REPORT TO COUNCIL
City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

Staff Report
July 15, 2008

Honorable Mayor and
Members of the City Council

Title: Sacramento Yacht Charters Agreements Termination

Location/Council District: Old Sacramento Historic District, Council District 1

Recommendation: Adopt a **Resolution** terminating City Agreements 2006-1306 and 2006-1307 between Sacramento Yacht Charters, LLC and the City of Sacramento.

Contact: Barbara E. Bonebrake, Director, Convention, Culture, and Leisure Department, 808-7733

Presenter: Barbara E. Bonebrake, Director, Convention, Culture, and Leisure Department, 808-7733

Department: Convention, Culture, and Leisure Department

Division: Old Sacramento Division

Organization No: 4360

Description/Analysis

Issue: The City entered into City Agreements 2006-1306 and 2006-1307 ("Agreements") with Sacramento Yacht Charters ("SYC") in November 2006. Under Agreement 1306, SYC agreed to make improvements to the City's south barge in exchange for rent abatement for the exclusive use of the barge from which it was to operate a charter vessel business. Under Agreement 1307, SYC was granted an exclusive license to operate riverboats, water taxis, and amphibious trolleys from designated locations in Old Sacramento. In exchange for this license, SYC was required to give to the City a percentage of its gross receipts.

Despite repeated requests by and assistance from City staff, SYC has failed to perform the terms of both Agreements. SYC never provided final plans for the construction of the improvements to the south barge. SYC provided no water

taxi service in 2007 and limited service in 2008. SYC is currently operating only one of two riverboats and one of two taxis and does not operate on the schedules provided in the Agreement. SYC did not replace the riverboat the *Matthew McKinley* with a new vessel by March 1, 2008 as required. It is also required under the Agreement to replace the *Spirit of Sacramento* no later than July 1, 2010. It is highly unlikely that SYC will have the resources to replace this vessel. It operates only one amphibious trolley, rather than the two contemplated under the Agreement, and the trolley is not accessible to the disabled.

Policy Considerations: Continuing to contract with SYC as the sole riverboat and water taxi provider in Old Sacramento is counter to the City's economic development vision to promote revenues to the City for use in various programs beneficial to the City and its residents as well as the vision to invest in the long-term viability of the business community, specifically in Old Sacramento. SYC's gross revenue is over 40% lower than the previous Old Sacramento riverboat contractor, which casts doubt on SYC's ability to maintain a successful operation in Old Sacramento, and their revenue-share payments to the City are significantly lower than projected.

SYC has repeatedly demonstrated it cannot operate a high-quality riverboat, water taxi, and amphibious trolley operation in Old Sacramento, which does not meet the City's vision to ensure quality cultural and entertainment venues and programs accessible to the community. SYC's riverboat tour schedule has not conformed to the terms of the Agreement. For example, SYC provided only 39 cruises (including charters) in May 2008, rather than the minimum of 48 regularly-scheduled cruises plus chartered cruises. On Memorial Day weekend in May, SYC provided only one cruise on Saturday, two on Sunday, and none on Monday. SYC's ticket booth on the waterfront in Old Sacramento has frequently been closed during regular business hours, making it very difficult for potential customers to purchase tickets or obtain information about the riverboat cruises.

SYC's continued substandard performance reflects poorly on the City and Old Sacramento, a historic and business district dependent upon its reputation for visitor services and attractions. By terminating the Agreements now, the Old Sacramento Division may conduct a new Request for Proposals process and select a more qualified riverboat and water taxi service provider for Old Sacramento before the 2009 visitor season begins.

Environmental Considerations: The proposed activity is not subject to environmental review under the California Environmental Quality Act (CEQA), California Code of Regulations, title 14, section 15060 because it is not a Project under CEQA.

