



Date: June 22, 2015
To: Mayor and City Council
From: Michael Chandler, Senior Management Analyst
Subject: Chamber of Commerce 2015-16 Contract

Recommendation

Approve a resolution authorizing the City Manager to execute a contract with the Chamber of Commerce.

Background

The City's contract with the Chamber of Commerce is done annually by fiscal year and includes funding approved by the City Council as part of the budget process. The City's FY 2015-17 Budget, adopted on June 17, 2015, allocates \$45,000 to the Chamber for each of the next two fiscal years, to be paid in quarterly installments of \$11,250. Section 1 of the attached contract specifies the Chamber's required scope of service and deliverables, including other services related to operating the Visitor's Center, maintaining and providing a complete selection of brochures and information related to visitor attractions and tourism amenities within the City, and maintaining and providing a current Visitor/Relocation Guide and bi-annual Business Directory.

Fiscal Impact

\$45,000 is budgeted for this contract in FY 2015-16.

Attachments

- Contract
- Resolution

APPROVED BY:

Rob Braulik, City Manager

AGREEMENT FOR PROFESSIONAL SERVICES
WITH THE MARTINEZ CHAMBER OF COMMERCE

This Agreement is made this 1st day of July, 2015, between the City of Martinez, a general law city, (“CITY”), and the Martinez Chamber of Commerce (“CHAMBER”) a non-profit corporation.

RECITALS

- A. The CITY acknowledges the CHAMBER’S central role in promoting the economic health -and-well-being of the Martinez business community, marketing the City of Martinez to our residents and visitors, and promoting a better quality of life for Martinez residents.
- B. The CITY recognizes that the CHAMBER provides a variety of services that benefit the economic health of Martinez, provides for a better experience for visitors, and works to promote tourism in Martinez, thereby benefiting both visitor-related businesses and the community as a whole.
- C. CHAMBER represents to CITY that it is fully qualified to continue to provide quality visitor services and to promote tourism within Martinez.
- D. The CITY and the CHAMBER have agreed upon the terms under which these services will be provided and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, the CITY and CHAMBER agree:

1. **SCOPE OF SERVICE & DELIVERABLES**

CHAMBER shall provide CITY with the following services from July 1, 2015, through June 30, 2016: (1) provide information, maps, and brochures to all visitors arriving at the Visitor’s Center, as well as responding to all phone and written requests for visitor-related assistance; (2) maintain a complete selection of brochures and information related to visitor attractions and tourism amenities within the City, including hotels, restaurants, transportation and tour services, gift and souvenir shops and other relevant businesses; (3) maintain the Visitor

Center facility, providing the general public with walk-in services to visitors during regularly scheduled office hours (Monday thru Thursday, 9am to 5pm and Friday, 10am to 2pm); (4) maintain a Chamber Executive Director position and sufficient staff position(s) to perform the day-to-day activities of the Visitor Center; (5) research, produce & make available up-to date Visitor/Relocation Guide and an bi-annual Business Directory, including linking both documents to the CHAMBER' S website; (6) provide a City of Martinez map (6,000 copies); (7) work with other local organizations to plan, advertise and carry out promotional events designed to attract area residents and visitors to Martinez and to showcase local amenities; (8) work with the CITY to create exit surveys for participants of said promotional events, distribute the surveys at one (1) event per year, and report the results of the surveys to the CITY (9) provide the CITY with promotional economic development video spots and advertising content suitable for airing on the City Channel and I-680 digital billboard, respectively. Said video spots and advertising content shall become the CITY's content and may be aired/posted at the CITY's sole discretion; (10) maintain an up-to-date website with information about Visitor Center location, hours, services and materials, including helpful links to relevant visitor attractions and tourism services; (11) in order to perform its oversight function, the CHAMBER shall conduct regularly-scheduled meetings of the Board of Directors of CHAMBER ("Board") with a quorum of Board Members, enforce the Chamber's policy that requires Board Members to attend all Board Meetings unless granted an excused absence, in accordance with CHAMBER bylaws, and ensure that all Board Members maintain up-to-date memberships in the Martinez Chamber of Commerce, (12) annually prepare and adopt a budget and provide the CITY with a copy, attached as Exhibit A of this agreement, (13) work with businesses to help obtain compliance with the City's ban on single-use plastic carryout bags and any other City laws and regulations affecting the business community. CHAMBER and CITY agree the aforementioned deliverables are subject to further refinement and revision to establish more clearly defined qualitative and quantitative measures. Any such changes shall be made in accordance with Section 8 of this Agreement.

