,610	2,245	2,085	2,170	2,135	2,853	3,115	1,995	1,750	2,030
Interest Revenue	72,998	65,877	57,670	42,934	43,423	20,004	14,025	10,752	7,175	23,689
Advertising Comm.	25,154	26,015	15,976	26,009	32,254	32,536	30,449	26,983	29,658	35,644
Sponsorship Revenue	2,300	1,600	1,800	5,550	5,700	16,500	10,950	4,000	2,800	14,150
Business Center Comm.	5,324	4,123	4,481	5,220	5,645	6,710	12,502	14,802	12,682	10,088
Other Income	11,057	2,204	8,874	8,629	4,134	18,771	3,572	3,702	4,629	28,158

SCCC TOTAL REVENUE	4,365,268	3,856,929	4,135,023	5,482,042	5,881,508	6,849,158	7,254,188	7,122,815	7,406,668	8,093,763
SCCC Expenses										
Labor Related	3,530,564	3,659,221	3,766,957	3,866,593	4,059,755	4,408,338	4,595,404	4,778,024	4,818,759	4,983,964
Parking Fees	16,165	8,925	15,720	26,145	38,865	25,320		6,901	36,982	8,550
City Admin Fee	45,000	45,000	45,000	45,000	45,000	45,000	45,000	47,250	50,000	136,699
Other Operating	2,297	196	2,220	8,546	12,463	25,823	10,490	76	3,760	39,500
Professional Associations	9,525	9,884	10,450	7,522	6,555	8,854	6,945	8,846	8,364	9,152
Advertising and Promotion	6,447	6,677	1,593	3,959	2,520	1,844	1,245	1,567	998	970
Telephone	38,317	37,901	29,812	21,706	19,905	5,693	5,072	4,799	6,951	8,568
Office Expense	55,708	79,755	107,015	78,843	61,358	87,511	169,619	146,692	89,810	111,525
Insurance	86,365	98,905	110,509	106,457	122,635	138,012	163,734	169,868	166,849	169,206
Employee Expenses (payroll, training, etc.)	41,998	39,188	39,856	45,346	40,836	45,244	51,004	53,715	57,088	72,780
Maintenance	135,467	143,632	134,231	135,042	158,071	177,577	247,704	209,468	237,890	244,576
Janitorial and Cleaning	90,082	83,373	83,326	89,032	108,849	146,616	133,914	138,593	152,630	144,713
Utilities	530,715	531,693	590,929	611,426	636,488	667,429	676,428	694,485	720,152	732,235
SCCC TOTAL EXPENSES	4,588,650	4,744,350	4,937,619	5,045,617	5,313,299	5,783,261	6,106,561	6,260,284	6,350,233	6,662,438
SCCC TOTAL NET INCOME (LOSS)	(223,383)	(887,421)	(802,597)	436,425	568,209	1,065,897	1,147,627	862,531	1,056,435	1,431,325
TOTAL FY 2007-08 TO 2016-17										\$4,655,050

Figure B2. SCCC Revenue, Expenses and Net Income for FY 2017-18

The SCCC provided the full FY 2017-18 Income Statement after our financial analysis was completed. It is included here to show the SCCC ended the year with \$2.2M in revenue.

	FY 2017-18
SCCC Revenue	
Space Rental	3,718,344
Event Revenue	592,910
Audio-Visual	853,587
Catering	2,874,957
Telecommunications	559,546
Other	448,259
SCCC TOTAL REVENUE	\$9,047,603
SCCC Expenses	
Labor Related	5,020,837
Insurance	174,206
JLL Evaluation	89,375
Maintenance & Supplies	234,521
Management Fee	133,184
Monthly Service Contracts	146,575
Office & Legal	268,886
Parking Fees & Rentals	6,000
Utilities	746,653
TOTAL SCCC EXPENSES	6,820,237
SCCC TOTAL NET INCOME	\$2,227,366



Santa Clara Chamber of Commerce
Response to Audit Findings and Concerns with
City Actions

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Purpose

The intent of the Santa Clara Chamber of Commerce's response to TAP Internationals audit is not to influence change in City action regarding the Chamber's management and operation of the Santa Clara Convention-Visitors Bureau and Santa Clara Convention Center. The intent is to accurately and factually present the response to inform those who have been misinformed and persuaded by the misleading information used to cast a shadow on the incredible work by the Santa Clara Chamber of Commerce over the last 70 years.

On September 18th, the Santa Clara City Council unanimously voted to Note and File the Audit Findings with the caveat that the Santa Clara Chamber of Commerce will present their response on October 9th to ensure Council had the complete story. This specific and direct Council Action included a date for the presentation without any other contingencies. Unfortunately, City Staff overruled Council Action and postponed the Santa Clara Chamber's presentation until November 13th, over a month past the original agreed upon date and coincidentally after the election.

Executive Summary

The Santa Clara Chamber of Commerce has been an invaluable organization in Santa Clara for over 70 years and a partner to the City of Santa Clara for over 40 years. The Santa Clara City Council voted to audit Santa Clara Chamber of Commerce's management of the Santa Clara Convention Center and the operation of the Santa Clara Convention-Visitors Bureau (CVB). Under this direction, City Staff hired TAP International to conduct this audit.

The Santa Clara Chamber of Commerce found blatant omissions, misleading content, and incomplete content in the Final Audit conducted by TAP International. The Santa Clara Chamber of Commerce is concerned with the independence of this audit and the procedure which the audit was conducted including releasing preliminary information to the public before properly vetting or discussing this information with the Chamber's Board or President/CEO.

The Santa Clara Chamber of Commerce is also concerned with the City's actions surrounding this audit. The City of Santa Clara has misused authority, reach, and public funds with the intent to harm the Santa Clara Chamber of Commerce and interfere with their ability to operate a business in Santa Clara. These actions include:

- Targeting Chamber Customer List with misleading and unsubstantiated material
- Uncharacteristically using Santa Clara Tax dollars to send letters via direct mail including businesses in other cities
- Reporting to FPPC and other agencies knowing it was past the FPPC statute of limitations
- Inserted Misleading Information Not Included in Audit
- Releasing Preliminary Observations made by City Staff and auditor before speaking to Chamber President/CEO or Board Members

- Council Members directing Chamber to remove the Santa Clara Weekly's Publisher from our Board
- Urging TID Advisory Board to stop conducting business with the Santa Clara Chamber
- Meeting with The SVO, formerly known as San Jose Chamber who is now attempting to go regional, for "General Relationship Building"

The Santa Clara Chamber of Commerce had a mutually beneficial and cooperative relationship with the City of Santa Clara for nearly a half a century. The Santa Clara Chamber understands that this is a one place in time and both entities will outlast this blunder and will rebuild a relationship, however, it is the duty of the Santa Clara Chamber, as a Chamber of Commerce and a community organization, to report wrongdoing within our local government. The Chamber feels that a number of issues presented herein amply address some of our concerns of the City's improper behaviors, however, we reserve the right to present additional points as to the actions of City leadership at a future date.

Observations and Concerns with City Action

Staff Reports

Background

On June 26th 2018, the City of Santa Clara voted to defund the CVB after the Chamber operated the CVB for over 40 years. In this action, the Council included 60 days of salaries and salary related expenses for the CVB employees, directed the Chamber to return all reserves for the CVB, transfer the CVB employees to the Convention Center where their salaries would be administered, and directed City Staff to create an agreement for this 60 day period.

Following this Council meeting, City Staff reported to the Chamber that a new agreement would not be possible in the short time period as the City Attorney's Office was busy dealing with the lawsuit surrounding the Elections. The City Staff decided the easiest course of action would be to write the Chamber a check covering the estimated difference between the reserves and the necessary funding needed to cover the 60 days of salaries and salary related expenses.

The City Staff dropped off an \$80,000 check of City funds to the Chamber's receptionist without a contract or agreement detailing the expectations. The Chamber's President/CEO did not feel comfortable accepting \$80,000 of City funds without any expectations so he contacted City Staff for clarification.

In an email thread with City Staff and Chamber Staff, the City Staff clarifies the \$80,000 was for salaries and salary related expenses with no expectations or scope of work. The email also states the Chamber was their employer and could redirect (or let go) the employees and the purpose of the funding was to allow the Chamber and the affected employees the flexibility to determine what might be the best course for their respective futures (Appendix A).

On September 18th 2018, the City Staff released a staff report stating,

It is worth noting that at the June 26,2018 City Council meeting, Council provided a 60-day salary appropriation for CVB staff, from July 1 through August 31, 2018, for the purpose of transitional/close out activities; however, the Chamber released staff in July and did not ensure proper close out of the fiscal year (Appendix B).

Concerns with City Action

The Staff Report issued by City Staff publicly blames the Chamber for not following the City's directive to conduct transitional/close out activities which was clearly not the case. The City of Santa Clara's Code of Ethics and Values supports trustworthy, truthful, and uninfluenced governance. City Staff misstated the circumstances and misrepresented the Chamber leading the public and Council to believe the Chamber was not compliant with City directives. This untruthful and incorrect Staff Report served to the detriment of the Chamber by misrepresenting the Chamber to the public.

Letter to TID Advisory Board

Background

The Santa Clara Chamber of Commerce and the several hotels formed a Tourism Business Improvement District (TBID) which was titled the Tourism Improvement District (TID). The participating TID hotels voluntarily implemented an assessment of \$1 per room night to generate more marketing funds for the CVB with the City as the taxing agency collecting these funds. The TID Bylaws state that all TID funding generated would be administered to the Chamber as the Chamber was serving as the fiscal agent and conducted the operational assignments.

In July 2018, the City of Santa Clara realized the possibility that the City and TID was not in compliance with the law. The City Staff instructed the TID Advisory Board to return the reserves generated by the assessment to the City which the TID objected. The TID Advisory Board and City agreed to freeze the reserves and stop collecting the assessment until the appropriate Council action was taken. The appropriate Council action has since been taken and the TID hotels have now reinstated the \$1 per room night assessment, however, the reserves are still frozen.

In a letter to the TID Advisory Board, the City detailed the concerns brought forth in the audit as well as the City's own insertions related to the Chamber. In this letter, the City "strongly urge[d] the TID to immediately address its governance structure, fiscal agent and operation assignments with the Chamber." (Appendix C).

Concerns with City Actions

The TID Advisory Board's Bylaws states the generated funds must be administered to the Santa Clara Chamber of Commerce and the TID has followed this for over five years. The Santa Clara Chamber of Commerce is concerned that the City has interfered with a contract between the TID Advisory Board and Santa Clara Chamber by urging the TID to stop doing business with the Chamber. This letter to the TID Advisory Board was released prior to the Chamber's response to the audit. The Chamber does not support the City's decision to interfere with the TID Advisory Board and Chamber's agreement. It is also concerning that this letter was released prior to the Chamber having the opportunity to respond to the Audit Findings.

City's Public Communications Regarding Audit

The City of Santa Clara sent two letters via direct mail regarding the audit after releasing the same information on the City's usual communication methods (Press Releases, Nextdoor, Social Media, etc.). These letters were purely informational with no call to actions or reason to stray from the usual communication methods. The estimated cost to the residents of Santa Clara for preparation and mailing of the two letters is over \$20,000.

Who received these letters?

The City of Santa Clara sent the two letters via direct mail to every business license holder in Santa Clara as well as the Chamber's Membership Directory. The Santa Clara Chamber's Membership Directory includes businesses in San Jose, Sunnyvale, Campbell and several other cities. The City of Santa Clara used Santa Clara tax dollars to inform businesses outside of the City of Santa Clara on actions taken at City hall. To further prove the City downloaded and targeted the Chamber's customer list, the Santa Clara Chamber's Membership Directory included a control profile to ensure no one was using their directory to spam their members. Day's Interior Design, the control profile, is not a registered business or business at all. The only way to get this Business Name or private address was through the Chamber's Membership Directory. Day's Interior Design received two letters from the City of Santa Clara. (Appendix D)

Letter #1 – 8/13 (Appendix E)

The City of Santa Clara's first letter, costing the residents of Santa Clara approximately \$10,000, included preliminary observations made by City Staff and TAP International prior to speaking with the Chamber's President/CEO or Board of Directors. The preliminary observations were unfounded and unconfirmed information that painted a negative picture of the Chamber. In two separate conversations with TAP International, the President/CEO of the Chamber, and the Vice-President of Sales, the auditor stated she was unhappy with the City's decision to combine the preliminary observation made by the auditor and the City's observations as it misrepresented the audit information. In a later conversation with TAP International, the auditor retracted this statement and stated she knew the information was going to be sent out and she was fine with it.

Letter #2 – 9/11 (Appendix F)

The City of Santa Clara’s second letter, costing the residents of Santa Clara approximately \$10,000, included many insertions and observations made by the City that were not included in the audit, although the letter stated they were.

The letter sent by the City stated “the auditor found that the City of Santa Clara lost \$20.5 million in revenue and City subsidies over the past 10 years.” This was not stated in the audit but was an abnormal calculation conducted by the City of Santa Clara and inserted as Audit Findings.

The letter also stated “board members engaged in self-dealing, using City assets for their own financial gain...” This statement was not in the audit. The City reported actual self-dealing instead of the appearance of self-dealing with more research needed. This false report defamed the Chamber and Board Members causing harm to the reputation of a valued Santa Clara entity as well as valued Santa Clara businesses.

Lastly, the letter stated the Chamber’s mismanagement resulted in \$37 million in lost funds to the City of Santa Clara. This, again, was not stated in the audit but was an insertion made by the City of Santa Clara.

Table 1: Lost Revenues and City Subsidies Resulting from Chamber’s Mismanagement of Public Funds

Net Lost Revenue and City Subsidies	Amount (in Millions)	Note	Time Period	Audit
Facility Discounts (1,720 events)	(\$16.1)		2011-2018	Pg. 34
Facility Free Rent (353 events)	(\$2.8)	(1)	2011-2018	Pg. 35
Bonus Payments to Convention Center Staff	(\$0.3)	(2)	2014-2017	Pg. 22
City General Fund Capital Expenditures	(\$2.4)	(3)	2007-2017	Pg. 12
City Annual Payments to CVB	(\$14.9)	(4)	2007-2017	Pg. 50
City Paid Management/Administration Fee	(\$0.5)		2007-2017	Pg. 53
TOTAL Lost Revenue and City Subsidies	(\$37.0)			
Positive Direct Convention Center/CVB Financial Impact	\$11.3		2007-2017	Pg. 17
Convention Center Net Income	\$5.2	(5)	2007-2017	Pg. 12
TOTAL Positive Convention Center/CVB Financial Impact	\$16.5			
TOTAL Net Lost Revenue and City Subsidies	(\$20.5)			

When referring to the graph above, one can see the City used unusual accounting practices to draw their desired conclusion.

- The City of Santa Clara counted Bonus Payments to Convention Center Staff twice: once in the Convention Center Net Income and once in the table.
- The City of Santa Clara included City General Fund Capital Expenditures and City Paid Management/Administration Fee as “lost funds” resulting from Chamber’s

Mismanagement of Public Funds. These expenditures were approved by Council each year for the 10 year period.

- The City included the total of 10 years of CVB operating budgets, approved by Council each year, as “lost funds” resulting from the Chamber’s Mismanagement of Public Funds.
- The City included \$18.9 million worth of “Facility Discounts and Facility Free Rent as lost revenue to the City of Santa Clara.
 - The “Facility Discounts” is the difference between the retail price of Convention Center space and the negotiated price. The Santa Clara Convention Center competes with many other Convention Centers for business and the auditor states that negotiating pricing is common in the Convention Center industry.
 - The “Facility Free Rent” includes refunds given to events that hit the food and beverage minimum which is also an industry standard practice. This calculation also includes free space used by the City of Santa Clara. Lastly, this calculation includes space given to community organizations, some of which are run by City Officials.
 - It is an unusual accounting practice to subtract the difference between retail price and the negotiated price from the Net Income to show a Net Loss.

Conclusion

The City of Santa Clara targeted the Santa Clara Chamber’s membership, using approximately \$20,000 of public money, to spread misinformation, misleading calculations, and blatant untruths to harm the reputation of the Santa Clara Chamber of Commerce.