Rationale for Recommendation: SYC has defaulted on both Agreement 2006-1306 and Agreement 2006-1307. SYC failed to provide final plans for the construction of the improvements to the south barge. SYC failed to operate two riverboats and failed to provide riverboat tours in substantial conformance with the Agreement tour schedule. SYC failed to commence the water taxi service during the 2007 season, and as of June 2008, SYC has failed to provide water taxi service per the route and schedule set forth in the Agreement. SYC has failed to provide an amphibious trolley that is compliant with the Americans with Disabilities Act (ADA). SYC has failed to replace the vessel *Matthew McKinley* by the date required in the Agreement.

Further, SYC has failed to show it has the capital or that it can be relied upon to perform its obligations under both Agreements. On October 2, November 6, and December 4, 2007, and on several other occasions, the City requested from SYC: 1) audited financial statements; 2) line of credit documents for the construction of improvements to the south barge; and 3) the lender commitment letter for the *Matthew McKinley* replacement vessel. The City made these requests because of SYC's failure to perform its obligations under both Agreements and to evaluate whether, if the Agreements were amended to bring SYC into compliance with the terms of the Agreements, SYC would have the ability to perform its obligations. SYC provided various excuses over a period of five months for not providing any of this information while intermittently promising City staff that the information they requested would be forthcoming.

Events of Default under both Agreements:

City Agreement 2006-1306

Under Agreement 1306, SYC agreed to make improvements to the south barge in exchange for rent abatement for the exclusive use of the barge from which it was to operate a charter vessel business. SYC has never submitted final plans for the south barge improvements to the City, despite receiving notice to do so.

City Agreement 2006-1307

The City of Sacramento granted a license to SYC to provide regularly scheduled riverboat tours from the City's tour boat dock in Old Sacramento using two riverboats. Under this Agreement, the riverboat tours are to be provided four times daily on Fridays, Saturdays, and Sundays and at variable times the other days of the week. The only riverboat currently in operation, the *Spirit of Sacramento*, is not disembarking from the tour boat dock four times daily as required on Fridays, Saturdays, and Sundays and its service on the other days of the week is sporadic. The *Matthew McKinley* is not being used for tours at all. The *Matthew McKinley* moved from Old Sacramento on Thursday, June 19 and is currently operating out Stockton by another company. Further, the agreement requires the replacement of the *Matthew McKinley* by March 2008, a term SYC

did not meet. The replacement vessel was a substantive component of SYC's proposal to address an aged vessel as well as provide a thoroughly accessible boat.

This Agreement also required SYC's amphibious trolley be built specifically for Sacramento and comply with the ADA. However, the trolley was built in Florida before the City Agreement was executed and is not accessible to the disabled. SYC contends that motorized wheelchairs cannot be permitted on the trolley because they are explosive devices. This Agreement also calls for the trolleys to have a seating capacity of 44 yet the trolley in operation by SYC has a seating capacity of 38. SYC contends this reduced capacity is irrelevant (despite the loss of revenue) because the City bargained for the operation of a trolley and SYC is operating a trolley.

Financial Considerations: Revenue from the riverboat Agreement is deposited in the General Fund and is used to offset the costs of providing maintenance, management, and programming for the Old Sacramento waterfront area. The last few years that the previous riverboat tour company was under contract with the City, the agreement provided approximately $65,000 per year in revenue to the City from riverboat tours alone (charters, water taxi, and amphibious trolley were not included).

When the City selected SYC as the exclusive provider of riverboat, water taxi, and amphibious trolley services in Old Sacramento, SYC estimated they would deliver an average $350,000 in revenue to the City annually from all three operations. The Old Sacramento Division budget conservatively estimated $90,000 for the current fiscal year and relies on this money to support services. However, the City has received an average of only $55,000 per year in revenue from SYC. SYC's gross receipts have decreased 28% since FY2006/07 and 44% since FY2005/06 (the first year they operated in Old Sac).

The Old Sacramento Division will arrange for limited interim riverboat service from another operator that will generate some revenue to the City. Upon termination of the Agreements with SYC, the Old Sacramento Division will immediately begin the Request for Proposals process to seek a new riverboat and water taxi provider with the goal of having service in place prior to the 2009 visitor season.

