



AGENDA MEMORANDUM

Future Item for the City Council Meeting of October 9, 2012
Action Item for the City Council Meeting of October 16, 2012

DATE: September 26, 2012
TO: Ronald L. Olson, City Manager
FROM: Wes Pierson, Assistant City Manager – Business Support Services
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Management Agreement with SMG for the American Bank Center

CAPTION:

Motion authorizing the City Manager or his designee to execute a new five year agreement with SMG to manage the American Bank Center under new fees, terms and conditions, including a new base management fee and incentive fee formula, new performance requirements, and new food and beverage service provisions.

PURPOSE:

Approve a new five year agreement with SMG to manage the American Bank Center under new fees, terms, and conditions.

BACKGROUND AND FINDINGS:

Since 2003, the operations at the American Bank Center have been managed privately on a contract basis. The facility operations have been managed by SMG, while the food and beverage operations have been managed by Centerplate. In 2009, Council authorized the City Manager to negotiate a new five year agreement with SMG to operate and manage the American Bank Center and to manage the food and beverage agreement with Centerplate. The new agreement required the City to solicit and entertain proposals from private venue management firms to manage and operate the American Bank Center at the end of the third year of the agreement (July 31, 2012). The new agreement also afforded the City the option of terminating the agreement, with or without cause, by providing no more than 90 days' notice to SMG without the payment of any penalty or fees. The new agreement was executed on July 21, 2009 with an effective date of August 1, 2009.

On May 4, 2012, as required by the management agreement, the City of Corpus Christi released a Request for Proposal (RFP). The initial due date for responses was June 15, 2012. There was only one participant (SMG) in the first pre-proposal conference on May 17, 2012. On May 18, 2012 City Staff was contacted by a second venue management company (Global Spectrum) requesting additional time to conduct the due diligence necessary to respond to the RFP. As a result, the initial RFP deadline was extended to June 29, 2012. The RFP deadline was extended a final time to July 6, 2012 to allow staff the time to finalize response to clarifying questions submitted by the RFP respondents.

On July 6, 2012, the City received one response (SMG) to its Request for Proposal for management services at the American Bank Center. Global Spectrum decided not to submit their proposal because of an existing management agreement with Nueces County for the Richard M. Borchard Regional Fairgrounds.

On September 18, 2012 the City Council approved a Motion directing the City Manager or designee to: i) prepare a document analyzing and summarizing the financial and strategic options available to the City for the operation and management of the ABC; (ii) provide recommendations to the City Council related to the operation and management of the American Bank Center; and (iii) conduct time-limited negotiations with SMG for the operation and management of the American Bank Center (ABC).

The following terms were agreed to as a result of the negotiations between SMG and the City and are reflected in the attached draft management agreement. City, SMG, and Bond Legal Counsel are finalizing review of the draft of the management agreement. A final executed agreement will be completed prior to final Council consideration on October 16, 2012:

Term:

5 Years (First three years guaranteed with a City option to terminate the agreement with or without cause with a 90 day notice during the final two years of the agreement – pursuant to IRS Revenue Procedure 97-13). The City retains the right to issue an RFP after year three of the agreement but is not required to do so.

SMG Grant:

At the commencement of the new management agreement SMG will provide a grant of \$250,000 to the City. The City, at its sole discretion, can determine how it would like to use the grant funds. In the case of termination before five years, SMG is entitled to reclaim the amount of the initial grant as depicted in the following example: if the City terminates the contract at the end of three years, the City would owe SMG \$100,000 or \$50,000 each of the two unrealized years of the contract; if the contract is terminated at the end of four years the City would owe SMG \$50,000, etc.