Concern with Audit Findings and City’s Actions

Appearance of Self-Dealing with More Research Needed

Background

The Santa Clara Chamber has managed the Santa Clara Convention Center for over 30 years with the direction to operate the Convention Center as a business. With that said, the Audit mentions the Appearance of Self-dealing three times all regarding the Shipping and Handling Services at the Convention Center. The Shipping and Handling Services mentioned in the Audit is referring to the lease for a UPS Store within the Convention Center.

The existing UPS Store owner, who holds the lease at the Convention Center, was near bankruptcy, past-due on payments, and near closing the store at a loss to the Convention Center. Knowing this, Corporate UPS, with no affiliation to the Chamber, searched and sought out a successful local UPS Franchisee to take over the lease keeping the UPS Store operational.

The current lease states the lease is transferable among private businesses with the approval of Corporate UPS and the Chamber. Corporate UPS proposed OMCO, Inc. as their approved new

owner believing OMCO, Inc. would be the most successful owner of this store not knowing that a Santa Clara Chamber Board Member was a partner at OMCO, Inc. The Board Member disclosed this potential Conflict of Interest prior to its existence and provided the Chamber Management and Executive Committee time to review and mitigate the Conflict. The Chamber mitigated this Conflict of Interest by having the proposed owner abstain from any future decisions regarding the management of the Convention Center including the decision to transfer the lease.

During this transition period which extended past the release of the Final Audit, the proposed owner agreed to operate under a management agreement between the current owner and proposed owner with the proposed owner paying all past due payments including those due to the Convention Center. It is important to note that the Board Member abstained from all decisions regarding the Convention Center while operating under the management agreement.

Concerns with the Audit

Prior to the release of the Final Audit, the lease was not transferred to the Board Member. The Audit states there was the Appearance of Self-Dealing with more research needed because the lease was transferred to a Board Member which was not the case. The Auditor was presented this information but it was misstated in the report to the detriment of the Chamber and the proposed UPS Store Franchisee. TAP International never discussed this with the Board Member in question but made assumptions that led to an error in the Audit.

Concerns with City Actions

The City of Santa Clara reported publically in Press Releases, News Articles, and Direct Mail to businesses and Chamber Members actions of the Chamber were *actual* Self-Dealing instead of the *appearance* of Self-Dealing with more research needed (Appendix F). The City of Santa Clara misled the public by reporting speculations made by the Auditor, which stated that more research was needed, and publically reported them as fact. The Chamber believes the City used public money to harm the reputation of the Chamber by knowingly and publicly dispersing misleading and incorrect information.

Former City Officials Did Not Use the Contracting Process to Change Management Fees Response

Background

The City of Santa Clara and the Santa Clara Chamber of Commerce's interest have traditionally been aligned to stimulate the growth and development of Santa Clara's economy. In the 1970s, the Santa Clara Chamber of Commerce and the Visitors Bureau advocated for the construction of the Santa Clara Convention Center. In 1984, the Santa Clara Chamber of Commerce was granted an evergreen contract (the "Agreement") to manage the Santa Clara Convention Center with a

\$45,000 administrative fee approved annually in the budget.¹ While the administrative fee remained static for 30 years, it was submitted yearly to City Staff and approved in the budget each year. In 2014/15, City Council approved an administrative fee increase to \$47,250 and in 2015/16, the administrative fee increased to \$50,000.

In 2016, with the development of Levi's Stadium and the still pending Redevelopment Agency ("RDA") issue, the Santa Clara Chamber of Commerce found itself spending an inordinate amount of time working to provide solutions to these issues while experiencing an increase of its liabilities. Executive Committee Members Paul Dines, Ravinder Lal, and Joe Siecinski met with Mayor Gillmor and Councilmember Davis to discuss the future management of the Convention Center. Mayor Gillmor and Councilmember Davis instructed the Santa Clara Chamber of Commerce to include an administrative fee of 2% of gross revenue in the 2016/17 budget. A summary of the meeting's outcome was outlined in an email thread between the Executive Committee Members directly following the meeting (Appendix G). For the last 30 years, the Chamber has submitted the budget to City Staff for approval by City Council.² Following this established process, the Chamber submitted their 2016/17 Convention Center budget to City Staff (Appendix H). The fee adjustment was clearly identified and marked in RED to provide City Staff notice of a significant change. The new budget, with the increased management fee, was approved in an open City Council meeting by the Mayor and Council Members.

In April 2017, the Santa Clara Chamber of Commerce submitted their 2017/18 budget which was reviewed by City Staff. During the review, the City acknowledged the prior year's (2016/17) fee adjustment "currently 2% of gross revenues" and tasked the City Manager "to work on getting the letter establishing the C of C Admin Fee" (Appendix I). The Chamber never received this letter, but the budget line item was again clearly identified and approved by Council for the 2017/18 year with the 2% Administrative Fee (Appendix J).

On May 22nd 2018, the Santa Clara City Council suspended the Santa Clara Chamber of Commerce's Administrative Fee until TAP International's final audit was submitted citing the Chamber for not disclosing the increased administrative fee. The Chamber, under reservation of rights to an administrative fee, agreed to uphold their side of the Agreement and continue the management of the convention to avoid a significant negative impact on Santa Clara (Appendix K).

TAP International's final audit has since been released confirming the increased administrative fee was disclosed. While the audit advised that there should have been a contractual amendment, the Chamber properly disclosed the amounts and followed the City's instructions for the fee

¹ "A contract between a governmental body and a private party is to be construed by the same rules which apply to the construction of contracts between private persons [Citation] . . . and the public entity is bound in the same manner as an individual." *Tonkin Constr. Co. v. Cty. of Humboldt*, 188 Cal. App. 3d 828, 831-32 (Ct. App. 1987).

² "As a general proposition of law, it is, of course, true that every commercial contract is entered into with the understanding that usage in regard to the particular matter of the contract becomes a part of the transaction itself." *Lucke v. First Nat. Bank of Marysville*, 193 Cal. 184, 189 (1924).

increase.³ (Section titled “Former City Officials Did Not Use the Contracting Process to Change Management Fees”).

Concerns with Audit

The information stated above was presented to TAP International detailing the circumstances surrounding the increased Management Fee; however, the audit incorrectly reported the information to include the Chamber as a responsible party. The Santa Clara Chamber of Commerce discussed the increased Administrative Fee with Elected City Officials and reported the increase to the appropriate City Staff. Appendix I clearly shows the Santa Clara Convention Center Staff brought the Discussion Point (DP) of the Chamber Board drafting a letter/amendment. The only Action Item (AI) concluding this meeting was the City Manager (CM) to follow up with the Chamber with a letter/amendment which we never received.

The Audit misstates this information declaring the Chamber was to also draft a letter which was clearly not the case. This misstatement is a concern of the Chamber because it puts unnecessary blame on the Chamber when the Chamber followed the City directed procedure.

Concerns with City Action

The City publically stated the Chamber did not disclose the increased Management Fee asserting the Chamber was deceitfully attempting to take more City funds than appropriate.

The Santa Clara Chamber followed the established process to increase the administrative fee with resulted in the City Council approving the Convention Center budget two consecutive years with the increased administrative fee. The miscommunication between City Staff and City Council led to the City Council prematurely suspending the established Management Fee in May 2018 prior to the final results of the Audit.

Conclusion

The Audit misrepresents the information surrounding the circumstances of the increased Administrative Fee. This misrepresentation serves to the detriment of the Chamber misleading the public to believe the Chamber shared responsibility. The City irresponsibly reported to the public stating the Chamber’s intentions to be deceitful and untrustworthy. The City also made the decision to suspend the Administrative Fee, which was an established practice for over 30 years, prior to the conclusion of the Final Audit and without the necessary information.

Conflict of Interest Regarding Advertisements in the Santa Clara Weekly

Background

The Santa Clara Convention-Visitors Bureau’s (CVB) duty was to market the City of Santa Clara

³ “Contractual understanding need not be express, but may be implied in fact, arising from the parties’ conduct evidencing their actual mutual intent to create such enforceable limitations.” *Guz v. Bechtel National, Inc.*, (2000) 24 Cal.4th 317, 336.

stimulating visitor's spending and promoting the Santa Clara economy. As stated in the Audit, the CVB's most lucrative customer-base was corporations. Included in an overall marketing plan, the CVB intended to engage more local corporations to further promote the CVB's most successful industry. Senior CVB Staff, with more than 25 years of Visitors Bureau industry experience, included a minimal appropriation of funds for print media.

The print media industry has severely declined over the course of decades leaving few print media options targeting the local Santa Clara corporations. The Santa Clara Weekly, one of few remaining print media outlets serving Santa Clara, is distributed to up to a 1,000 businesses per week. The Santa Clara Weekly Publisher is on the Chamber's Board of Directors, which most would believe is a beneficial considering the Santa Clara Chamber is a nonprofit organization run by Santa Clara businesses and it is important to have the diverse business community represented including the only print media outlet serving Santa Clara.

CVB Staff, with no influence from the Santa Clara Chamber Board of Directors, contacted the Santa Clara Weekly to run these advertisements. The Santa Clara Weekly offered 6 full-page color advertisements to the CVB for an under market price of \$5,000. This price was over \$2,500 off retail price. The Santa Clara Weekly's competitors offer 6 full-page color advertisements for over \$25,000 (Appendix L).

Being good business people, the Senior CVB Staff Member contracted the print media outlet that better reached the targeted customer-base at a more cost-effective rate. It is also important to note the Staff Member's Direct Supervisor, President/CEO, and Board Chair all separately reviewed and approved the expense. It is also important to note the CVB received leads from local corporations who saw the advertising and were interested in bringing their corporate event to Santa Clara. Unfortunately, the CVB services were defunded prior to these leads substantiating.

Concerns with the Audit

The Audit omits the clear business reasons for deciding to contract the Santa Clara Weekly to run 6 full-page advertisements. The Audit also omits the Staff Member's Direct Supervisor, President/CEO, and Board Chair all separately reviewed and approved the expense. Lastly, the Audit omits the fact that the CVB received leads from local corporations who saw the advertising and were interested in bringing their corporate event to Santa Clara.

Conclusion

The Audit misrepresents the CVB's intention which was to grow their largest customer base. These omissions in the Audit serve to the detriment of the Chamber misleading the public to believe the Chamber was pushing contracts towards its Board when the intention was, and has always been, to best serve the interest of the residents of Santa Clara.

Redevelopment Agency Issue

Background

In 2015, the City of Santa Clara instructed the Chamber to stop booking the Convention Center as the future of the Convention Center was uncertain due to the pending Redevelopment Agency (RDA) issue. The City of Santa Clara's ban on Convention Center bookings lasted seven months and fell within the period that was audited by TAP International.

The uncertainty of the future of the Convention Center and the seven month ban on booking the Convention Center had a severe impact on the success of the Convention Center and CVB which is still being felt today. It is important to note that during this period, the CVB and Convention Center lost many employees including seasoned Sales Managers. There was an estimated 85,000 rooms nights lost due to this seven month ban on booking the Convention Center.

Concerns with Audit

TAP International reported several issues hindering the success of the CVB and Convention Center but did not mention the City's directive for the CVB and Convention Center to stop booking for seven months due to the RDA issue. In fact, the RDA issue was not mentioned in the Audit. When independently evaluating the success of an organization over the course of 10 years, the Chamber feels it necessary to include a period of seven months where there was a ban on booking future business.

This information was provided to the Auditor but was omitted from the Audit. This omission served to the detriment of the Chamber and relieved the City of any negative attention for causing a major negative impact on the tourism industry in Santa Clara.

Santa Clara Chamber PAC

Donations to the Santa Clara Chamber PAC

In 2012, the Santa Clara Chamber PAC, a separate organization from the Santa Clara Chamber of Commerce made up of Chamber members, conducted a fundraiser. Due to infrastructure challenges, the Santa Clara Chamber of Commerce collected \$8,000 of donations for the Santa Clara Chamber PAC with the donors knowingly and intentionally making these donations to the Santa Clara Chamber PAC. The Santa Clara Chamber of Commerce, having \$8,000 of PAC money on their books, made a check out to the Santa Clara Chamber PAC for \$8,000. No Chamber or City funding was donated to the PAC.

Concerns with Audit

This information was presented to TAP International; however, this information was misstated in the report. The auditor reported the CVB conducted the fundraiser and collected the donations. The distinction between the CVB and Chamber is very important because the Chamber is not

subsidized by City funding. The auditor also reported the Chamber donated to the Santa Clara Chamber PAC using public funds which was not the case.

The Chamber informed the auditor on several occasions, but the auditor would not make this change in the report. The City used this misinformation to publicly reprimand the Chamber for using City funds to make political donations painting the Chamber in a negative light.

Free Space Provided to Santa Clara Chamber PAC

In 2012, Santa Clara Chamber PAC held a breakfast fundraiser at the Santa Clara Convention Center during a need period with no other competing events. The Santa Clara Chamber PAC's contract included language where an offset would be applied with the minimum purchase of food and beverage. The Santa Clara Chamber PAC hit the food and beverage minimum for the event and the offset was applied.

The Santa Clara Chamber PAC contributed thousands of dollars to the Santa Clara Convention Center during a need period following offset procedures (Appendix M).

Several Elected City Officials attended this event including Mayor Gillmor.

Concerns with Audit

TAP International misstated the information reporting the Santa Clara Convention Center made gift of public funds to a political organization when this was not the case. It is concerning that the auditor would misstate this information when it was provided to the auditor. The City then used this misinformation to publicly reprimand the Chamber for gifting public funds to a political organization. The misstatements regarding the PAC event were to the detriment to the Chamber.

Recommendation to Report to FPPC and other agencies

TAP International erroneously recommended the City report the Chamber to the FPPC and other agencies for political violations made in 2012. TAP International cited several policies regarding the FPPC and IRS but failed to state the FPPC Statute of Limitation for investigations is 5 years. The City Staff followed the recommendations, with the knowledge of the City Attorney, to use City tax dollars to report the Santa Clara Chamber to the FPPC when it was clearly past the Statute of Limitations.

Along with erroneously reporting the Chamber to the FPPC, the City reported in a press release to the public that the Chamber may have violated state law (Appendix N). Due to the facts stated above, the Chamber believes the City knew these allegations were past the Statute of Limitations, however, used the erroneous FPPC report as an opportunity to publicly harm the reputation of the Santa Clara Chamber of Commerce.

Conclusion

The City of Santa Clara used incomplete and inaccurate audit findings, along with misleading insertions and miscalculations by the City, used in a PR campaign that was detrimental to the Santa Clara Chamber of Commerce, a nonprofit organization run by a volunteer board of Santa Clara businesses and community leaders. The Santa Clara Chamber of Commerce and many other members of the community is left with the question of why?

In any case, the Santa Clara Chamber of Commerce will continue the tradition established over multiple generations of building a vibrant community that benefits all.

Appendix A

Kaspar, Nick

From: Ruth Shikada <RShikada@SantaClaraCA.gov>
Sent: Tuesday, July 03, 2018 8:16 AM
To: Kaspar, Nick; Moreno, Lisa
Cc: Deanna Santana
Subject: RE: Option for Vacation Time

Good morning Nick
Here are responses to your inquiries:

Our understanding was that we were to return the reserves to the City. I am happy to work out another model but just wanted to make sure to request clarification so the Chamber is compliant.

The Council voted to fund salaries for the next 60 days and request return of the reserves. Based upon the time left on the contract and because the City's expense for the cost of salaries was more than what the Chamber had on reserve, we determined that the best course was to apply the reserves to the overall salary expense and provide the Chamber with supplemental funding. We estimated that \$80k plus the reserves was enough for the 60 day salary cost --- but since it was only an estimate, we asked for a reconciliation.

I realize that an agreement for the CVB for the next 60 days might be difficult
Until the audit is done, I don't know that we will have the ability to negotiate meaningful terms. I wouldn't have an expectation of an agreement during this time.

I did want to request clarification about expectations of CVB. Without any funding for operations of the CVB, can you share what the cities expectation and scope of work are from the CVB employees?

Without a contract, the City does not have expectation of any services from CVB. We understand that this will cause a disruption. We also understand that the Chamber, as their employer, may choose to redirect the scope of work (or let go) of the employees previously funded under the CVB contract. Providing the cost of salaries was intended to allow the Chamber and the affected employees with flexibility to determine what might be the best course for their respective futures.

with the termination of the CVB Contract, the Chamber is supposed to close out the City Store. We have the current inventory and can cut a check for the City today. Please let us know who should be the POC to close out the City Store with us.