Emerging Small Business Development (ESBD): Not applicable.

Approved by: Barbara E. Bonebrake

Barbara E. Bonebrake, Director
Convention, Culture, and Leisure Department

Recommendation Approved:

for Ray Kerridge
City Manager

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Attachment 1

Summary of Events leading to Recommendation for Termination of City Agreements 2006-1306 and 2006-1307 between Sacramento Yacht Charters and City:

1. November 21, 2006 – Agreements approved.
2. April, 2007 – Taxi service to commence. SYC sought to rescind purchase of taxis. Chamber had to reach compromise deal with SYC. Service never started in 2007.
3. Trolley to be built for City and ADA compliant, seat 44 passengers. City worked with SYC to obtain ADA compliance. SYC claimed motorized chairs could not go on trolley because they are explosive devices and they would manually lift disabled persons. City disputed. ADA compliance not shown, trolley used, not new, seats 38.
4. *Matthew McKinley* to be replaced by March 1, 2008 – not replaced.
5. October 2007 through February 2008 – asked for financial information to show could perform Agreements. SYC did not provide any of the information requested. Provided a lot of unreliable information instead that was never requested by City.
6. May, 2008 – Running only one taxi sporadically – illegally trespassing on Riverbank Marina property, speeding, verbal altercation.
7. Rents chronically late, percentage rents down dramatically (40%). Ticket booth rarely open.
8. Asked for copies of certificates of inspection – refused, forcing City to board vessels to inspect.
9. Refused to provide basic information relative to number of tours operated and customers served, requiring City to physically go to their office to inspect records.
10. May 2008 - *Spirit of Sacramento* engine reportedly failed. Boat rammed dock, taking out railing and water pipe. Agreement calls for SYC to repair. SYC claims City responsible for repairs because no bumper on dock.
11. Construction plans for south barge to be completed within 60 business days of Agreement execution. SYC never provided and to date has refused to pay architect.
12. June 2008 – City learned *Matthew McKinley* leased to operator in Stockton; SYC currently operating only one tour vessel.

Additional Background:

- SYC's average annual reported gross receipts for the two years it has been operating (2006 and 2007) are approximately 43% lower than the average annual gross receipts from the last three years of the previous riverboat operator—and SYC is operating more services than the previous contactor. The previous operator conducted riverboat tours only; it did not operate the water taxis or amphibious trolleys. SYC's gross receipts should therefore be much higher.
- SYC's own staff reported to City representatives that SYC regularly cancels riverboat cruises at the last minute, telling tourists and patrons of Old Sacramento to walk to SYC's business office for a refund.
- Under Agreement 1307, SYC agreed to provide water taxi service similar to that which had been provided by the former operator, WAVES. SYC made no attempt to operate the water taxis in 2007. In fact, although SYC had a written agreement with WAVES for the purchase of the taxis, it first denied the existence of the written contract. When provided a copy of the written purchase agreement, it repudiated and sought to rescind the agreement.
- On November 14, 2007, the City received a one-page document dated January 24, 2007 from SYC attorney Gary Bradus who represented that the document was a conditional approval from WestAmerica Bank of a $1.5 million line of credit ("LOC") for the construction of south barge improvements. The document was the first page only of a five page e-mail dated January 24, 2007 from WestAmerica Bank. Pages four through five of the e-mail which contained the approval conditions were missing. Upon request, the City received a list of the conditions. Months later, the City discovered from WestAmerica Bank that the conditional LOC offer was valid for a 30-day period only. This limitation was never disclosed by SYC.
- On November 15th, following further inquiry, Mr. Bradus informed the City that SYC would not acquire a LOC "because it (SYC) will not incur the fees and costs of establishing the line of credit until the amendments (to both Agreements) have been signed and approved. . . "
- On November 16th, SYC submitted unaudited financial statements to the City from an accountant in Concord who is not a CPA. The monthly and yearly statements did not identify the month or year reflected in the statements.
- On November 19th, following further inquiry, Mr. Bradus informed the City that "[T]he financial statements I provided are not audited as the cost for audited statements is not justified in this context."
- On November 19, 2007, in lieu of the Commitment Letter from a lender, SYC submitted letter to the City from SkipperLiner, a boat manufacturer, as evidence of SYC's ability to obtain financing for the MM replacement vessel. SYC did not disclose the fact that Noel Jordon, the owner of SkipperLiner, is a business