CHAMBER shall provide a quarterly written report to the CITY that summarizes work accomplished, specifically the number of visitor contacts, description of services rendered, events and celebrations held that attracted visitors and tourists to Martinez, type and volume of materials distributed (City Maps, brochures, Relocation Guides, Business Directories, etc.) and

other relevant activities that accomplish the CHAMBER'S visitor and tourism function. The CITY and CHAMBER will develop a mutually agreeable format for this quarterly report.

CHAMBER will make bi-annual presentations to the City Council during regularly scheduled City Council meetings to inform the Council about the Chamber's Visitor Center accomplishments, activities, and services performed during the prior six months.

2. COMPENSATION

(a) The CITY will pay to the CHAMBER a total of \$45,000 for FY 2015-16 in performance of this Agreement. Said compensation shall be paid by the CITY in equal quarterly installments, (\$11,250 each quarter), only after receipt of each quarterly report, as set forth in Section 1, a written invoice as described in Section 3(a), and after receipt of the financial information as required in Section 3(b).

(b) Payments prescribed herein shall constitute all compensation to CHAMBER for services performed as set forth in Section 1 hereof, Scope of Service & Deliverables.

(c) CHAMBER shall use these funds for the purpose of providing all necessary services as set forth in Section 1, Scope of Service & Deliverables. In accordance with Section 1, the CHAMBER shall expend the CITY's funds for the following: (1) applicable salaries; (2) promotional materials such as brochures, the City map, and business directory; (3) promotional activities related to attracting visitors through events and special celebrations; (4) maintenance of website containing Visitor Center information, location, hours, and services; (5) working with CHAMBER members through promotional and educational activities to foster economic development in Martinez; and (6) a percentage of applicable office expenses related to performing the services described in Section 1, Scope of Service & Deliverables.

(d) CHAMBER shall keep accounting records of all Visitor Center related activities funded with the CITY funds it receives and expends.

3. DOCUMENTATION: RETENTION OF MATERIALS

(a) CHAMBER shall submit to the CITY a quarterly written report on all Visitor Center related activities, in a format mutually agreed upon, detailing the performance of the

Scope of Service & Deliverables, as set forth in Section 1, and a written invoice that substantiates the use of the CITY'S grant monies, as required by Section 2 of this Agreement.

(b) CHAMBER shall keep and maintain full and complete documentation and accounting records of all Visitor Center related activities and expenditures concerning all services performed by it and shall make such documents and records available to authorized representatives of CITY for inspection at any reasonable time. In addition, the CHAMBER shall provide the following specific financial records in accordance with the timeline identified herein:

1. the most current profit and loss statement of the CHAMBER on a form approved by the City, within thirty (30) days of execution of this Agreement and quarterly thereafter.
2. the most current balance sheet for the CHAMBER on a form approved by the City, within thirty (30) days of execution of this Agreement and quarterly thereafter.

(c) CHAMBER shall maintain its Visitor Center related records and shall allow CITY access to such records for a period of four (4) years.

4. INDEMNITY/LIABILITY/INSURANCE

(a) The status of the CHAMBER is that of an independent contractor operating and having control of its work and the manner in which it is performed. CHAMBER is not considered to be an officer, an employee, or an agent of CITY, nor shall it hold itself out as or represent that it is an officer, employee, or agent of the CITY.

