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Introduction

In accordance with the City Auditor's 2006-07 Audit Workplan, we audited Team San Jose, Inc. to determine whether it met the performance measures and other requirements specified in the Agreement for the Management of the San José Convention Center and Cultural Facilities between the City of San José and Team San Jose, Inc. (Management Agreement) for FY 2004-05. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Objectives, Scope, and Methodology section of this audit report.

The City Auditor's Office thanks Team San Jose, Inc., the San José Convention & Visitors Bureau, the City Manager's Office, the Budget Office, the Finance Department, the City Attorney's Office, the Office of Employee Relations, and the Office of Equality Assurance, who gave their time, information, insight, and cooperation during the audit process.

Background

The Mayor's March 2003 Budget Message requested that the City Administration report on opportunities to save costs and improve efficiencies at the Convention Center by revising the current operations structure. At that time, the Conventions, Arts and Entertainment Department (CAE) was responsible for the management and operation of the Convention and Cultural Facilities, specifically overseeing event coordination, technical services, sales and marketing, facility setup, security, and maintenance of the Facilities. In 2003-04, CAE operated the Convention Facilities with a budget of $11,351,110 for 93.18 authorized positions.[1]

In June 2003, the City Council directed the City Manager to prepare a Request for Proposal (RFP) for the management and operation of the San José Convention Center and Cultural Facilities (Facilities). The primary objective of this effort was to decrease costs of operation and increase the occupancy and revenue-producing capabilities of the Facilities.

[1] The 2003-04 Operating Budget shows 110.18 total CAE positions. Of these CAE positions, 17 positions were budgeted for the Office of Cultural Affairs.

The Facilities include three Convention Facilities and three Cultural Facilities:

The Convention Facilities are:

1. **San José Convention Center**: The Convention Center provides exhibit and general assembly space encompassing over 425,000 square feet of function space. The Center includes multiple accommodations for large exhibitions, up to 30 meeting rooms for 2,400, and banquets up to 5,000. South Hall is an 80,000 square foot column-free tensile structure adjacent to the Convention Center. The South Hall expansion grows the Convention Center exhibit space to a total of 223,000 square feet.

2. **Civic Auditorium**: The Civic Auditorium includes 3,060 seats and four meeting rooms designed for performing arts, general assembly, community, and sporting events.

3. **Parkside Hall**: The Parkside Hall includes 30,000 square feet of exhibit and general assembly space with capacity for banquets up to 1,800.

The Cultural Facilities are:

1. **Center for the Performing Arts**: The Center for the Performing Arts features continental seating with 2,665 seats and includes full staging facilities, reception, box office, concessions, coat check for patrons, and an infrared system for the hearing-impaired.

2. **Montgomery Theater**: The Montgomery Theater features 523 seats and full production capabilities for musical and cultural entertainment with an infrared system for the hearing-impaired.

3. **California Theater**: The California Theater is a performing arts facility accommodating art groups as well as the presentation of film. Opera San José makes its home at the California Theatre.

In response to the City Council's directive, the City issued a RFP in December 2003.

The RFP established the following four goals and objectives for managing the Facilities:

1. **Customer Service**: To deliver a level of service consistent with the City's goals of exceeding customer expectations.

2. **Financial Performance**: To provide a value-added experience for Convention Center customers. This includes providing effective management to maximize occupancy and revenue-producing capabilities of the Facilities and providing prudent financial management of the Facilities.

3. **Employee Environment**: To be consistent with those service delivery standards which include the City's expectation of fair treatment of employees.

4. **City Use, Community Use, and Public Access**: Provides up to $180,000 for City Departments to use Convention Center Facilities.

In February 2004, the City received four responses to the RFP: 1) The City Employee Team; 2) Team San Jose, Inc.; 3) Global Spectrum; and 4) GL Events. The City Employee Team consisted of members selected by the Conventions, Arts and Entertainment employees with the goal of streamlining operations and maximizing revenues. Global Spectrum is a Public Facility Manager for 36 facilities located in the United States with operations based in Philadelphia and a subsidiary of Comcast-Spectacor. GL Events, with its North American office in New York, has provided extensive management of venues throughout Europe.