We'll set an appointment with a staff person to meet with you to determine next steps to handle inventory and accounting matters.

Let me know if you have further questions.

Ruth

Appendix B



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
@SantaClaraCity

Agenda Report

18-995

Agenda Date: 9/18/2018

REPORT TO COUNCIL

SUBJECT

Action on the Santa Clara Convention Center and Convention-Visitors Bureau 4th Quarter and Fiscal Year Ended June 30, 2018 Financial Status Report

BACKGROUND

The purpose of this report is to provide a financial status update for the 4th quarter and fiscal year ending June 30, 2018 for the Santa Clara Convention Center and Convention-Visitors Bureau. The report covers the period of time when the City had two Agreements with the Santa Clara Chamber of Commerce & Convention- Convention Visitors Bureau (Chamber), which required that the Chamber provide the City with a quarterly activity and operations report for the Santa Clara Convention Center (SCCC) and the Convention-Visitors Bureau (CVB) within 30 days after the end of each quarter during the fiscal year. The SCCC-CVB Financial Status Report for fourth quarter and fiscal year ended June 30, 2018 provides current information on the business activities of the Santa Clara Convention Center and Convention-Visitors Bureau. Since that time, the SCCC-CVB agreement for CVB services has expired.

DISCUSSION

Submitted for City Council review and acceptance is the SCCC-CVB Financial Status Report for the 4th quarter and fiscal year ending June 30, 2018, as submitted by the Chamber. Submission of the report is required under the Management Agreement for the operation of the Santa Clara Convention Center and the Agreement for convention and visitor services which expired June 30, 2018. This report is unaudited and therefore, subject to change. The City is simply transmitting to the City Council the Chamber's report for its compliance with its agreement terms.

It should be noted that information included in prior quarterly reports such as room rental nights, convention attendees, and estimated revenues for convention center rental and Transient Occupancy Tax associated with CVB bookings was excluded from this report. The Convention Center submitted the report without this information. The Convention Center stated that these figures were omitted from the report because the Chamber released from employment the CVB staff members, who provided this information and, as a result, the Chamber is not able to obtain this information. It is worth noting that at the June 26, 2018 City Council meeting, Council provided a 60-day salary appropriation for CVB staff, from July 1 through August 31, 2018, for the purpose of transitional/close out activities; however, the Chamber released staff in July and did not ensure proper close out of the fiscal year. As such, the Convention Center General Manager, Lisa Moreno, provided a letter dated September 7, 2018 explaining why this information was not provided with this report (see Attachment 2).

Although the City continues to work with the Santa Clara Convention Center staff to research this

Appendix B Continued

18-995

Agenda Date: 9/18/2018

information, it was not available at the time this report was prepared. As it is unclear when the information might be forthcoming, and should also be noted that the provision of this information to the City is required under both Agreements and even though the CVB Agreement expired on June 30, 2018, all accounting requirements survive the expiration of the Agreement. Staff may require the assistance of an accountant/auditor to reconcile CVB accounts and to obtain a valid close out report.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

FISCAL IMPACT

Year-end positive net operating results could be a revenue source to the General Fund, while net operating losses may be require a subsidy by the General Fund.

The financial status of the Convention Center operation as captured in the attached quarterly report is one of several aspects of the City's overall financial obligation related to the Convention Center. In addition to the general management and day-to-day operation of the Convention Center as captured in the quarterly report, in FY 2017/18 the City budgeted funds for the Convention Center's Capital Improvement Program (CIP) in the amount of \$304,000; an annual contribution of \$1,461,601 for the Convention-Visitors Bureau (CVB); a contribution of \$669,941 into Maintenance District 183 (an agreement between the Convention Center, TechMart, and Hyatt for maintenance of shared spaces); and funds of \$145,291 for an annual management fee. (It should be noted that while the management fee was budgeted, payment of the fee was frozen by Council direction as of May 2018.) The budgeted General Fund subsidy for the Convention Center overall was \$2,317,825 for FY 2017/18.

The Convention Center operation shows a net profit of \$2,227,366, compared to \$1,470,826 for fourth quarter YTD 2016/17. As of June 30, 2018, the City contributed \$212,594 and \$669,941 for CIP and Maintenance District expenditures, respectively, and paid \$1,479,956 to CVB operations. ***Based on the final net operating results and capital expenditures for the fiscal year ended June 30, 2018, the actual General Fund subsidy is \$135,125.***

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Note and file the Santa Clara Convention Center and Convention-Visitors Bureau Financial Status Report for the 4th quarter and fiscal year ended June 30, 2018, as submitted by the Santa Clara Chamber of Commerce & Convention-Visitors Bureau.

Appendix B Continued

18-995

Agenda Date: 9/18/2018

Reviewed by: Angela Kraetsch, Director of Finance
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. SCCC-CVB Activity Report for Fiscal Year 2017/18 Fourth Quarter
2. Convention Center Letter dated September 7, 2018

Appendix C



**City of
Santa Clara**
The Center of What's Possible

City Manager's Office

September 21, 2018

Mr. Eron Hodges, Chair of Santa Clara Tourism Improvement District
c/o Hyatt Regency Santa Clara
5101 Great America Pkwy
Santa Clara, CA 95054

RE: Response to Mr. Rollet's Correspondence (dated September 10, 2018)

Dear Mr. Hodges:

This letter is in response Mr. Rollet's September 10, 2018 communication to the City concerning the Tourism Improvement District (TID) cash flow and the future management of TID funds. As I stated previously, the City shares the TID's concern with the Chamber of Commerce's (Chamber) terminating its staff working with the TID, our mutual past non-compliance with the proper process to reauthorize the TID levy, and the legal requirement to maintain unexpended for one year the TID reserve of approximately \$600,000. These circumstances have resulted in difficulties for the TID to operate. However, the City must meet the legal requirements and properly authorize levied assessments, regardless of the inconvenience it temporarily presents to correct past improper actions. To alleviate the short-term cash flow issues, I would like to work with the TID Board to figure out a path forward.

At the September 18, 2018 City Council meeting, TAP International, the performance auditor contracted by the City, identified serious misuse and mismanagement of public funds by Chamber through its two Convention Center and CVB contracts. The audit findings include and are not limited to poor management of public funds and financial mismanagement, misuse of government resources (personal gain, inappropriate bonuses/commissions, and political fundraising activities), conflict of interests by Chamber staff and Board members (self-dealing that went uncorrected/undisclosed until the City asked), and problematic accounting and unexplained expenditures. Further, as you know, TAP International is currently auditing TID-related activities as well and references the improper use of TID funds in the audit. A separate TID audit was initiated based on serious preliminary audit findings on the Chamber's management of the Convention Center and CVB.

Due to the significant audit findings of the use of public funds, the City Council has terminated the Management Agreement with the Chamber for the Santa Clara Convention Center and the Council has already allowed for the CVB agreement to expire. Parallel to working with the TID on addressing cash flow issues, I strongly urge the TID to immediately address its governance structure, fiscal agent, and operation assignments with the Chamber. The City Council has terminated any issuance of public funds from its two contracts and has put significant due-diligence measures in place for the expenditure of public funds relative to the Santa Clara Convention Center. We ask that the TID consider the same, as further issuance of public funds to the Chamber for TID purposes, absent the TID staff, presents serious concern and challenges for the City.

Appendix C Continued

Re: Response to Mr. Rollet's Correspondence
September 21, 2018
Page 2

In light of these recent events, I respectfully request to meet with you and other TID Board Members on October 4, or another mutually agreeable date, to discuss the TID's governance structure, fiscal agent, and operation assignments, and short-term cash flow issues.

Kathi McGraw, Executive Assistant to the City Manager, will reach out to you to set up a meeting. If you have any questions please do not hesitate to contact me at dsantana@santaclaraca.gov or 408-615-2210.

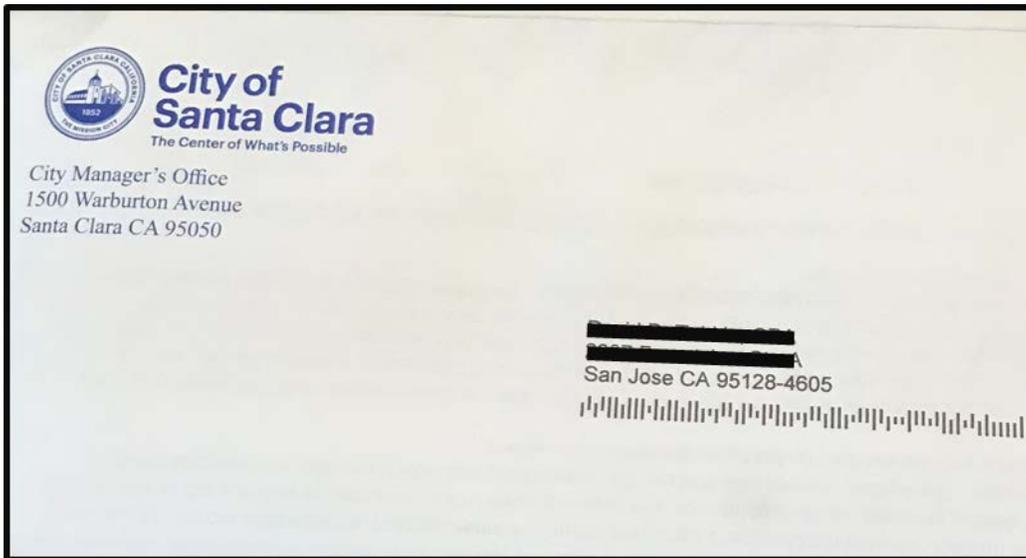
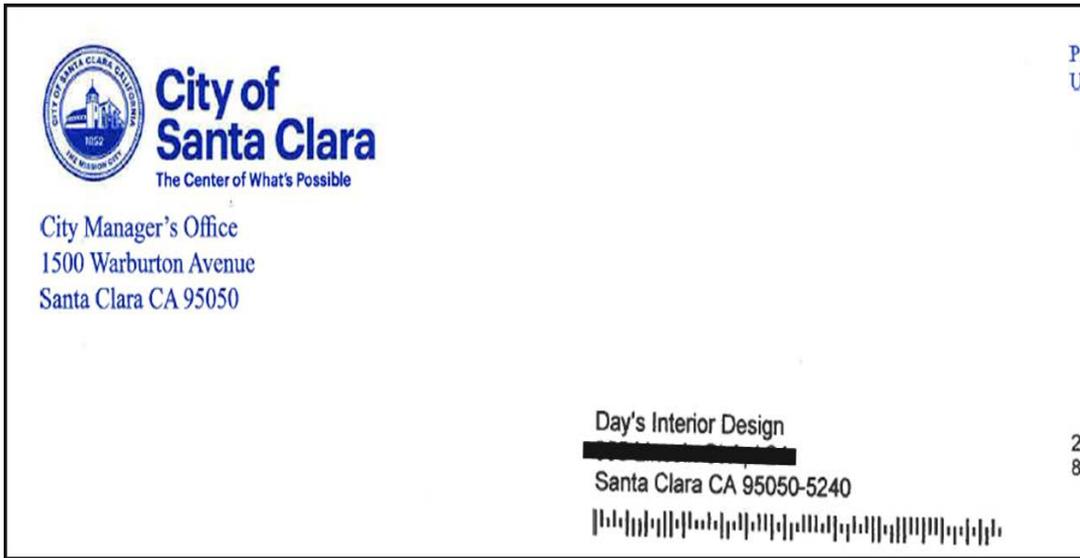
Sincerely,



Deanna J. Santana
City Manager

c: City Council
City Attorney
Finance Department Director
Chamber of Commerce

Appendix D



Appendix E



August 15, 2018

To Our Valued Santa Clara Business:

Greetings! The City of Santa Clara is fortunate to be a world-class city with a diverse range of businesses from local small businesses to Fortune 500 companies. I recognize the integral role that the business community plays in driving a strong local economy, contributing to the global economy, and playing a key role in making Santa Clara “The Center of What’s Possible.”

As an example of the City’s commitment to its strong partnership with the business community, and in order to ensure continuous support for mutual goals, the City Council has established “Promoting and Enhancing Economic and Housing Development” and “Enhance Community Engagement and Transparency” as two of six strategic pillars. The City Council’s strategic pillars have been established to guide policy development, budget appropriations, and strategic focus of the City Council. In addition to strategic pillars, the City Council has been focused on ensuring the efficient use of public funds to achieve improved service delivery in a transparent and cost-effective manner to the public, residents, the business community, visitors, and guests. At the City Council’s request, City staff has been evaluating its contract management, audit, and procurement processes with various City services.

As a valued member of the Santa Clara business community, the City is taking this extra step to provide information and facts surrounding recent actions taken by the City Council relative to its review of the Santa Clara Chamber of Commerce’s two contracts to (1) manage the City-owned Santa Clara Convention Center (Center) and (2) provide convention and visitor services to promote tourism and attract bookings for the Center. Combined, the two contracts were valued annually at over \$1.6 million of public funds, not including additional subsidies that have been needed year-to-year for the past decade. One of two contracts has expired and Council has directed that no payments of public funds be issued for the second contract.¹ Additionally, the City Council directed that City staff initiate a performance and fiscal audit to inform future decision-making. Staff and a professional auditor have made some preliminary observations that were reported publicly on June 26, 2018, which are:

- Material inconsistencies were found between the Chamber’s federal filings (e.g., Form 990: Return of Organization Exempt from Income Tax) and the practices that the Chamber claimed to have in place with the City to protect against conflicts of interest.
- There is a long-standing practice that the Chamber (since the Convention Center opened), on its own initiative, grants 20% discounts to Chamber members that rent Center space without any public disclosure, approval, or reporting of lost revenue to the City.
- There is preliminary evidence that the Chamber grants itself complete discounts on space rental for Chamber events and only pays for food and beverages, including major Chamber fund-raising events, providing significant financial value to the Chamber.
- These discounts were not disclosed to the City and the value of the discounts, which is lost public revenue funds, has not been determined. Analysis is underway to determine whether this is a material conflict of interest and/or self-dealing; whether Board members used their role to benefit each other; and/or, a violation of State law with respect to political fund-raiser(s) held at the City-owned Center.

¹ The Council authorized a payment equal to 60 days of salary expense for the Chamber employees impacted by the expired City contract. We are aware that the Chamber has terminated these services, along with their staff. It is unfortunate that despite the Chamber’s public testimony of providing a minimal “lights on” service level, the Chamber did not continue services for the paid 60-day term provided by the City.

Appendix E Continued



**City of
Santa Clara**
The Center of What's Possible

While the Chamber plays an important role in our community, the City Council has a responsibility to address these contract matters: unfortunately, the City had not evaluated its contractual relationship with the Chamber over the past 30 years, despite it being a good business practice to evaluate expenditure of public funds to determine whether the City is accomplishing the intended purpose. The final audit will be presented publicly in September 2018 and will answer some of these inquires and allow the Council to take informed action. To ensure full transparency, the City has established a webpage that provides background of this matter, which can be found at: <http://santaclaraca.gov/cvb-chamber>.

We are hopeful that the business community will understand the City Council's interest of preserving the appropriate use of public funds and facilities as they relate to the City's strategic pillars of promoting economic benefit for our business community and city. There is a great opportunity to redefine the future of these important Santa Clara assets for the benefit of the community as a whole. Regardless of the outcome of the City Council-directed audit, we will work to ensure that the appropriate remedies are in place to protect our public funds and facilities. The City encourages you to stay engaged and if you have any questions, please contact the City Manager's office at manager@santaclaraca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Deanna J. Santana".

Deanna J. Santana
City Manager

Appendix F



September 21, 2018

To Our Valued Santa Clara Business:

On behalf of the City, I recently sent a letter to local businesses about the City Council’s policy priorities and to provide some general information about an independent audit conducted on two City contracts for the Santa Clara Chamber of Commerce’s (Chamber) management of the Santa Clara Convention Center (Convention Center) and Convention-Visitors Bureau (CVB).

The audit findings state that the Chamber mismanaged City facilities and seriously misused public resources. The audit findings revealed the Chamber’s significant financial mismanagement, questionable accounting practices, self-dealing practices, conflicts of interest, and misuse of government resources, as well as a lack of City contract oversight. The Auditor recommends that the City engage state and federal agencies to investigate potential violations of law and the City has taken the appropriate actions.