(b) CHAMBER assumes all responsibility for damages to property or injury or death to persons caused by the negligent performance, acts, errors or omissions of the CHAMBER and/or his/her agents or employees. To the extent permitted by law, the CHAMBER shall indemnify, hold harmless, release and defend CITY, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, and expenses including attorneys' fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including the CHAMBER from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of the CHAMBER, its employees and agents hereunder and regardless of CITY'S passive negligence. CITY agrees to provide the CHAMBER with

reasonable notification of legal claims and/or lawsuits which CITY may receive and for which CITY will request indemnification under this paragraph.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for the CHAMBER under Workers' Compensation, disability or other employee benefits acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by the CHAMBER.

(c) INSURANCE

Without limiting CHAMBER'S indemnification provided hereunder, CHAMBER shall take out and maintain or cause to be taken out and maintained, at all times during the term of this Agreement, the following policies of insurance in connection with the performance of the work hereunder by CHAMBER, its agents, employees, representatives, sub-consultants, contractors, sub-contractors and vendors:

1. **Commercial General Liability (CGL)**

Commercial general liability insurance for all activities of CHAMBER and its sub-consultants, contractors, sub-contractors and vendors, arising out of or in connection with this Agreement, written on a commercial general liability form. Coverage shall be at least as broad as Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than One Million Dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the performance under this Agreement or the general aggregate limit shall be twice the required occurrence limit. At the time the Agreement is entered into the CITY may require higher limits depending on the nature of the services being provided by CHAMBER. Such determination shall be made by the City's Risk Manager.

2, **Automobile Liability**

Coverage shall be at least as broad as, ISO Form Number CA 0001 covering Code 1 (any auto), or if CHAMBER has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less One Million Dollars (\$1,000,000) per accident for bodily injury and property damage. At the time the Agreement is entered into the City may require higher limits depending on the nature of the service being provided by CHAMBER. Such determination shall be made by the CITY'S Risk Manager.

3. **Workers' Compensation**

Workers' Compensation insurance to cover its employees, and CHAMBER shall require all sub-consultants, contractors, sub-contractors and vendors, performing work or present at or on CITY property pursuant to the terms of this Agreement, similarly to provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the said person or entity's employees. All Workers' Compensation policies shall be endorsed with the provision that it will not be canceled without first giving thirty (30) days prior notice to the CITY.

In the event any class of employees engaged in hazardous work under the Contract is not protected under Workers' Compensation Statutes, CHAMBER shall provide, and shall cause all sub-consultants to provide adequate and suitable insurance for the protection of its employees not otherwise protected. Such policy must be acceptable to CITY and shall provide that it will not be canceled without first giving thirty (30) days notice to the CITY.

All Workers' Compensation insurance as required herein shall be endorsed to include the following language: "All rights of subrogation are hereby waived against the CITY, its officers and employees when acting within the scope of their appointment or employment."

To the extent that CHAMBER utilizes or authorizes sub-consultants, contractors, sub-contractors or vendors, relating to, arising out of, or in connection with this Agreement CHAMBER shall either provide the required insurance(s) for the type of service being provided by such sub-consultants, contractors, sub-contractors or vendors or shall provide evidence acceptable to the CITY demonstrating that such sub-consultants, contractors, sub-contractors or vendors has in effect the required insurance(s).

If CHAMBER maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by CHAMBER. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- (i) The CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work performed by or on behalf of CHAMBER including materials, parts or equipments furnished in connection with such work. General liability coverage can be provided in the form of an endorsement to CHAMBER'S insurance at least as broad as ISO form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms.
- (ii) For any claims related to this Agreement, CHAMBER'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents or volunteers shall be excess of CHAMBER'S insurance and shall not contribute with it.
- (iii) CHAMBER hereby grants to CITY a waiver of any right to subrogation which any insurer thereof may acquire against the CITY by virtue of the payment of any loss under such insurance. CHAMBER agrees to obtain any endorsement that

may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY received a waiver of subrogation endorsement from the insurer.

- (iv) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- (v) All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY. Current certification of such insurance shall be kept on file with the City Clerk at all times during the term of this Agreement.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers, or CHAMBER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

5. ASSIGNMENT

The CHAMBER shall not assign any rights or duties under this Agreement to a third party without the prior express written consent of CITY.