A selection panel was assembled consisting of four City and five non-City members. The selection panel reviewed the proposals and interviewed the proposers in March 2004. The selection panel used the following criteria and rating scale to evaluate the proposals:

Criteria	Points
Qualification and Experience of Firm	20
Strength of Proposed Marketing Plan	35
Financial Proformas	35
Transition Plan	10
Total Available Points	**100**

In keeping with the City Council management objectives to decrease costs of operation and increase the occupancy and revenue-producing capabilities of the Facilities, more weight was given to the strength of the marketing plan and the financial proformas.

In April 2004, the selection panel concluded with a recommendation to the City Council that the City Manager enter into exclusive negotiations with Team San Jose, Inc. (TSJ) to manage and operate the Convention Center and Cultural Facilities for a five-year period. If negotiations with TSJ were unsuccessful within the thirty-day period, the panel recommended that negotiations commence with Global Spectrum, the next highest-rated firm.

In May 2004, the City Council authorized the City Manager to enter into exclusive negotiations with TSJ. The negotiations resulted in the development and execution of the "Agreement for the Management of the San José Convention Center and Cultural Facilities between the City of San José and Team San Jose, Inc."

Team San Jose

TSJ is a private, non-profit corporation created specifically to manage and operate the Facilities. Its mission is to ensure that San José's Convention Center and Cultural Facilities are effectively managed to reduce costs, improve the local economy, and add value to customers, residents, workers, and businesses within the City of San José.

TSJ is comprised of staff from TSJ, the San Jose Convention & Visitors Bureau (SJCVB), Centerplate, and City employees. TSJ has a Chief Executive Officer (CEO), an Executive Committee, and a 27-member Board of Directors. The organizational chart shows 10 TSJ positions, 34 SJCVB positions, 4 Centerplate positions (does not include cooks, captains, steward staff, bartenders, or servers as they are temporary staff used on an as needed basis) and 85 City employee positions (See Appendix B). The SJCVB provides TSJ with the following management positions as a part of consolidating City-duplicated positions: Chief Financial Officer, Director of Human Resources, Director of Sales, and Director of Marketing.

According to the 2004-05 Adopted Operating Budget, the City eliminated 8.43 Facilities' positions as a result of the contract with TSJ, leaving a total of 84.75 authorized City positions. In

order to memorialize the mutual understanding of the parties concerning the shared employees, a Memorandum of Understanding was developed and included as an exhibit to the Management Agreement.

TSJ's Board of Directors is represented by four distinct stakeholder groups: 1) local hoteliers; 2) organized labor; 3) the arts; and 4) the Convention & Visitors Bureau. The Board elects officers (Chairman, Vice Chairman, Secretary, and Treasurer), establishes policy, and approves annual operating budgets. The members of each stakeholder group elect a representative to sit on the Executive Committee, which is responsible for the day-to-day decisions of TSJ. The Executive Committee addresses routine issues and directs the activities of the professional staff, including the Chief Executive Officer (CEO). Currently, the Chairman of the Board is also acting as TSJ's Interim CEO, while also holding the position of President and CEO of the San Jose Convention & Visitors Bureau.

The SJCVB, formerly a division of the San Jose Chamber of Commerce, became a separate entity on July 1, 1984 with a base of 113 members, represented by a 17-member Board of Directors. The City entered into an Agreement with the SJCVB on June 27, 2000 for the period July 1, 2000 to June 30, 2005, with one additional five-year option which was exercised extending the Agreement from July 1, 2005 to June 30, 2010. The SJCVB's mission is to enhance the image and economic well-being of San José by taking the leadership role in marketing San Jose as a globally-recognized destination. The SJCVB provides a comprehensive marketing program to advertise, promote, and publicize the City to achieve as the City's first priority, the goal of booking conventions, trade shows, conferences, and other events at the Convention Center and area hotels.

Management Agreement

On June 22, 2004, the City Council approved a Management Agreement with TSJ to manage and operate the Facilities for a five-year period, beginning July 1, 2004. The Management Agreement provided a first year subsidy from the Transient Occupancy Tax (TOT) in the amount of $3.7 million and represents the entire agreement between the City and TSJ.

The Management Agreement, in Section 4.8, outlines the following four key performance measures and requires TSJ to submit a monthly report to the City. The following measures track revenue and financial performance, economic impact, and customer service.

1. **Gross Revenues**: TSJ will focus on increasing gross revenues for the Facilities. Gross Revenues will be aggregated from all sources for all Facilities and detailed by category, including rental income, food and beverage commissions, services and other revenue streams.