Further, the auditor found that the City of Santa Clara lost \$20.5 million in revenue and City subsidies over the past 10 years. The mismanagement of the Convention Center and CVB services impacted the City and local businesses alike through loss of potential business opportunities, hotel occupancy, and services provided to our visitors. The full audit and its findings on the Chamber’s management of the Convention Center and CVB are now available online: www.santaclaraca.gov/cvb-chamber. The following table illustrates the financial impact for the time period audited:

Table 1: Lost Revenues and City Subsidies Resulting from Chamber’s Mismanagement of Public Funds

Net Lost Revenue and City Subsidies	Amount (in Millions)	Note	Time Period	Audit
Facility Discounts (1,720 events)	(\$16.1)		2011-2018	Pg. 34
Facility Free Rent (353 events)	(\$2.8)	(1)	2011-2018	Pg. 35
Bonus Payments to Convention Center Staff	(\$0.3)	(2)	2014-2017	Pg. 22
City General Fund Capital Expenditures	(\$2.4)	(3)	2007-2017	Pg. 12
City Annual Payments to CVB	(\$14.9)	(4)	2007-2017	Pg. 50
City Paid Management/Administration Fee	(\$0.5)		2007-2017	Pg. 53
TOTAL Lost Revenue and City Subsidies	(\$37.0)			
Positive Direct Convention Center/CVB Financial Impact	\$11.3		2007-2017	Pg. 17
Convention Center Net Income	\$5.2	(5)	2007-2017	Pg. 12
TOTAL Positive Convention Center/CVB Financial Impact	\$16.5			
TOTAL Net Lost Revenue and City Subsidies	(\$20.5)			

⁽¹⁾ Includes free rentals for Chamber members, staff and other insiders for wedding receptions, birthday parties and other events

⁽²⁾ Reflects bonus payments over four fiscal years only; likely to be higher with completion of more review

⁽³⁾ Includes \$82,039 of City funds paid in 2007 not included in the audit

⁽⁴⁾ \$14.9 million in City payments subsidized the Convention Center/CVB Net Loss of \$9.4 million

⁽⁵⁾ Does not include the City-paid management/administration fee

The audit confirmed the Chamber’s financial and operational mismanagement as well as serious misuse of public resources as summarized below:

- Issued \$18.9 million in undisclosed and improper fee waivers and discounts to Chamber members and others over the past seven fiscal years “which led to a direct financial loss to the City.”

Appendix F Continued

RE: Audit of the Chamber of Commerce's Management of the Convention Center and Convention Visitors Bureau

September 21, 2018

Page 2 of 2

- Issued \$300,000+ in staff bonuses over the past four fiscal years, without any public disclosure or Council authorization, with a portion of these funds paid “without a formal contract or written legal agreement in place.”
- Operated the Convention Center and Convention-Visitors Bureau at a \$9.4 million loss over a decade, while at the same time receiving \$17.3 million in operating and capital subsidies from the City. Direct tax and assessment revenue generated by CVB activities amounted to \$11.3 million during the last 10 years. During the same period, the City subsidized CVB operations with \$14.9 million, with the Chamber's business practices resulting in additional financial loss of \$3.6 million.
- Board members engaged in self-dealing, using City assets for their own financial gain, such as: political fundraising activities, diverting public funds to their personal business, and held personal weddings, birthday parties and more events at a direct loss to the City.
- Managed public assets without transparency, without proper documentation and under a business model rife with personal gain and conflicts of interests.

The audit findings also indicated that these serious fiscal issues might have been discovered sooner if the City had strong agreements in place or implemented effective contract oversight. The audit made a series of recommendations which the City has started to act on:

- Cooperate with California Fair Political Practices Commission and Internal Revenue Service (IRS) on potential violations.
- Utilize a professional consultant to address audit findings and industry best practices into a new management agreement.
- Select a qualified management company through a competitive procurement process.
- Implement contract oversight and reconciliation and close out of contracts based on audit findings.

During the October 9, 2018 Council meeting, the Chamber will be given the opportunity to provide a response to the audit. As directed by the Council, staff will present a Request for Proposal (RFP) procurement framework and business model for future operations of the Convention Center for Council discussion and public input with the goal to contract with an experienced and qualified operator.

The City is committed in the success of the Santa Clara Convention Center and the convention/tourism industry in Santa Clara. Success of the Convention Center and a robust convention/tourism industry in Santa Clara leads to the business community's success and benefits all of us. As such, we are taking the audit findings and recommendations seriously and implementing steps to ensure that the public trust and business community's trust will be restored.

You can stay informed on this topic by visiting the Updates for Santa Clara Chamber of Commerce and Convention-Visitors Bureau Agreement page on the City's website, <http://santaclaraca.gov/cvb-chamber>. For questions, please contact the City Manager's Office at manager@santaclaraca.gov.

Sincerely,



Deanna J. Santana
City Manager

Appendix G

----- Forwarded message -----

From: CEO Mail <rl.store4636@gmail.com>

Date: Thu, Feb 25, 2016 at 4:02 PM

Subject: Re: Meeting This AM

To: "Dines,Paul A" <Paul.Dines@edwardjones.com>

Cc: "undisclosed.for.privacy" <undisclosed.for.privacy@edwardjones.com>



Hi Paul and Joe,

All of that sounds good. The mayor did say put the increased cost into the budget so when I talked to Lisa at the convention center I told her to go ahead and put 2% of the gross as our fee to manage the center. Of course they can negotiate that later if need be.

Ravinder

Sent from my iPhone

On Feb 25, 2016, at 1:59 PM, Dines,Paul A <Paul.Dines@edwardjones.com> wrote:

Hi Joe and Ravinder:

Alright, we need to capture the message from our meeting today with the mayor and Debi D. to report to the full board next TUE. I'd appreciate your help in making sure we get the correct message conveyed back to the board, and that I'm not: a) missing anything important, or 2) misstating anything.

My take is that:

- The mayor understands that the landscape of Santa Clara has changed dramatically since the original Chamber/CVB/Convention Ctr. structure was put together.
- The mayor understands and agrees with the separation of the Chamber from the Convention Ctr and CVB as a logical and needed step to move forward.
- The mayor understands that this will take at least a year, and hence is comfortable with an MOU for the chamber to continue managing the CC and CVB.

Appendix G Continued

- All parties understand that there are many, many details to work out to make this happen.
- The mayor understands that the \$50K annual mgmnt. fee is not enough.
- The mayor expressed that City hall is in a "transition" (Lisa said "dysfunctional") and nothing will happen soon.
- The mayor would like to see a strong chamber and she believes that option A will provide this opportunity to the chamber.

The meeting was meant to be informative, educational and see what level of "partnership" there was between the City and the Chamber of Commerce.

Please feel free to add/edit the crap out of my notes above! I'd like to get this note to Joe Sweeney today so he can put a line item into the Agenda, and then the details will be discussed during the meeting.

Warm regards,

Paul A. Dines

Financial Advisor | **Edward Jones U.S.A**

69 Washington Street , Santa Clara, California 95050

PH: 408-984-4729 | FAX: 866-532-4716

Mail: paul.dines@edwardjones.com

For administrative questions, please contact Naira at 408-984-4729, or naira.masri@edwardjones.com

*Please help us help you protect your account. If you need help making trades, money transfers and check requests, **CALL 408-984-4729** for immediate assistance. Our goal is to provide you with the best and most timely service you deserve. You can also use our secure message center via your on-line account access.*

TAX DISCLOSURE: Edward Jones, its employees and financial advisors cannot provide tax or legal advice. You should consult your attorney or qualified tax advisor regarding your situation.

SANTA CLARA CONVENTION CENTER

	GL Acct #s	Proposed Budget 2016/2017	Final Budget 2015/2016	2015/2016 Actual 7/14-01/16	2015/2016 Est. 2/15-6/15	2015/2016 Total Est. 7/15-6/16	2015/2016 Variance Final vs. Est.	Budget to budget % +/-)	Notes/Comments
REVENUE									
Space Rental	4110-4200	2,600,000	2,500,000	1,840,623	1,141,900	2,982,523	482,523	4%	Tracking OB
Labor - Miscellaneous	4220	15,000	15,000	5,785	6,250	12,035	-2,965	0%	
Equipment Rental	4230	90,000	90,000	63,622	37,500	101,122	11,122	0%	
Electrical Commissions	4240	210,000	210,000	78,872	87,500	166,372	-43,628	0%	
Electrical Services - In House	4250	150,000	140,000	98,660	58,333	156,993	16,993	7%	Increase in business
A/V Commissions	4260	758,734	680,000	333,191	352,453	685,644	5,644	12%	Increase in business
Services - Misc.	4270	3,000	6,000	665	2,500	3,165	-2,835	-50%	Tracking UB
Incoming Freight	4290	6,000	6,000	860	2,500	3,360	-2,640	0%	
Cell Site Revenue	4540	33,039	25,000	12,470	10,417	22,886	-2,114	32%	DAS did not materialize based on RDA effect
Telephone Commissions	4560	300,000	280,000	263,756	142,618	406,374	126,374	7%	
Catering Commissions	4610	2,600,000	2,000,000	1,078,467	1,340,885	2,419,352	419,352	30%	Tracking OB
Insurance Revenue	4620	3,000	3,000	1,120	1,240	2,360	-640	0%	
Advertisement Revenue	4640	40,000	36,000	12,133	18,000	30,133	-5,867	11%	
Sponsorship Revenue	4645	3,000	5,000	1,750	5,000	6,750	1,750	-40%	Less due to DesignCon N/C for 2017. Last year w NC
Business Center/UPS	4650	14,000	13,448	7,344	6,160	13,504	56	4%	Increase in business
Other Income	4660-4690	5,000	5,000	2,841	2,083	4,924	-76	0%	
Interest	4630	4,200	10,800	2,714	4,500	7,214	-3,586	-61%	City Account
TOTAL REVENUE		6,834,973	6,025,248	3,804,873	3,219,838	7,024,711	999,463	13%	
LABOR EXPENSES									
Labor Related									
General Management	5010+5560	922,404	849,770	504,295	353,575	857,870	8,100	9%	Assumes 3% increase across the board
Non-Exempt	5020	202,968	222,150	112,206	92,431	204,637	-17,514	-9%	Have not replaced 2 PT positions
Operations Mgmt & Labor	300-5410, 5530-5550	2,152,529	2,122,763	1,165,697	883,173	2,048,870	-73,892	1%	Did not replace 1 FT position
PT Bldg. Services/Agency	5520	150,000	150,000	124,608	61,490	186,099	36,099	0%	
Payroll Total		3,427,901	3,344,683	1,906,807	1,390,669	3,297,476	-47,207	2%	
Employer Paid Taxes	5710	293,051	284,215	146,334	116,572	262,906	-21,309	3%	Based on payroll increase
Workers' Compensation	5730	176,400	322,678	137,724	68,736	206,460	-116,218	-45%	Reduction in Exp Mod Rate
Medical & Other Insurance	5810-5920	1,090,873	1,022,207	549,246	445,373	994,619	-27,588	7%	Market changes
401k Contribution/Admin Fee	5990	110,000	107,737	55,142	42,399	97,541	-10,196	2%	Based on payroll increase
Payroll Overhead Total		1,670,324	1,736,837	888,446	673,081	1,561,527	-175,310	-4%	
Labor Related Total		5,098,225	5,081,520	2,795,253	2,063,750	4,859,003	-222,517	0%	
OPERATION EXPENSES									

SANTA CLARA CONVENTION CENTER

	GL Acct #s	Proposed Budget 2016/2017	Final Budget 2015/2016	2015/2016 Actual 7/14-01/16	2015/2016 Est. 2/15-6/15	2015/2016 Total Est. 7/15-6/16	2015/2016 Variance Final vs. Est.	Budget to budget % +/-	Notes/Comments
Other Outside Rentals	6050	10,000	10,000	0	4,300	4,300	-5,700	0%	
Parking Fees	6070	50,000	50,000	31,432	50,000	81,432	31,432	0%	
C of C Administration Fee	6100	136,699	50,000	29,167	20,833	50,000	0	173%	
Professional Associations									
Memberships	6110	2,500	2,500	1,288	1,216	2,504	4	0%	
Meeting & Travel	6120	10,000	10,000	1,528	5,900	7,428	-2,572	0%	
Advertising & Promotions									
Printing	6310	1,000	1,000	224	650	874	-126	0%	
Travel, CVB Support	6360	500	500	0	500	500	0	0%	
Telephone Expenses									
Fixed Charges	6410					0	0		
Maintenance Costs	6420					0	0		
Local & Long Distance Calls	6430	5,500	4,840	2,995	2,350	5,345	505	14%	Based on cost of phone services
Office Expenses									
Office Supplies	6510	13,500	13,500	4,724	5,500	10,224	-3,276	0%	
Postage	6520	1,500	1,500	380	300	680	-820	0%	
FedEx, UPS, etc.	6530	500	500	0	220	220	-280	0%	
Copier Lease Expense	6540	6,200	6,000	3,690	2,500	6,190	190	3%	
Office Equipment Maintenance	6550	1,500	1,500	0	1,000	1,000	-500	0%	
Forms Printing	6560	1,500	1,500	0	1,000	1,000	-500	0%	
Computer Software/Hardware	6570	7,000	7,000	1,861	2,917	4,777	-2,223	0%	
Computer System Support	6590	20,000	18,500	11,816	7,708	19,524	1,024	8%	
Legal	6610	40,000	30,000	18,047	10,000	28,047	-1,953	33%	Union Negotiations
Insurance									
Property & Business Interrupt	6620	74,168	63,236	49,474	26,348	75,822	12,586	17%	10% increase over current year actual
General Liability/Fidelity	6640	116,275	117,790	53,136	50,613	103,749	-14,041	-1%	
Employee Expenses									
Uniform Rental	6720	22,000	21,425	13,440	8,927	22,367	942	3%	
Training & Education	6740	8,000	8,000	4,653	3,500	8,153	153	0%	
Employment Advertising	6750	500	500	0	500	500	0	0%	
Payroll Processing	6770	34,100	27,851	14,454	11,604	26,058	-1,793	22%	Increase to add ACA Reporting and Training Modules
Pre-Employment Expenses	6780	500	500	503	500	1,003	503	0%	
Maintenance Expenses									
Elevator & Escalator Maint.	6810	50,800	48,380	26,247	20,158	46,406	-1,974	5%	KONE expected increase
Service Contracts	6820	21,100	24,350	12,654	10,146	22,800	-1,550	-13%	Daktronics no longer covered under contract
Maintenance Supplies	6830	72,750	66,125	49,566	26,029	75,595	9,470	10%	Increased costs/aging building
Interior Landscaping	6840	7,000	6,624	8,265	2,760	11,025	4,401	6%	

Appendix H Continued

SANTA CLARA CONVENTION CENTER

	GL Acct #s	Proposed Budget 2016/2017	Final Budget 2015/2016	2015/2016 Actual 7/14-01/16	2015/2016 Est. 2/15-6/15	2015/2016 Total Est. 7/15-6/16	2015/2016 Variance Final vs. Est.	Budget to budget % + / (-)	Notes/Comments
Pest Control	6850	3,884	3,604	2,182	1,502	3,684	80	8%	2016 increase
Paint & Supplies	6870	3,415	3,250	980	1,352	2,332	-918	5%	Increased cost/aging building
Lighting System	6920	18,000	16,380	6,814	6,825	13,639	-2,741	10%	Change in materials used
Telephone Equipment Supplies	6940					0	0		
Less: Damage Claims	6980	-2,000	-2,000	-2,002	-833	-2,836	-836	0%	
Non-Routine Maintenance	6990	40,000	27,500	32,870	11,451	44,321	16,821	45%	Increased cost/aging outdoor sign
Janitorial & Cleaning									
Dumping Fees	7010	53,424	50,400	33,000	21,000	54,000	3,600	6%	Price Increase
Paper Supplies	7020	40,000	32,000	30,964	13,000	43,964	11,964	25%	Price Increase/Business Increase
Cleaning Chemicals	7030	16,000	14,000	12,555	5,800	18,355	4,355	14%	Price Increase/Business Increase
Janitorial Supplies	7040	25,000	19,000	19,414	7,900	27,314	8,314	32%	Price Increase/Business Increase
Window Washing	7050	6,500	6,000	0	6,000	6,000	0	8%	Price increase
Utilities									
Electricity	7310	727,200	709,430	439,568	302,213	741,781	32,351	3%	SVP 2.5% increase
Aramark Utilities	7315	(159,920)	(120,000)	(72,524)	(60,325)	(132,849)	-12,849	33%	Based on revenue increase
Gas	7320	84,569	76,188	38,726	28,016	66,742	-9,446	11%	PG&E expected increase
Water & Sewer	7330	53,835	48,941	31,083	17,099	48,182	-759	10%	Estimate per city
Capital Additions		0	0	0	0	0			
Total Operation Expenses		1,624,999	1,478,313	913,173	638,980	1,552,152	73,839	10%	
Total Expenses		6,723,225	6,559,833	3,708,425	2,702,729	6,411,155	-148,678	2%	
EXPENSES VS REVENUE		111,748	-534,585	96,447	517,109	613,556	1,148,141	-121%	

Appendix H Continued

Appendix I

From: Feliser Lee
Sent: Thursday, April 06, 2017 12:09 PM
To: Lisa Moreno; 'Fitzgerald, Karen'; Bill Benaderet
Cc: Alita Reinecker; Marcelo Penha
Subject: followup to SCCC/CVB CM Budget Meeting

This email serves as a summary of the major discussion points ("DP"), minor talking points ("TP"), and action items ("AI") from the Operating Budget Review Meeting held with your department. Please review and respond by email to revise, comment, or provide additional major discussion points and action items from the meeting. In addition, please contact Alita or myself to address the Action Items and make changes within Questica, as necessary. Your reply is requested by end of day, Tuesday, 4/11.