Base Management Fee:

\$125,000 (subject to an annual increase equal to the CPI)

Incentive Fee:

The incentive fee is based on the cumulative performance of the entire facility. In order to be eligible to receive an incentive payment, SMG must achieve all four of the following criteria:

1. Net Operating Income surpasses the Net Operating Income/Loss Benchmark
2. Food & Beverage operating profit margin be a minimum 34.5%
3. Meet mutually agreed upon Customer Satisfaction Goals (i.e. Food & Beverage quality and pricing, Customer Experience, etc.)
4. Meets mutually agreed upon Maintenance/Capital Goals

If SMG achieves the above criteria it would earn 25% of the following: the difference between the actual operating revenue and the budgeted operating revenue. This difference will be capped in an amount equal to the amount in which the actual Net Operating Income/Loss surpasses the Net Operating Income/Loss Benchmark for each contract year.

Note: Pursuant to IRS Revenue Procedure 97-13, the total amount of the incentive fee cannot exceed the amount of the base management fee on an annual basis.

Termination for Poor Performance:

The following language was included in the agreement to provide the City an option to pursue in the event of ongoing poor performance by SMG:

Termination by the City: The parties have agreed that a material condition to SMG's engagement under this agreement is the improved financial performance of the American Bank Center. As such SMG's incentive compensation is based on SMG surpassing the Net Income/Loss Benchmark for each contract year. In addition, notwithstanding anything to the contrary contained in this Agreement, if SMG's performance under this Agreement results in the increase of Actual Operating Expenses over the Budgeted Operating Expenses (i) in any Contract Year, then within fifteen (15) days of SMG's submission of the Annual Report, SMG shall provide to the City an explanation of the reasons for such failure and a plan to address such failure for the next Contract Year (but in no event shall such explanation and plan be delivered later than seventy-five (75) days following the end of such Contract Year) and (ii) in any two (2) consecutive years, then the City shall have the right to terminate this Agreement upon ninety (90) days written notice to SMG. However, if Actual Operating Expenses have increased over the approved budgeted expenses and there are corresponding revenues to offset such increase then it will not trigger this provision.

It is important to note that except for these new terms, no material changes are being made to the terms of the existing agreement. The new agreement encompasses the terms of the current management agreement.

ALTERNATIVES:

- 1) Accept proposed management agreement
- 2) Direct staff to continue negotiations to improve the proposed management agreement
- 3) Reject proposed management agreement and issue a new Request for Proposal

OTHER CONSIDERATIONS:

The new management agreement consolidates management of both facility and food and beverage operations under one provider (SMG). Upon execution of the new agreement the existing management agreement would have to be terminated. The existing agreement requires 90 day notice for termination which notice must also be given to Centerplate (through SMG) effectively ending Centerplate's tenure as the provider of food and beverage services at the American Bank Center.

CONFORMITY TO CITY POLICY:

This agreement conforms to City Policy

EMERGENCY / NON-EMERGENCY:

Not applicable.

DEPARTMENTAL CLEARANCES:

Assistant City Manager – Business Support Services, Finance, Legal

FINANCIAL IMPACT:

x Operating

Revenue

Capital

Not applicable

Fiscal Year: 2011-2012	Project to Date Expenditures (CIP only)	Current Year	Future Years	TOTALS
Line Item Budget		\$269,986.04	\$1,051,010	\$1,320,996.04
Encumbered / Expended Amount		\$0.00	\$0.00	\$0.00
This item		\$250,000.00	\$1,051,010	\$1,301,010
BALANCE		\$19,986.04	\$0.00	\$19,986.04

Fund(s): Visitor's

Comments:

On an annual basis, Staff will budget sufficient funds to cover both the base management fee as well as the maximum possible incentive fee. The maximum amount budgeted for in year one of the agreement will be \$250,000. That amount will only change in future years to adjust for inflation. It is anticipated that Hotel Occupancy Tax Dollars will be transferred into the Visitor's Fund to cover these expenditures consistent with Staff's current practice.

RECOMMENDATION:

Staff recommends Council approve a new five year management agreement with SMG for the management of the American Bank Center incorporating the fees, terms, and conditions outlined above.

LIST OF SUPPORTING DOCUMENTS:

Draft Contract