6. TERMINATION

(a) This Agreement may be terminated at any time, with or without cause, by the CITY within its sole discretion upon written notice to the CHAMBER. The CHAMBER may terminate this Agreement upon thirty (30) days' written notice to the CITY only for good cause.

The CHAMBER'S written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. In the event of termination by the CHAMBER, the CHAMBER shall only be compensated for all work the CHAMBER satisfactorily performs prior to the time the CHAMBER delivers to the CITY the termination notice, unless other arrangements are agreed to by the CITY. In the event of termination by the CITY, the CHAMBER shall be compensated for all work satisfactorily performed prior to the time the CHAMBER receives the termination notice, and shall be compensated for all materials ordered by the CHAMBER, and services of others ordered by the CHAMBER prior to receipt of the CITY'S termination notice, whether or not such materials or instruments of services of others have actually been delivered to the CHAMBER or the CITY, provided that the CHAMBER is not able to cancel such orders for materials or services of others. In the event this Agreement is terminated pursuant to this section, the CHAMBER shall not be entitled to any additional compensation over that provided herein; nor shall the CHAMBER be entitled to payment for alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the CITY pursuant to this section.

Should the CHAMBER fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the CITY may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination in such event. The CHAMBER shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage, if any, sustained by CITY by virtue of the CHAMBER'S breach of this Agreement.

7. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

CITY:

Michael Chandler
Senior Management Analyst
City of Martinez
525 Henrietta Street
Martinez, CA 94553

CHAMBER:

Executive Director
Chamber of Commerce
603 Marina Vista
Martinez, CA 94553

8. ADDITIONAL SERVICES

If CITY makes a decision to change the Scope of Service & Deliverables, as delineated in Section 1 above, all such changes shall be by written amendment to this Agreement.

9. SUCCESSORS AND ASSIGNS

CITY and CHAMBER each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein.

10. ENTIRE AGREEMENT

This Agreement is the entire Agreement between the parties.

11. MODIFICATION

This Agreement shall not be modified except in writing executed by all parties.

12. NON-DISCRIMINATION

CHAMBER shall comply with all Federal, State and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation laws requiring licensing and non-discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases.

13. TIME OF PERFORMANCE

CHAMBER shall begin work effective July 1, 2015, and shall thereupon work diligently and continuously to provide all the required services and activities described herein until June 30, 2016.

14. This Agreement shall be construed in accordance with the law of the State of California. Venue shall be in the County of Contra Costa.

15. In the event either party to this Agreement brings an action to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to attorney's and witness fees as well as other costs.

16. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CHAMBER

CITY OF MARTINEZ

By _____

By _____

Rob Braulik
City Manager

Name _____

Attest _____

Title _____

Deputy City Clerk

RESOLUTION NO. -15

**AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT
WITH CHAMBER OF COMMERCE**

WHEREAS, the City of Martinez recognizes the importance of economic development throughout the City; and

WHEREAS, to help achieve its goals, the City has included annual funding for the Martinez Area Chamber of Commerce (“Chamber”) within its adopted FY 2015-17 Budget; and

WHEREAS, as a condition of providing said annual funding, the City requires a formal contract with Chamber; and

WHEREAS, the Chamber plays a central role supporting the economic health and well-being of the business community by marketing the City and promoting tourism in Martinez; and

WHEREAS, through these and other efforts, the Chamber provides services that benefit businesses and the community and therefore help to improve the quality of life in Martinez; and

WHEREAS, the parties have agreed upon terms under which these services will be provided for FY 2015-16 in the form of the attached contract.

NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Martinez hereby authorizes the City Manager to execute a contract with the Chamber upon the mutually agreeable terms, considerations, covenants, and conditions as set forth in the form attached to this resolution.

* * * * *

I HEREBY CERTIFY the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez, at a Regular Meeting of said Council held on the 1st day of July, 2015, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