Major Discussion Points ("DP") / Action Items ("AI")

SCCC

(DP.1) Discussed drafting an amendment/letter regarding the C of C Admin Fee from board

(AI.1) CM to work on getting the letter establishing the C of C Admin Fee, and asking about the fee amount (currently 2% of gross revenues) in relation to the split of operations of the SCCC/CVB and Chamber

(DP.2) Discussed \$100k increase in computer Software/Hardware and need for an integrated system to replace the current system originating from 1998.

(AI.2) SCCC/CVB to provide current technology platform and requirements to the City to have City IT review and make possible suggestions.

- We are currently using an integrated software called "ConCentrics" which has been in place since 1998 with no upgrades. They have since had four revisions, the latest, is web based. We have also looked at Ungerboeck and Sales Force. Sales Forces does not have an accounting component, which is needed. Ungerboeck, is a good program, but expensive. We believe that we will stay with ConCentrics as it is a good system, user friendly and less training.
- As for IT support, we only have the funds to have "on-call" services, on an add needed basis.

(DP.3) Discussed Aramark reserves that City would like to reflect on balance sheet as an asset

(AI.3) SCCC/CVB to provide current reserve balance to year-end reserve balance to the City.

- Current equipment fund balance: \$318,581.52

(DP.4) Discussed staffing levels (42 FTE, 4 PT)

(AI.4) SCCC/CVB to provide position listing with title and FTE count for both SCCC and CVB

CVB

Karen sent yesterday

(DP.5) Discussed current rent, with the use of less space

(AI.5) SCCC/CVB to provide City information obtained on rate and space utilization. The City may look at other options with SCCC/CVB based on market rate being paid.

- I reached out to the Chamber last week and I am waiting for this information. I will inquire again today.

[://mail.google.com/mail/u/0/?ui=2&ik=7be48044cd&jsver=FPvd7uxXULs.en.&cbl=gmail_fe_180508.13_p10&view=pt&msg=16397ffe5849d903&search=inbox](mailto://mail.google.com/mail/u/0/?ui=2&ik=7be48044cd&jsver=FPvd7uxXULs.en.&cbl=gmail_fe_180508.13_p10&view=pt&msg=16397ffe5849d903&search=inbox)

SANTA CLARA CONVENTION CENTER

	GL Acct #s	Proposed Budget 2017/2018	Final Budget 2016/2017	Total Estimate 2016/2017	Variance Final vs. Est. 2016/2017	Budget to budget % + / (-)	Notes/Comments
REVENUE							
Space Rental	4110-4200	2,800,000	2,600,000	2,973,964	373,964	8%	
Labor - Miscellaneous	4220	15,000	15,000	10,850	(4,150)	0%	
Equipment Rental	4230	90,000	90,000	103,480	13,480	0%	
Electrical Commissions	4240	213,575	210,000	269,492	59,492	2%	
Electrical Services - In House	4250	128,000	150,000	94,900	(55,100)	-15%	
A/V Commissions	4260	927,052	758,734	779,414	20,680	22%	
Services - Misc.	4270	3,000	3,000	4,039	1,039	0%	
Incoming Freight	4290	6,000	6,000	7,584	1,584	0%	
Cell Site Revenue	4540	30,000	33,039	30,286	(2,753)	-9%	
Telecom Commissions	4560	300,000	300,000	515,033	215,033	0%	
Catering Commissions	4610	2,647,923	2,600,000	2,742,355	142,355	2%	
Insurance Revenue	4620	3,000	3,000	2,365	(635)	0%	
Advertisement Revenue	4640	40,000	40,000	38,325	(1,675)	0%	
Sponsorship Revenue	4645	3,000	3,000	13,050	10,050	0%	
Business Center/UPS	4650	14,000	14,000	10,431	(3,569)	0%	
Other Income	4660-4690	35,000	5,000	3,772	(1,228)	600%	
Interest	4630	9,000	4,200	13,926	9,726	114%	Based on current year actual
TOTAL REVENUE		7,264,551	6,834,973	7,613,265	778,293	6%	
LABOR EXPENSES							
Labor Related							
General Management	5010+5560	917,462	922,404	916,530	(5,874)	-1%	3% + Reduction of Commission Estimate
Non-Exempt	5020	230,680	202,968	208,763	5,795	14%	3% + Add'l for HR
Operations Mgmt & Labor	5100-5410, 5530-5554	2,321,451	2,152,529	2,112,206	(40,323)	8%	3% + 1 staff in each department
PT Bldg. Services/Agency	5520	189,000	150,000	196,053	46,053	26%	3% + add'l labor for increased business
Payroll Total		3,658,594	3,427,901	3,433,551	5,650	7%	
Payroll Overhead							
Employer Paid Taxes	5710	296,412	293,051	270,503	(22,548)	1%	
Workers' Compensation	5730	201,770	176,400	177,997	1,597	14%	Increase in EXP MOD and assumes 10% increase

SANTA CLARA CONVENTION CENTER

	GL Acct #s	Proposed Budget 2017/2018	Final Budget 2016/2017	Total Estimate 2016/2017	Variance Final vs. Est. 2016/2017	Budget to budget % +/(-)	Notes/Comments
Medical & Other Insurance	5810-5920	1,091,320	1,090,873	1,022,958	(67,915)	0%	
401k Contribution/Admin Fee	5990	113,431	110,000	99,957	(10,043)	3%	
Payroll Overhead Total		1,702,933	1,670,324	1,571,416	(98,908)	2%	
Labor Related Total		5,361,527	5,098,225	5,004,967	(93,258)	5%	
OPERATION EXPENSES							
Other Outside Rentals	6050	5,000	10,000	3,300	(6,700)	-50%	
Parking Fees	6070	25,000	50,000	23,550	(26,450)	-50%	
C of C Administration Fee	6100	145,291	136,699	136,594	(105)	6%	
Professional Associations							
Memberships	6110	2,500	2,500	1,745	(755)	0%	
Meeting & Travel	6120	10,000	10,000	8,488	(1,512)	0%	
Advertising & Promotions							
Printing	6310	700	1,000	750	(250)	-30%	
Travel, CVB Support	6360	0	500	500	0	-100%	
Telephone Expenses							
Fixed Charges	6410			0	0		
Maintenance Costs	6420			0	0		
Telephone	6430	8,820	5,500	6,933	1,433	60%	Increase in cell phone stipend
Office Expenses							
Office Supplies	6510	14,000	13,500	13,281	(219)	4%	
Postage	6520	860	1,500	1,903	403	-43%	Using less
FedEx, UPS, etc.	6530	0	500	224	(276)	-100%	
Copier Lease Expense	6540	6,300	6,200	6,328	128	2%	
Office Equipment Maintenance	6550	1,500	1,500	1,108	(392)	0%	
Forms Printing	6560	750	1,500	750	(750)	-50%	Using less
Computer Software/Hardware	6570	107,000	7,000	5,769	(1,231)	1429%	Enterprise Software Upgrades
Computer System Support	6590	45,000	20,000	18,646	(1,354)	125%	Support for Upgraded sotware
Legal	6610	24,000	40,000	57,115	17,115	-40%	No Union negotiations
Insurance							

Appendix J Continued

SANTA CLARA CONVENTION CENTER

	GL Acct #s	Proposed Budget 2017/2018	Final Budget 2016/2017	Total Estimate 2016/2017	Variance Final vs. Est. 2016/2017	Budget to budget % +/-	Notes/Comments
Property & Business Interrupt	6620	74,168	74,168	69,460	(4,708)	0%	
General Liability/Fidelity	6640	123,208	116,275	103,214	(13,061)	6%	
Employee Expenses							
Uniform Rental	6720	23,100	22,000	26,872	4,872	5%	Service agrmnt increase + new hires (2) Sec & (3) BS
Training & Education	6740	8,000	8,000	14,152	6,152	0%	
Employment Advertising	6750	0	500	575	75	-100%	Using Job posting service through ADP
Payroll Processing	6770	33,600	34,100	29,274	(4,826)	-1%	
Pre-Employment Expenses	6780	500	500	1,813	1,313	0%	
Maintenance Expenses							
Elevator & Escalator Maint.	6810	52,553	50,800	53,044	2,244	3%	
Service Contracts	6820	26,786	21,100	21,321	221	27%	Adding Sprinkler Inspection, 3% for Daikin Contract
Maintenance Supplies	6830	76,388	72,750	72,433	(317)	5%	
Interior Landscaping	6840	7,000	7,000	6,795	(205)	0%	
Pest Control	6850	3,884	3,884	3,882	(1)	0%	
Paint & Supplies	6870	3,483	3,415	2,692	(723)	2%	
Lighting System	6920	18,900	18,000	16,944	(1,056)	5%	
Telephone Equipment Supplies	6940			0	0		
Less: Damage Claims	6980	(2,000)	(2,000)	(3,292)	(1,292)	0%	
Non-Routine Maintenance	6990	42,000	40,000	72,282	32,282	5%	
Janitorial & Cleaning							
Dumping Fees	7010	56,629	53,424	55,267	1,843	6%	Updated City Rates
Paper Supplies	7020	40,000	40,000	39,972	(28)	0%	
Cleaning Chemicals	7030	16,800	16,000	16,361	361	5%	
Janitorial Supplies	7040	25,000	25,000	25,582	582	0%	
Window Washing	7050	9,150	6,500	6,500	0	41%	New Vendor
Utilities							
Electricity	7310	741,744	727,200	710,317	(16,883)	2%	Updated City Rates
Aramark Utilities	7315	(148,091)	(159,920)	(153,237)	6,683	-7%	
Gas	7320	93,872	84,569	83,593	(976)	11%	Updated City Rates
Water & Sewer	7330	61,910	53,835	51,829	(2,006)	15%	Updated City Rates

Appendix J Continued

SANTA CLARA CONVENTION CENTER

	GL Acct #s	Proposed Budget 2017/2018	Final Budget 2016/2017	Total Estimate 2016/2017	Variance Final vs. Est. 2016/2017	Budget to budget % + / (-)	Notes/Comments
Capital Additions		0	0	0			
Services - JLL Contract		0	0	0	0		New CC Evaluation Contract
Total Operation Expenses		1,785,306	1,624,999	1,614,631	(10,369)	10%	
Total Expenses		7,146,833	6,723,225	6,619,598	(103,627)	6%	
EXPENSES VS REVENUE		117,718	111,748	993,668	881,919	5%	

Appendix J Continued

Appendix K



CHAMBER OF COMMERCE & CONVENTION – VISITORS BUREAU

Tuesday, June 12, 2018

City Manager Deanna Santana
Santa Clara City Hall
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Information Requested By City during June 6th Meeting

Dear Mayor, City Council, and City Manager:

On June 6th, representatives from the Santa Clara Chamber of Commerce and Convention-Visitors Bureau, Santa Clara Convention Center, and City Staff met following the direction of City Council to begin a process of exploring a term sheet for a new agreement with the Chamber of Commerce for their management of the Convention Center and to begin the process to execute a financial and performance audit of the Chamber.

The outcome of this meeting was for the Santa Clara Chamber of Commerce and Convention-Visitors Bureau to provide a response in regards to four topics: Santa Clara Chamber PAC Advertising in Chamber Eblast, Conflict of Interest Policies in regards to the Convention-Visitors Bureau advertising in the Santa Clara Weekly, Response to City's Request of Information regarding the Convention-Visitors Bureau, and Position on Intention to continue management role while the management fee is suspended.

Santa Clara Chamber PAC Advertising

The Chamber PAC is separate from the Santa Clara Chamber of Commerce and is independently funded. The Chamber PAC was created in March of 2010 as a political action committee, formally called the Santa Clara Chamber Political Action Committee.

The purpose of the PAC is to review research and recommend support of and/or any opposition to proposed ballot measures and legislation, ordinances and other actions of local, county and state government bodies. It is also the responsibility of the committee to seek out, evaluate qualifications and endorse those candidates who are running for office at the local, county and state level, who support the free enterprise system, believe in fiscally responsible government and whose views represent the interests of the business community. David D. Tobkin is the Chair of the SCCPAC.

Appendix K Continued

The Santa Clara Chamber PAC is a separately funded organization from the Chamber. No membership dues funds will be utilized for the PAC. All funds collected for the SCCPAC are done through separate donations and gifts. Thus, Santa Clara Chamber PAC does not receive any public funding. Like many other Chamber members the Chamber PAC has the option of advertising in the Chamber's eblasts. The Chamber PAC is provided the same treatment as any other Chamber member and pays for the advertising like many other Chamber members.

Please refer to the FPCC reports filed with the City Clerk's office to find detailed reports of the funding sources of the SCCPAC.

Conflict of Interest Policies in regards to the Convention-Visitors Bureau advertising in the Santa Clara Weekly

As part of the Santa Clara Chamber of Commerce's duty as manager for the Santa Clara Convention Center and Visitor's Bureau ("CVB"), the Chamber has a duty to market the space in order to maximize bookings. As part of this effort, the Chamber has, over the last few years engaged in an aggressive marketing campaign which has led to over a 60% increase in bookings this year alone.

One piece of this aggressive marketing campaign involves direct advertising of the Convention Center space and other Santa Clara venues. The best and most logical place to run advertisements to target the local community is in the Santa Clara Weekly. The Santa Clara Weekly is the only recognized paper of general circulation in Santa Clara and has the widest reach for the local Santa Clara community which is most likely to use the CVB for events.

Chamber Director Miles Barber has a controlling interest in the Santa Clara Weekly. Each Director reads and signs the conflict of interest policy that requires them to, among other things, act in the best interest of the Chamber and subordinate his own interests to that of the Chamber in the event of an interested director transaction, which is also what the California Corporations Code requires of a director.

Chamber Board member, Miles Barber complied with this policy by giving the Chamber a 30% discount on all advertising. Since Mr. Barber always fills his advertising space, this resulted directly in a revenue cut for himself. Given the overall success of the Chamber's marketing program (a 60% increase in bookings) and the discount, the transactions with the Weekly have been more than fair to the Chamber.

Booking the ads was initiated and implemented by Chamber staff as one piece of a broader marketing program. Chamber staff discussed advertising in the Weekly with Mr. Barber briefly when he agreed to give the discount, but there was never any decision made by the Chamber board concerning advertising in the Weekly. The amount paid to the Weekly for the advertisements amounted to less than one third of a percent of the entire CVB budget. The Chamber board approved was the broader marketing program which was then implemented by



Appendix K Continued

staff and has been a great success. As a result of the marketing campaign numerous marketing leads have been generated and attributed directly to the Weekly advertisements.

At one time, there were discussions about the expending of advertising dollars with Harbir Kaur Bhatia who is currently on the Santa Clara Cultural Commission. Those discussions never came to fruition and there was never a conflict of interest in the situation.