partner with SYC principals Roy Kings and John Gueola in Four Amigos Leasing, LLC.

- City staff made many additional unsuccessful attempts to secure financial information from SYC and informed SYC that the City would not enter into any amendments to the Agreements if it did not provide this information. Further, SYC is required to provide the City with an audited financial statement by June 15th of each year for the previous fiscal year; the City has never received any audited financial statements from SYC.
- Additionally, the City was informed by Ervin McMullen of CRMS Architects that SYC owes his company $58,630 for the drawings prepared for SYC for the south barge improvements. The City and Mr. McMullen made repeated demands on SYC to pay the money owed to CRMS. SYC rejected the City's demands and would not take Mr. McMullen's repeated telephone calls.
- On November 20, 2007, Barbara Bonebrake ordered SYC to immediately remove the *Island Girl* from the City's south barge since it was not authorized to moor there. SYC disregarded the order and finally removed the *Island Girl* from the premises on March 15, 2008, nearly four months after ordered to do so and only after the City billed SYC for moorage fees in the amount of $7,980. By letter dated March 6th, Mr. Bradus informed the City SYC would not pay these fees.
- On May 23, 2008, the City received a complaint from Tess Jones, Riverbank Marina's manager regarding three incidents during April and May 2008 in which SYC trespassed on Riverbank's property by unlawfully disembarking passengers in their marina. She informed staff that she had called the police regarding these incidents.

Attachment 2

RESOLUTION NO. 2008-

Adopted by the Sacramento City Council

TERMINATING CITY AGREEMENTS 2006-1306 AND 2006-1307 BETWEEN SACRAMENTO YACHT CHARTERS, LLC AND THE CITY OF SACRAMENTO

BACKGROUND

A. The City entered into City Agreements 2006-1306 and 2006-1307 ("Agreements") with Sacramento Yacht Charters ("SYC") in November 2006.

B. SYC has defaulted on both Agreements by failing to operate two riverboats and failing to provide riverboat tours in substantial conformance with the Agreement schedule. SYC failed to commence the water taxi service during the 2007 season, and as of June 2008, SYC has failed to provide water taxi service per the route and schedule set forth in the Agreement. SYC failed to provide an amphibious trolley that is compliant with the ADA or that was specifically constructed per the Agreement. SYC failed to pay rents due to the City. SYC has failed to replace the vessel *Matthew McKinley* by the date required in the Agreement. SYC failed to submit final plans to the City for the south barge improvements.

C. SYC has failed to show it has the capital or that it can be relied upon to perform its obligations under both Agreements. SYC has not provided, despite repeated requests, verification of their ability to perform under the Agreements in the form of: 1) audited financial statements; 2) line of credit documents for the construction of improvements to the south barge; and 3) a lender commitment letter for the *Matthew McKinley* replacement vessel.

D. SYC's continued substandard performance reflects poorly on the City and Old Sacramento, a historic and business district dependent upon its reputation for visitor services and attractions. By terminating the Agreements now, the Old Sacramento Division may conduct a new Request for Proposals process and select a more qualified riverboat and water taxi service provider for Old Sacramento before the 2009 visitor season begins.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. City Agreement 2006-1306 with Sacramento Yacht Charters, LLC is terminated.

Section 2. City Agreement 2006-1307 with Sacramento Yacht Charters, LLC is terminated.