Response to City's Request of Information regarding the Convention-Visitors Bureau

When the initial request for certain information came in the Chamber's board, management, and staff needed additional time to review, discuss, and prepare the information the City requested. The Santa Clara Chamber of Commerce and Convention-Visitors-Bureau is prepared to provide the information the City has requested.

Position on Intention to Continue Management Role while the Management Fee is Suspended

The suspension of the management fee is a precautionary measure albeit a mistake. The City has paid the Chamber a management fee for decades. For many years it was \$45,000 and in recent years, was changed to 2% of total revenue. Under reservation of rights, in order to prevent any damage that might occur to the local business community and current employees, the Chamber will continue to manage the Convention Center despite the City's actions, but the management fee has been a substantial part of the parties' agreement as evidenced by the actions of the Chamber and the City for many years.

The Santa Clara Chamber of Commerce and Convention-Visitors Bureau appreciates the equally beneficial partnership to manage the Santa Clara Convention Center and operate a Convention-Visitors Bureau and looks forward to working with the consultant, TAP International, to perform a financial and performance audit on the Santa Clara Convention Center and Convention-Visitors Bureau.

Sincerely,



Nick Kaspar
President/CEO

Santa Clara Chamber of Commerce and Convention-Visitors Bureau

Appendix L

From: [REDACTED]
Sent: [REDACTED]
To: Kaspar, Nick
Subject: Re: Advertisement Rate Sheet

Sorry for the delay Nick, was called into a meeting.

For [REDACTED] we can offer any of the pages but the front page and the back page. I can offer you the following pricing:

For a full page - 10" wide x 21" tall **Color:**

1x - \$5,670

2x - \$5,418 each

3x - \$5,040 each

4x - \$4,788 each

5x - \$4,536 each

6x - \$4,284 each

These prices are a pretty big discount off our rate card. I'm happy to be able to offer them to you.

Let me know what other information I can provide.

Thanks,

R-

[REDACTED] Retail Sales Manager | Advertising - Retail



Appendix M

ARAMARK Corporation
 Santa Clara Convention Center
 5001 Great America Parkway
 Santa Clara, 95054
 Phone: (408) 748-7030
 Fax: (408) 748-7047



EVENT CONTRACT

Contract#: 99038206

SANTA CLARA CHAMBER PAC

CUSTOMER	EVENT INFORMATION
Barbara Carlisle 1850 Warburton Ave Santa Clara, CA 95050 Phone: 408-380-1232 Fax: 408-244-7830 Account Number: 8479003128	Event Date: Thursday, April 12, 2012 Description: SC CHAMBER PAC - SIT DOWN BI Guest Count: 270 Guarantee Count: 270 Salesperson: Melanie McCarthy Event Status: Booked Contact Person: Barbara Carlisi Contact Phone: 408-380-1232

LOCATION AND TIMES			
Location	Setup Style	Start Time	End Time
Mission City MR123	Rounds of 10	7:30 am	9:00 am

EVENT TIMES			
Doors Open:	7:30 am	Service Begins:	7:30 am
Program Begins:	8:00 am		

MENU SELECTIONS			
Name	Quantity	Price	Total
== SIT DOWN BREAKFAST ==	270	\$18.50	\$4,995.00
SERVED WATM IN BASKETS w/ Butter (please line basket w/gold or red napkin)			
---PRE-SET--- ~Warm Cinnamon Rolls on Table Served Yogurt Parfait w/ Fresh Berries, Granola, Drizzled Honey (Served in Universal Wine Glass)			
--PLATED MEAL-- ~ Frittata w/ Portobello Mushrooms, Spinach, Roasted Peppers and Gruyere Cheese ~ 2 Applewood Bacon Strips ~ Homestyle Breakfast Potatoes ~ Baked Tomato ~ Chef Choice Additional Garnish			
--BEVERAGE SERVICE-- ~ Peet's Certified Organic Coffee (2 individual carafes per table) ~ Peet's Certified Organic Decaf (served upon request) ~ Peet's Hot Tea (served upon request)			
~ 1 Pitcher of Orange Juice on Each Table ~ Pre-set Iced Water in Glasses at Each Setting			

OTHER CHARGES

Appendix M Continued

EVENT CONTRACT

Contract#: 99038206

SANTA CLARA CHAMBER PAC

STAFFING		PURCHASE MATERIALS	
OUTSIDE SERVICES		ROOM CHARGES	
SPECIAL INSTRUCTIONS		BILLING	
<p>VIP CHAMBER EVENT</p> <p>SPEAKER: JED YORK</p> <p>SET-UP: - ARAMARK TO HAVE ALL THE TABLES FULLY SET BY 7:00 AM - ARAMARK TO SKIRT REGISTRATION TABLES IN FOYER (BLACK ON BLACK) BY 6:00 AM</p> <p>SET-UP INCLUDES MIRRORS WITH 3 BATTERY OPERATED VOTIVES PER TABLE</p> <p>*** SEE DIAGRAM FOR NUMBERS OF GUEST FOR EACH TABLE. SOME TABLE WILL BE SET FOR 11 ATTENDEES</p> <p>LINENS: WHITE (8PT) (2 PER TABLE) NAPKINS: GOLD AND RED (PLEASE ALTERNATE PER TABLE) FAN FOLD ON TABLE</p> <p>HEAD TABLE: BLACK ON BLACK</p> <p>AGENDA: 7:00 AM TO 7:30 AM - REGISTRATION IN MISSION LOBBY 7:30 AM - OPEN DOORS - OFFER COFFEE TO ALL GUESTS AND BEGIN SERVING MEALS AS GUESTS ARE SEATED 7:45 AM TO 8:15 AM - CLEAR PLATES AND REFILL ALL COFFEE THERMALS 8:00 AM - PROGRAM BEGINS 8:15 AM - STAFF TO QUIETLY CONTINUE CLEARING AND DEPART FROM ROOM AS SOON AS POSSIBLE 8:15 AM TO 9:00 AM - 4 STAFF TO REMAIN IN ROOM TO CONTINUE SERVICING GUESTS WITH FILLING COFFEE THERMALS OR ANY OTHER REQUESTS .</p> <p>SERVICE REQUIREMENTS: - PRE-SET WATER GLASSES - OFFER COFFEE SERVICE TO ALL GUESTS AS THEY ARE SEATED - 1 REGULAR COFFEE THERMAL AND 1 DECAF THERMAL ON EACH TABLE</p> <p>PRE-SET THE FOLLOWING: - ORANGE JUICE PITCHER ON TABLES WITH JUICE GLASSES - 2 REGULAR COFFEE THERMALS ON EACH TABLE</p> <p>- JUICE TO BE LABELED WITH SIGN ON EACH TABLE SERVE ENTREES AS GUESTS ARE SEATED. DO NOT NEED TO WAIT FOR A TABLE TO FULLY BE SEATED PRIOR TO SERVING OR CLEARING.</p>		<p>Subtotal: \$4,995.00</p> <p>: -</p> <p>Sales Tax: \$494.51</p> <p>Tax 2 (N/A): -</p> <p>Service Chg: \$999.00</p> <p>: -</p> <hr/> <p>Contract Total: \$6,488.51</p> <p>Total Credits: \$6,488.51</p> <hr/> <p>Adjusted Total: -</p>	

Appendix N



**City of
Santa Clara**
The Center of What's Possible

NEWS RELEASE

FOR IMMEDIATE RELEASE: Thursday, Sept. 20, 2018

CONTACT: Lenka Wright, Director of Communications, 408-615-5515 or lwright@santaclaraca.gov

Santa Clara Terminates Chamber of Commerce's Contract for the Operations of the Santa Clara Convention Center and Prepared to Report Questionable Practices to State and Federal Authorities for Further Investigation

City begins its own internal reforms to address audit findings showing City's lack of contract oversight

SANTA CLARA, Calif. – After the City Council took action this week to terminate the City's management agreement for the operations of the Santa Clara Convention Center (Convention Center), the City is now in the process of reporting questionable practices by the Santa Clara Chamber of Commerce to state and federal authorities for review of potential violations of law.

The City's swift actions were recommended by Principal Auditor Denise Callahan, TAP International, to the City Council as part of the independent [audit](#) of the Convention Center and Convention-Visitors Bureau under the Chamber's management.

The audit findings – which revealed the Chamber's serious financial mismanagement, questionable accounting practices, self-dealing, conflicts of interest and misuse of government resources as well as a lack of City contract oversight - were presented to the City Council at the Tuesday, Sept. 18 meeting. The audit's recommendations state:

- Further legal analysis is needed to determine if the Contractor (Chamber): (1) violated its 501(c)(6) tax exempt status when it provided full facility discounts to its members, and (2) engaged in self-dealing when it used its personal or organizational relationships to offer free use of publicly owned facilities, and allowed the Contractor's Board member to assume SCCC (Convention Center) services without implementing a competitive bid.
- Investigation is needed by the California Fair Political Practices Commission (FPPC) to determine if violation of state law occurred when the Contractor (Chamber) allowed the Santa Clara Chamber Political Action Committee to use SCCC (Convention Center) facilities free of rental charges."

In advance of the Oct. 9 Council meeting, the City fully intends to report these issues to the Internal Revenue Service (IRS) and the California Fair Political Practices Commission (FPPC) concerning the audit's findings. The City [will share with the FPPC](#) that the Chamber apparently allowed for the illegal use of public assets for its Political Action Committee by subsidizing the PAC's political fundraising activities and using CVB administrative resources to raise campaign funds and participate in political activity. Prior to notifying the IRS, the City's pulling in legal experts on 501(c)(6) designation for a thorough review of the \$2.8 million of full facility discounts and findings of board members' self-dealing activities, where their personal businesses profited by the improper use of public assets. Meantime, the City continues to assess what additional actions are necessary in alerting state and federal authorities regarding potential ethical lapses in the Chamber's mismanagement of the Convention Center.

Appendix N Continued

This week, the City already held two sessions of a newly developed contracts training that's designed to assist staff in writing more effective contracts. The training also provides direct procurement and contract management support. More training sessions will be rolled out to the entire organization. The City's procurement and contract reform efforts include:

- Adoption of overall administrative policies and purchasing training;
- Recent involvement in proper surplus property sales;
- Implementation of online bidding tool (*coming soon*) to enhance competitive bidding process and process improvement for vendors bidding on City services and equipment;
- Development of emergency operations procurement guidelines; and
- Hiring of a seasoned procurement manager to ensure best practices in public sector purchasing to increase transparency, maximize competition and equal treatment of all participants in bidding process.

Read the [Sept. 19 news release](#) about the audit. For additional background, visit the [City website](#).

About the City of Santa Clara

Located at the heart of Silicon Valley about 45 miles south of San Francisco, the City of Santa Clara truly is "The Center of What's Possible." Incorporated in 1852, Santa Clara covers an area of 19.3 square miles with a population of 120,000. Santa Clara is home to an extraordinary array of high-tech companies, including Applied Materials, Hewlett-Packard, Intel, Nvidia, Oracle, and Ericsson. The City of Santa Clara is also home to Santa Clara University, California's Great America Theme Park, and Levi's® Stadium, home of the San Francisco 49ers and Super Bowl 50. For more information, go to www.SantaClaraCA.gov.

About TAP International

TAP International is a consulting firm that provides performance management evaluation has over 100 years of combined experience conducting performance audits. Principal Consultant [Denise Callahan](#) has an extensive auditing background and has performed performance audits of other convention centers, as well as compliance audits, internal audits and best practices reviews for federal, state and local government agencies. Ms. Callahan has been a lecturer at the University of San Francisco and the University of Southern California. She serves on the Audit Committee for the American Society for Public Administration and has won awards for the quality of completed performance audits.

###

STATUS OF TAP INTERNATIONAL AUDIT RECOMMENDATIONS

TAP INTERNATIONAL AUDIT OF THE SANTA CLARA CONVENTION CENTER AND VISITOR'S BUREAU

Audit Recommendation	Current Status	Action Taken
1 The City Manager, in response to prior City Council direction to develop options for the SCCC and the CVB operations, should include a feasibility study to assess the advantages and disadvantages of various business structures to run each or both operations. The feasibility study should include analysis of financial projects in the short and long term for each option.	Partially Complete	Through the Request for Proposal process, the City will test the market for one provider to operate the SCCC or for one operator to manage both the SCCC and the CVB. Depending on proposals submitted and evaluated, staff will recommend one of the two options to the City Council for contract award. Should one operator get selected to manage the SCCC only, the City will then move forward with formation of a CVB as a separate entity. The RFP will be released in October of 2018.
2 Regardless of any change in the business structure, the City Manager should consider implementing the following activities to ensure better accountability of operations and to build on the financial performance of the SCCC:		
2.A Develop a comprehensive and integrated business and marketing strategy.	Partially Complete	As part of the procurement process, proposers to the RFP will be required to include a comprehensive business and marketing strategy, which will be included in the resulting management contract.
2.B Develop better event scheduling policies that address renting SCCC facilities to nonprofit organizations, the use of discounts, and document specific criteria for prioritizing event scheduling.	Partially Complete	As part of the procurement process, proposers to the RFP will be required to include scheduling policies, which will be included in the resulting management contract.
2.C Transition into booking more same day events to area hotels to allow greater availability of calendar time for multi-day events at the SCCC.	Partially Complete	As part of the procurement process, proposers to the RFP will be required to include a booking policy, which will be included in the resulting management contract.
2.D Reduce the SCCC's schedule of events to six months in advance.	Partially Complete	As part of the procurement process, proposers to the RFP will be required to include a scheduling policy, which will be included in the resulting management contract.
2.E Strategically align more sales staff to industries that frequently rent the SCCC.	Partially Complete	As part of the procurement process, proposers to the RFP will be required to include a strategic sales and marketing plan, which will be included in the resulting management contract.

STATUS OF TAP INTERNATIONAL AUDIT RECOMMENDATIONS

Audit Recommendation	Current Status	Action Taken
2.F Integrate all marketing and sales activities between the SCCC and CVB.	Partially Complete	As part of the procurement process, proposers to the RFP will be required to propose an integrated marketing and sales activities plan, which will be included in the resulting management contract.
2.G Consolidate accounting systems used between the SCCC and the CVB.	Not Implemented	The consolidation of accounting systems used by a vendor will be part of the due diligence process for selecting a vendor through the procurement process. In addition, the City needs to review its internal accounting processes to ensure that all risk areas have been addressed as we transition to reconciliation and close out of these to Chamber contracts.
2.H Consider elimination of sales commision.	Partially Complete	As part of the procurement process, proposers to the RFP will be required to propose an employee compensation policy and its advantages and disadvantages. The policy will be referenced in the resulting management contract with proper transparency/disclosure of financial incentives, if any are proposed. The City Council, and public, will be informed of the compensation model with transparency and monitoring, as part of required managment oversight.
2.I Modernize the SCCC	Partially Complete	<p>The 2017 study of the SCCC estimates replacement and modernization costs for short-term repairs at \$5.3 million and other long-term repair costs at \$57.7 million over the next ten years. The City and SCCC budgeted over \$1 million to replace the carpeting and budgeted over \$4 million to update the kitchen in FY 2020-21. These budget items will compete with other City-wide Capitol Improvement Budget priorities.</p> <p>As part of the procurement process, proposers to the RFP will be required to propose a capital improvement funding plan, which will be included in the resulting management contract.</p>

STATUS OF TAP INTERNATIONAL AUDIT RECOMMENDATIONS

Audit Recommendation	Current Status	Action Taken
2.J Prohibit commingling of City funds with other nongovernmental revenue sources.	Not Implemented	The prohibition of commingling of funds will be included in the new contract(s).
2.K Establish a clear leadership structure and team to administer effective City oversight of operations.	Complete	At the September 18, 2018 Council Meeting, the City approved 1.5 positions (1.0 Assistant to the City Manager position and 0.5 Office Specialist III position) to implement the SCCC audit, oversee the RFP, and manage the ensuing contracts. On an interim basis, the City Manager filled an Assistant to the City Manager position and the recruitment for permanently filling this position is underway.
2.L Establish requirements to avoid, disclose, and mitigate conflict of interests.	Not Implemented	The new contract(s) will include strong conflict of interest language to comply with state and federal laws.
2.M Establish financial disclosure requirements for the SCCC and the CVB contractors who make decisions on behalf of the City.	Not Implemented	The new contract(s) will include financial disclosure for contractors who make decisions on behalf of the City. The contract will require the decision makers to comply with state and federal laws and disclosure requirements.
2.N Establish requirements that describe and define appropriate and reasonable expenditures.	Not Implemented	The new contract(s) will have a specific language on cost allocations, routine financial reviews, and planned audits, as applicable.

STATUS OF TAP INTERNATIONAL AUDIT RECOMMENDATIONS

Audit Recommendation	Current Status	Action Taken
2.O Establish requirements and controls for purchasing, including the use of the credit cards and purchase cards.	Not Implemented	The new contractor(s) will be required to establish requirements and controls for purchasing, including the use of the credit cards and purchase cards, and the City will audit against these policies.
2.P Establish contracting and contract management requirements for the SCCC and the CVB.	Not Implemented	The new contractor(s) will be required to establish contracting and contract management requirements and the City will audit against these policies.
2.Q Establish stronger requirements for financial reporting on operations.	Not Implemented	The new contract(s) will establish stronger requirements for financial reporting on operations made public on a quarterly basis.
2.R Establish the requirement to develop, track, and report on progress in meeting key performance benchmarks for the SCCC and the CVB operations.	Partially Complete	As part of the procurement process, proposers to the RFP will be required to propose industry specific key performance indicators for both operations, which will be included in the resulting management contract and subject to approval by the City. The City will maintain the right to include additional key performance indicators specifically tailored for the management of public assets and resources.
2.S Establish employee compensation policies.	Partially Complete	As part of the procurement process, proposers to the RFP will be required to propose an employee compensation policy and its advantages and disadvantages. The policy will be referenced in the resulting management contract and part of the City Council's review when considering awarding an operation agreement.

STATUS OF TAP INTERNATIONAL AUDIT RECOMMENDATIONS

Audit Recommendation	Current Status	Action Taken
2.T Establish controls that ensure accuracy and completeness of the SCCC and the CVB performance reporting.	Not Implemented	The City will establish internal controls that will ensure accuracy and completeness of the SCCC and the CVB performance reporting.
2.U Establish requirements for the storage and archiving of financial and operational data.	Not Implemented	The new contract(s) will establish requirements for the storage and archiving of financial and operational data.
2.V Conduct ethics and conflict of interest training to the SCCC and the CVB employees.	Not Implemented	The new operator must be able to demonstrate a working knowledge of good governance for public facilities and funds. Contract(s) will require regular ethics and conflict of interest training to the operator's SCCC and the CVB employees.
2.W Conduct training on the principles of good governance to the SCCC and the CVB employees.	Not Implemented	The new operator must be able to demonstrate a working knowledge of good governance for public facilities and funds. Contract(s) will require regular ethics and conflict of interest training to the operator's SCCC and the CVB employees.
3 The City Manager should review the accountability issues and concerns described in this report and refer them, if needed, for further review by the City or by other agencies.	Complete	The City Manager did refer the findings and the TAP audit of the SCCC and CVB to the IRS and FPPC. The FPPC has forwarded the Audit to the District Attorney. The City will cooperate with state and federal agencies if more violations are discovered during the process.
4 The City should conduct contract oversight activities by reconciling (a) the Contractor's allocation of CVB's revenues and expenses and (b) the Contractor's credit card statements.	Complete	The City extended TAP International's contract to reconcile the Contractor's allocation of CVB's revenues and expenses. Since May 2018, City staff has reviewed Contractor's credit card statements. An additional audit will be conducted on the credit card statements.



Conflict of Interest Policy

The purpose of this Conflict of Interest Policy is to protect the interests of the Santa Clara Chamber of Commerce & Convention-Visitors Bureau. Each Officer, Board Member and staff member shall act in the best interest of the organization and disclose any conflicts of interest.

A conflict of interest exists when officers, board members or staff has a direct or indirect business, professional or personal situation or relationship that may influence or be perceived to influence the judgment or action of the officer, Board Member or staff when servicing the Santa Clara Chamber of Commerce & Convention-Visitors Bureau. Such conflicts of interest include, but are not limited to: personal and professional affiliations and business dealings.

All real or perceived conflicts of interest will be disclosed to the appropriate level of authority necessary for consideration, resolution and direction.

Officers, Board Members and staff will be required to sign a conflict of interest form.

Conflict of Interest Form

I have read and understand the Conflict of Interest Policy, and understand that it is my obligation to act in a manner that promotes the best interest of the Santa Clara Chamber of Commerce & Convention-Visitors Bureau and to avoid conflicts of interest when making decisions and taking actions on behalf of the Santa Clara Chamber of Commerce & Convention-Visitors Bureau.

I agree to disclose to the proper level of authority any real or perceived conflicts of interest that may arise during the course of my tenure with the organization.

Additionally, I agree to abide by the direction and decision rendered by the Santa Clara Chamber of Commerce & Convention-Visitors Bureau.

Name (print) _____

Signature _____

Date _____

CONFLICT OF INTEREST DISCLOSURE FORM

Date: _____

Name: _____

Position (employee/volunteer/director): _____

Please describe below any relationships, transactions, position you hold (volunteer or otherwise), or circumstances that you believe would contribute to a conflict of interest between the Santa Clara Chamber of Commerce & Convention-Visitors Bureau and your personal interests, financial or otherwise:

_____ I have no conflict of interest to report

_____ I have the following conflict of interest to report (please specify other non-Profit and for-profit boards you (and your spouse) sit on, any for-profit businesses for which you or an immediate family member are an officer or director, or a majority shareholder, and the name of the employer and any businesses you or a family member own):

1. _____

2. _____

3. _____

I hereby certify that the information set forth above is true and complete to the best of my knowledge. I have reviewed, and agree to abide by, the Policy of Conflict of Interest of The Santa Clara Chamber of Commerce & Convention-Visitors Bureau.

Signature: _____

Date: _____

Information Referral

(See instructions on reverse)

Use this form to report suspected tax law violations by a person or a business.

CAUTION: READ THE INSTRUCTIONS BEFORE COMPLETING THIS FORM. There may be other more appropriate forms specific to your complaint. (For example, if you suspect your identity was stolen, use **Form 14039.**)

Section A – Information About the Person or Business You Are Reporting

Complete 1, if you are reporting an Individual. Complete 2, if you are reporting a business only. Complete 1 and 2 if you are reporting a business and its owner. (Leave blank any lines you do not know.)

1a. Name of individual		b. Social Security Number/TIN		c. Date of birth	
d. Street address		e. City		f. State	g. ZIP code
h. Occupation		i. Email address			
j. Marital status (check one, if known) <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Head of Household <input type="checkbox"/> Divorced <input type="checkbox"/> Separated				k. Name of spouse	
2a. Name of business SANTA CLARA CHAMBER OF COMMERCE		b. Employer Tax ID number (EIN) 94-0675790		c. Telephone number 408 422-9660	
d. Street address 1850 WARBURTON AVENUE		e. City SANTA CLARA		f. State CA	g. ZIP code 95050
h. Email address nick.kaspar@santaclara.org		i. Website http://www.santaclarachamber.com/			

Section B – Describe the Alleged Violation of Income Tax Law

3. Alleged violation of income tax law. (Check all that apply.)

<input checked="" type="checkbox"/> False Exemption	<input type="checkbox"/> Unsubstantiated Income	<input checked="" type="checkbox"/> Unreported Income	<input type="checkbox"/> Failure to Withhold Tax
<input type="checkbox"/> False Deductions	<input type="checkbox"/> Earned Income Credit	<input type="checkbox"/> Narcotics Income	<input type="checkbox"/> Failure to File Return
<input type="checkbox"/> Multiple Filings	<input checked="" type="checkbox"/> Public/Political Corruption	<input type="checkbox"/> Kickback	<input checked="" type="checkbox"/> Failure to Pay Tax
<input type="checkbox"/> Organized Crime	<input type="checkbox"/> False/Altered Documents	<input type="checkbox"/> Wagering/Gambling	<input checked="" type="checkbox"/> Other (describe in 5)

4. Unreported income and tax years
Fill in Tax Years and dollar amounts, if known (e.g., TY 2010- \$10,000)

TY _____ \$ _____ TY _____ \$ _____ TY _____ \$ _____ TY _____ \$ _____ TY _____ \$ _____

5. Comments (Briefly describe the facts of the alleged violation-Who/What/Where/When/How you learned about and obtained the information in this report. Attach another sheet, if needed.)

The City of Santa Clara recently received an audit which indicated possible Federal and State income tax violation by the Santa Clara Chamber of Commerce. We have not been able to determine the full extent of the possible violations, but we are forwarding the audit to you for your investigation into some of the findings that relate to your enforcement authority.

6. Additional information. Answer these questions, if possible. Otherwise, leave blank.

a. Are book/records available? (If available, do not send now. We will contact you, if they are needed for an investigation.) Yes No

b. Do you consider the taxpayer dangerous? Yes No

c. Banks, Financial Institutions used by the taxpayer

Name			Name		
Street address			Street address		
City	State	ZIP code	City	State	ZIP code

Section C – Information About Yourself

(We never share this information with the person or business you are reporting.)

This information is not required to process your report, but would be helpful if we need to contact you for any additional information.

7a. Your name Brian Doyle		c. Best time to call 8:30 am to 4:30 pm	
d. Street address 1500 Warburton Avenue		e. City Santa Clara	
		f. State CA	g. ZIP code 95050

Please print and send your completed form to: Internal Revenue Service
Stop 31313
Fresno, CA 93888

Instructions for Form 3949-A, Information Referral

General Instructions

Purpose of the Form

Use Form 3949-A to report alleged tax law violations by an individual, a business, or both.

CAUTION: DO NOT USE Form 3949-A:

- o If you suspect your **identity was stolen**. Use Form 14039. Follow "Instructions for Submitting this Form" on Page 2 of Form 14039.
- o To report suspected **misconduct by your tax return preparer**. Use Form 14157. Submit to the address on the Form 14157.
- o If your **paid preparer** filed a return or made changes to your return **without your authorization**. Instead, use Form 14157 AND Form 14157-A. Submit both to the address on the Form 14157-A.
- o If you **received a notice** from the IRS about **someone claiming your exemption or dependent**. Follow the instructions on the notice. Do not complete Form 3949-A.
- o To report an **abusive tax avoidance scheme, promotion, or a promoter** of such a scheme. Use Form 14242. Mail or FAX to the address or FAX number on the Form 14242.
- o To report misconduct or **wrongdoing by a tax exempt organization** or its officers, directors, or authorized persons. Use Form 13909. Submit by mail, FAX, or email, according to the instructions on the Form 13909.

Have information and want to claim a reward? Use Form 211, Application For Award For Original Information. Mail it to the address in the Instructions for the form.

Specific Instructions

Section A – Provide Information About the Person/Business You Are Reporting, if known.

Provide as much information as you know about the person or business you are reporting.

1. **Complete if you are reporting an individual.** Include their name, street address, city, state, ZIP code, social security number or taxpayer identification number, occupation, date of birth, marital status, name of spouse (if married), and email address. Include as much information as you know.
2. **Complete if you are reporting a business.** Include the business name, business street address, city, state, ZIP code, employer identification number (EIN), telephone number(s), email address, and website, if known.
Note: Complete both parts if you are reporting a business and its owner.

Section B – Use to Describe the Alleged Tax Law Violation(s)

3. Check all Tax Violations That Apply to Your Report.

False Exemption- Claimed persons as dependents they are not entitled to claim.

False Deductions- Claimed false or exaggerated deductions to reduce their taxable income.

Multiple Filings- Filed more than one tax return to receive fraudulent refunds.

Organized Crime- Member of a group of persons who engaged in illegal enterprises such as drugs, gambling, loansharking, extortion, or laundering illegal money through a legitimate business.

Unsubstantiated Income- Reported false income from an unverifiable source in order to get a false refund.

Earned Income Credit- Claimed Earned Income Credit which they were not entitled to receive. They may have reported income they did not earn or claimed children they were not entitled to claim.

Public/Political Corruption- Public official or politician violated laws against using their position illegally for personal gain.

False/Altered Documents- Changed documents, such as a W-2 or Form 1099, or created fake documents to substantiate a false refund.

Unreported Income- Received cash or other untraceable payments, such as goods or services, and did not report the income.

Narcotics Income- Received income from illegal drugs or narcotics.

Kickback- Received illegal payments or kickbacks in exchange for referring the business of a government agency or other business towards a company or for influencing business decisions that result in part of the payment for the business received or service performed being returned to the person who made the referral.

Wagering/Gambling- Did not report income received from wagering or gambling.

Failure to Withhold Tax- Individual or business did not withhold legally owed taxes from income paid to their employee(s), such as Social Security or Medicare taxes. Example: A business treated employees as independent contractors and issued Forms 1099, with no tax withheld, instead of a W-2.

Failure to File Return- Individual or business has not filed returns legally due.

Failure to Pay Tax- Individual or business has not paid taxes legally due.

Other- Describe in 5.

4. If your report involves unreported income, indicate the year(s) and the dollar amount(s).
5. Briefly describe the facts of the alleged tax law violation(s) as you know them. Please attach another sheet, if you need more room.
6. Additional Information, if known. Attach another sheet, if you need more room.

Section C – Provide Information about Yourself

7. **Note: Information about yourself is NOT required to process your report, but may be helpful if we need additional information.**

Please print and send your completed form to the Internal Revenue Service at:

Internal Revenue Service
Stop 31313
Fresno, CA 93888

Paperwork Reduction Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. This report is voluntary and the information requested helps us determine if there has been a violation of Income Tax Law. We need it to insure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administrations of any Internal Revenue laws. Generally, tax returns and tax return information are confidential, as required by Code section 6103.

The time required to complete this form will vary depending on individual circumstances. The estimated average time is 15 minutes.

Privacy Act Notice

We are requesting this information under authority of 26 U.S.C. 7801. The primary purpose of this form is to report potential violations of the Internal Revenue laws. The information may be disclosed to the Department of Justice to enforce the tax laws. Providing the information is voluntary. Not providing all or part of the information will not affect you.



September 20, 2018

Fair Political Practices Commission
Enforcement Division
1102 Q Street, Suite 3000
Sacramento, CA 95811

RE: Potential Fair Political Practices Commission (FPPC) Violations, Conflicts of Interest, and Misuse of Public Funds and Assets by the Santa Clara Chamber and Santa Clara Chamber Political Action Committee (PAC)

To FPPC Official:

On September 18, 2018, Principal Auditor Denise Callahan, TAP International, publicly presented an audit of two City contracts with the Santa Clara Chamber of Commerce (Chamber) regarding its management of the City's Convention Center and Convention and Visitors Bureau (CVB) services.

The Auditor identified potential Fair Political Practices Commission (FPPC) violations, conflicts of interest, and misuse of public funds and assets by the Chamber and Santa Clara Chamber Political Action Committee (PAC). Per the auditor's recommendation, the City is formally requesting the FPPC to investigate the Chamber and its PAC for the violations identified in the audit and summarized in this letter.

Specifically, the performance audit has found that in 2012 the Chamber (referred to as Contractor in the audit) sponsored a fundraising event for its PAC. The Chamber commingled the administrative resources, funded with public funds for other contract work, with Chamber PAC fundraising activities which resulted in an \$8,000 check improperly issued to the Chamber PAC from CVB (pages 41-42 of the audit). In particular the audit states: "in 2012, the Contractor sponsored a web-based fundraising event for a political action committee. During the campaign, the Contractor received checks that totaled about \$8,000 made payable to the CVB. Rather than returning the political donor's check, the Contractor deposited the checks and recorded the deposit on the CVB's accounting records. The Contractor then recorded and issued a check on May 8, 2012 under the CVB accounting records for about \$8,000 to the Political Action Committee. Contractor management attributed the problem to donor confusion about whom to make the checks payable. When the CVB sent the payment to the Chamber PAC, it provided a gift of public funds by the use of public resources being used for political fundraising purposes that requires further review by the FPPC for potential violation of State law." In addition to this incident, the audit found that the Chamber used the City's publicly owned facility, Convention Center, to host

its PAC events. The audit also states that because the Contractor facilitated the fundraising activity for the Political Action Committee, it may have jeopardized its 501(c)(6) tax exempt status.

The City is taking these potential violations of law very seriously. Should you have any questions and or need additional more information, please do not hesitate to contact me at dsantana@santaclaraca.gov. Also, you may contact Denise Callahan of TAP International Consulting at denise@tapinternational.org.

Sincerely,



Deanna J. Santana
City Manager

cc: City Council
City Attorney
Nick Kaspar, CEO of Santa Clara Chamber of Commerce

Attachment:

(1) Santa Clara Convention Center and Convention-Visitors Bureau: Restructuring Operations Can Strengthen Accountability, Performance and Revenue



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

October 9, 2018

City of Santa Clara
Attn: Deanna J. Santana, City Manager

[REDACTED]
Santa Clara, CA 95050

Via email [REDACTED]

RECEIVED

OCT 11 2018

Office of the City Manager
City of Santa Clara

Re: Sworn Complaint Against Santa Clara Chamber of Commerce (COM-09252018-01791)

Dear Ms. Santana:

This letter is in response to the sworn complaint you submitted to the Enforcement Division of the Fair Political Practices Commission regarding the above-named entity. Based on a review of the complaint and documentation provided, the Enforcement Division will not pursue an enforcement action in this matter. It appears these issues may better be addressed by the District Attorney's office and we have forwarded the audit report to them. If you have any questions, please contact Chris Holm at cholm@fppc.ca.gov.

Sincerely,

Galena West

Galena West
Chief, Enforcement Division

GW:cah

cc: Santa Clara Chamber of Commerce

11/27/18

item 6 A-E



City Council

Item #6 (A-E)
Santa Clara Convention
Center/Convention-Visitors
Bureau

November 27, 2018

The seal of the City of Santa Clara, California, featuring a mission building, the year 1852, and the text "CITY OF SANTA CLARA CALIFORNIA" and "THE MISSION CITY".



City of Santa Clara
The Center of What's Possible

Agenda

- Background and Audit Context
- Santa Clara Chamber of Commerce Response
- Auditor Response to Chamber Response
- City Response to Audit Recommendations

2

The slide features a dark blue header with a red diagonal line. The City of Santa Clara logo is in the top right corner. The main content is a bulleted agenda.

POST MEETING MATERIAL



Background

- Council directed audit of Convention Center and CVB on May 22, 2018
- TAP International (TAP) presented audit to Council on September 18, 2018– *today is a continued discussion*
- Chamber requested opportunity to respond to the audit
- TAP was not available on October 9, 2018

3



Audit Context

- **Audit is a normal function of due diligence**
 - City's responsibility to audit per the Convention Center Management Agreement, it did not for 30+ years
 - City never audited the Tourism Improvement District (TID) nor its Fiscal Agent (Chamber) since its inception in 2005
- **City allowed a high-risk environment without any Council oversight, assigned City staff, or management controls.**

4



Audit Findings

Tonight's City-Chamber discussion on these two audits has various common denominators:

- **Chamber**
 - Mismanagement of public funds and assets
 - Inadequate financial controls, lack of policies or compliance with them, sloppy record keeping, and no disclosure of how it was managing public resources
 - Lack of understanding of governance (e.g., conflict of interest violations, disclosures to Council, authority of Council with respect to public funds and assets, alignment to role and responsibilities, etc.)
- **City**
 - Lack of proper Governance, Contract Management and Oversight

5



Chamber of Commerce Response to TAP Audit (Item 6.A)

6



Auditor Response to Chamber of Commerce (Item 6.B)

7



City Response to Previous Council Questions (Item 6.C)

8



City Council Questions

1. What groups received discounts and/or free facility rentals?
2. What were the commissions and incentives paid to Chamber staff?
3. Review of Santa Clara Chamber of Commerce's Political Action Committee (PAC) Fair Political Practices Commission (FPPC) Filings

9



Discounts & Free Rentals

- **Groups receiving partial discounts (Attachment 2)**
 - Data provided by TAP using data provided by the Chamber
 - *The data does not detail the nature of the discount*
- **Groups receiving a free rental (Attachment 3)**
 - Data provided by TAP using data provided by the Chamber
 - *The data does not detail the rationale for the free rental*

10



Commissions and Incentives Paid

- During the audit period the Chamber paid
 - over \$300,000 in commissions and
 - \$23,500 in incentive bonus payments
- Commissions/Incentive pay are not offered in publicly funded environments
- Commission structure created incentive to book day events vs. multi-day (economic generators)
- Commissions largely paid to one employee
- Attachment 4 provides commissions and bonuses paid by month, quarter, and calendar year

11



Chamber PAC FPPC Filings

- **Appointed City Clerk and City Auditor**
 - reviewed the Santa Clara Chamber PAC FPPC Reports on file with the City Clerk's Office
 - issued two reports/audits on October 29 and October 31, 2018, respectively (Attachments 5 and 6)
 - identified potential violations of FPPC report filings
- **On November 13, the FPPC issued a letter stating that “the Enforcement Division of the Fair Political Practices Commission will investigate the allegation.” (Attachment 7)**

12



City Response to Audit (Item 6.D)

13



City's Response -- TAP's Audit

- Staff concurs with audit recommendations
- Implementation matrix developed (Attachment 3) and staff will report, as necessary, once a new operator is selected
- The majority of recommendations can be resolved by a new Management Agreement and City oversight of it

	RFP Related	Future Management Contract	City Action Related	Total
Complete	0	0	3	5
Partially Complete	11	0	0	11
Not Implemented	0	10	2	12
Total	11	10	5	26

14



City Action Related Items

- Council authorized an additional 1.5 FTEs for Convention Center and CVB oversight
- Referrals have been made to FPPC and to IRS
- Establishment of other controls (e.g., accounting and contract performance) will be developed with new staff and SCCC/CVB operators

15



City's Response – Chamber's Audit Response

Demonstrates lack of basic understanding of governance, contract requirements, and contract principles, City's response to Chamber's response is focused on four categories:

- Public Sector Governance
- Conflicts of Interest
- TID Audit (Item #7)
- Obligations to Report Preliminary Audit Observations and Respond to Council's Directives

16



Public Sector Governance

Chamber's response demonstrates deficiencies with understanding:

- Council – Manager form of government – Council as governing body of public assets and City Manager implements direction
- City's right to communicate broadly with residents and businesses on Council actions
- Oversight and use of a public asset
- Budget appropriation
- Public sector contracting and Contractor responsibilities
- Business and industry oversight

17



Use of a Public Asset

- Private sector practices do not apply.
- Use of public facilities (Convention Center) and public funds (Convention Center and CVB) are subject to public sector business practices, e.g., governance, transparency, compliance, and reporting.
- Like SCSA focus, the governing body (Council) and public have a right to know how its resources are being used. Chamber's response does not appropriately account for this requirement.

18



Use of a Public Asset

- Fee waivers/discounts must be examined through policies and held to a high level of scrutiny, transparency, fairness.
- Unless authorized by City Council through policy, Chamber did not have authority to waive fees at the public's expense:
 - During the audit period, \$16.1 million in discounts granted (45% of total bookings),
 - During the audit period, **\$2.8 million free use** privileges granted to the Chamber; Chamber employees and members, and SCCC vendor partners. **Public did not have access to this privilege.**
 - Chamber did not follow its own policy, nor report these practices to the Council

19



Budget Appropriation

- By an affirmative Council vote, at a properly noticed public Council meeting, Council may establish budget appropriations.
- Budget appropriations do not grant spending authority, unless delegated to the City Manager or approved by Council agreement (e.g., MOUs, CM contract authority, contracts and amendments explicitly stating funds, etc.)
- Expenditures must be consistent with City budget adopted by Council. In this case, staff failed to disclose to Council an increased budget appropriation and subsequent increased payments.

20



Budget Appropriation

- Individual members of the Council cannot authorize expenditures, bind the City Council, or direct the City Manager
- Chamber's reference, whether true or untrue, to informal and/or private discussions with two Councilmembers does not bind the City nor does it constitute legitimate action to provide for an increased payment in the Management Fee

21



Public Sector Contracting

- City and Chamber had two public contracts, (1) Convention Center management and (2) CVB activities.
- Among other requirements, Chamber obligated to provide Convention Center marketing, reporting, etc. through these two separate contracts which it can not due to its own actions.
- Separately, Chamber signed on as fiscal agent/administrator for the TID which requires various services and obligations—separate fund.
- Chamber's overly broad termination of its staff, regardless of funding source, left it unable to meet contractual obligations for the Convention Center or its TID requirements.

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Public Sector Contracting

- Termination of the CVB contract did not relieve Convention Center contract obligations or TID requirements. Chamber's actions demonstrate a lack of understanding of its separate contract or TID obligations.
- Up to Chamber to determine how it will comply with its public contract (Convention Center).
- However, Council granted City Manager broad authority to work with Chamber to shift funds to Convention Center contract for some staffing and other expenditures for the Convention Center and TID. Publicly stated that this was the only way to fund activities.

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Public Sector Contracting

- Chamber took broad action to terminate its employees, including those funded by the TID for which the Council took no action.
- City's advice (through ACM Shikada) was clearly relevant to CVB public contract and it DID NOT regard Convention Center or TID legal obligations. Demonstrates Chamber's lack of understanding of legal obligations under each role and/or contract.
- Employees are Chamber employees. Chamber makes hiring/termination decisions – City did not terminate them, as often suggested.

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Business and Industry Oversight

- Chamber's public contract to manage a public facility does not allow for private sector practices (see governance).
- Chamber's and City's policy objective for the management of the Convention Center and CVB should have been to protect the General Fund and maximize revenue, unless an explicit public policy decision was made to subsidize it.
- Chamber Board, responsible to the Council for this contract, should have managed the facility, including its own conflicted business practices

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Business and Industry Oversight

- Board meeting minutes reflect shallow management of Convention Center and CVB to keep Santa Clara competitive in the industry through active management; trend analysis; and strategic planning.
- Audit findings of conflicts between CVB multi-day and SCCC single-day bookings went unnoticed or unresolved, at a potential adverse impact to revenues and hotel night bookings. Shows Chamber's lack of management and best industry practices.

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Conflict of Interest

- Chamber Conflict of Interest Policy & Forms
- Chamber Conflict of Interest – Form 990
- Truthfulness at the core of status of Conflict of Interest Policy
- Management of Conflict and Governance

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Chamber's Conflict of Interest Policy

A conflict of interest exists when officers, board members or staff has a direct or indirect business, professional or personal situation or relationship that **may influence or be perceived to influence** the judgment or action of the officer, Board Member or staff when servicing the Santa Clara Chamber of Commerce & Convention-Visitors Bureau ... **All real or perceived conflict of interest will be disclosed to the appropriate level of authority necessary for consideration, resolution and direction.** [emphasis added]

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Chamber Conflict of Interest Policy

- Chamber's Policy requires their avoidance of even a perception of personal or professional conflict, as well as an actual conflict
- Conflicts not actively managed, corrected, or disclosed
 - Timing and date of executive of submittal of Chamber forms to the City surface reasonable questions regarding truthfulness
 - Appears conflicts not discussed or addressed at the Board level and/or brought to the City's attention ("appropriate level of authority necessary for consideration," e.g., the City Council, governing body responsible for these public contracts)

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Lack of Management of Actual Conflicts of Interest

- **Santa Clara Weekly Ads and Boardmember's profit from personal and professional role:**
 - Response provides various versions of profit and discounts
 - Justifies conflict by intent of CVB staff, which is irrelevant for a violation
 - Uses various internal "chain of command" review to justify corrective action and/or management of conflict.
 - Chamber should have rejected ads and required disclosure to the Board. Boardmember should have actively managed his conflict by declining ads and revenue/profits.
 - Chamber's response demonstrates that it can not manage conflicts

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Lack of Management of Actual Conflicts of Interest

- **UPS Store Lease Agreement**
 - Chamber has a Management Agreement to **operate** Convention Center
 - City did not convey any property rights in the Management Agreement.
 - A Lease Agreement conveys property rights. Only Council can approve lease agreements, on behalf of the City, as the owner.
 - Convention Center is not a legal entity with rights to enter into contracts that bind the City to lease agreements.
 - Chamber does not have rights either to bind the City or its property.

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Lack of Management of Actual Conflicts of Interest

- **UPS Store Lease Agreement**
 - Chamber/Convention Center had no authority to sign a lease agreement.
 - Chamber / Convention Center created risk with entering into a lease agreement for which it has no legal authority to execute.
 - City has directed Convention Center General Manager to take no further action, City will need to address.

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Lack of Management of Actual Conflicts of Interest

- **UPS Store Lease Agreement**
 - Putting aside the complete absence of legal authority to enter into a lease agreement, Chamber created an actual conflict when it allowed for a Boardmember to move into this space, without a legitimate contract, to conduct his private business.
 - UPS Store transfer provisions are not relevant--contract is not legal; however, Chamber did not protect public's interest by allowing an individual with no proper legal documentation to conduct his private business in a City owned facility.

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Lack of Management of Actual Conflicts of Interest

- **UPS Store Lease Agreement**
 - Last, the correct manner to allow private business in public facilities is through a public process, with open competition and fair access, similar to the recent SCSA concessionaire contract

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Obligations to Report Audit Observations & Staff Research

- Chamber asserts inappropriateness or politically motivated action of Auditor and Staff relative to June report and has miscommunicated purpose for reporting—demonstrating a lack of understanding of reporting requirements, governance, and proper forum.
- Council directed research of Conflicts of Interest and Review of Form 990s
- Auditor bound to ethics and standards of United States Government Accountability Office Government Auditing Standards (Yellow Book)
- Notification was appropriate to Council in open session and does not qualify for Closed Session, where other matters were heard

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Government Audits – Yellow Book (2011) Section 6.49

Auditors report deficiencies in internal control, fraud, noncompliance with provisions of laws, regulations, contracts, or grant agreements, or abuse. **For some matters, early communication to those charged with governance or management may be important because of their relative significance and the urgency for corrective follow-up action.** Further, when a control deficiency results in noncompliance with provisions of laws, regulations, contracts or grant agreements, or abuse, early communication is important to allow management to take prompt corrective action to prevent further noncompliance.

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Obligations to Report Audit Observations & Staff Research

- Chamber's response does not professionally acknowledge the governance and professional responsibilities to disclose and report to the governing body, Council, of the Auditor or staff.
- Staff disclosed publically Auditor's statement in July 2018 Information Memo, which stated:

"..when there is preliminary evidence of potential fraud, waste or abuse, it is an audit requirement to immediately report it to the client (City). The Chamber/CVB and CC providing discounts to Chamber members at the Convention enter, including full discounts to Chamber and other entities that use convention Center facilities triggered this requirement."

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Notification to Council -- Open Session

- Council commissioned audit regarding the Chamber's contracts (Council is the client): Convention Center and Convention and Visitors' Bureau
- Council also directed staff to review Conflict of Interest Policy and Form 990-Tax Exempt Filing
- City Manager obligated to report to Council and implement direction
- Not a closed session matter allowable under the Brown Act
- Staff's actions to report to the Council in public were completely appropriate and reflect proper reporting to Council

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TID Audit

- Separate item on the agenda, but the findings reveal the same pattern of Chamber mismanagement of public funds
- New development from this Audit is that Chamber's own independent auditor commissioned to review the TID financial statements surfaced "significant deficiencies" with its fiscal management (dated October 25, 2017).
- Chamber could have been transparent with the City during the course of these audits and our efforts to reform these contracts of its fiscal management shortcomings.
- Further review is needed to understand how long the Chamber has known of its mismanagement, what was corrected, and ignored.

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TID Audit

- Establishment of TID is authorized under State Law through the City's authority
- Governing of the TID is the City Council / TID Advisory Body is advisory only with no legal authority
- The funds collected for the TID are public funds
- Chamber asserts that the City recommended that TID Advisory Board stop doing business with the Chamber
- The TID Advisory Board's role is only advisory
- The Chamber's role has been fiscal agent – responsible for meeting all legal requirements of the administration of these public funds
- TID business is the City's interest and fiscal agent actions are its concern

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Recommendation

- 1.** Note and File Reports 6A, 6B, 6C, 6D and/or 6E and direction to continue to implement the audit recommendations
- 2.** Direct staff to further review credit card expenses
- 3.** Direct staff to further review bonuses and commissions paid
- 4.** Direct staff to return to Council with information and next steps regarding UPS store occupancy, at the appropriate time
- 5.** Partner with the Chamber to successfully transition Convention Center/CVB to a potential new operator
- 6.** Any other action determined by Council