2. **Net Profit or Loss Financial Performance**: TSJ will focus on reducing the City's operational subsidy to support the Convention and Cultural Facilities.

3. **Economic Impact**: TSJ will focus on increasing the total attendance for events held at the Convention and Cultural Facilities.

4. **Customer Service Results**: TSJ will ask the decision-maker of each event to rate their overall satisfaction with the product and services provided.

The Management Agreement contains both a termination and a compensation deletion provision in the event that TSJ fails to meet the performance measures listed in the Management Agreement. Specifically, the Management Agreement includes a provision that allows the City Council to terminate the Management Agreement, in whole or in part, if the Council determines TSJ has not met the performance measures stated in the Management Agreement.

The Management Agreement states that the City and TSJ (Operator) agree that if:

> *(a) Operator fails to achieve at least three of the four measures set forth in 4.8 or*
>
> *(b) Operator fails to achieve at least 67% of any of measures (a), (b) or (c) set forth in Section 4.8 or fails to achieve the applicable annual percentage measure set forth in measure (d);*

> *then, City Council may terminate this Agreement within the time provided for in Section 6.1.*[2] *The City Council's determination of whether Operator has met the performance measures and to what degree shall be at the City Council's sole discretion. Nothing in this section is intended to limit the City's discretion to terminate this Agreement for convenience or as otherwise provided for in this Agreement.*

In addition, if in Year 4 (July 1, 2007 through June 30, 2008) or Year 5 (July 1, 2008 through June 30, 2009) of the term of the Management Agreement, TSJ fails to meet the performance measures set forth in Section 4.8, the City shall have the right to delete the fixed payment of $150,000 from the fixed management fee. The City may either eliminate the fee from the Operating Budget or require that the budgeted amount be expended for another purpose.

The Management Agreement requires two annual audits (financial statement and performance audit) and provides the City an option to request a third (an agreed upon procedures audit). The following summarizes the three audits.

- **Annual Financial Statement Audit**: An audit of the books and records of the Facilities is to be conducted by the City's External Auditor, Macias Gini & Company LLP. The audited financial statements shall include a balance sheet, income statement and statement of changes in financial position, and a statement of Gross Revenues.
- **Performance Audit**: An annual performance audit is to be conducted by the City's Internal Auditor (City Auditor's Office) to determine compliance to performance standards pursuant to the Management Agreement.
- **Agreed Upon Procedures Audit:** The Management Agreement also allows the Finance Director to request the City's External Auditor to conduct an agreed upon procedures audit. The audit may include, but is not limited to, a review and evaluation of TSJ's internal controls and operating procedures for the Facilities.

[2] Section 6.1 states "… City may upon one hundred and eighty (180) days written notice, beginning on the second day after mailing, terminate this Agreement in whole or in part..."

In addition to the above audits, City staff regularly monitors TSJ's performance and compliance with the Management Agreement. For example, in accordance with the Management Agreement, TSJ submits a monthly report to the Deputy City Manager which provides an Executive Summary, Overview on Operational Issues, Operational Statistics, Event Sales Log & Reports, Financials, Litigations Summary, Staffing Issues & Personnel Overview, Performance Measures, and Marketing & Sales Reports information for the month. City staff from the Finance Department, the Budget Office, and the City Manager's Office also meets with TSJ staff on a monthly basis to review financial and operations data. A Senior Accountant in the City's Finance Department provides additional monitoring of TSJ. The Senior Accountant performs multiple duties such as, but not limited to, preparing FMS entries for cash and credit card receipts; preparing FMS entries for adjusted revenues; reviewing the transfer of funds request for operating expenses from TSJ and comparing amounts requested with budgeted monthly cash projections; and summarizing City payroll accrual and other costs for submission to TSJ.

The Management Agreement includes TSJ's initial operating budget and stipulates that TSJ shall submit a proposed operating budget to the City on or before March 1st of each contract year. The actual 2004-05 Operating Budget for TSJ was $11,277,332, of which $6,392,121 was appropriated for Personal Services and $4,885,211 was appropriated for Non-Personal/Equipment.[3] In 2004-05, TSJ was funded by the Convention and Cultural Affairs Fund, which was comprised of the Transient Occupancy Tax Fund, the General Fund, and the General Purpose Parking Fund.

Objectives, Scope, And Methodology

The objectives of our audit were to determine whether Team San Jose (TSJ) met its performance measures specified in the Management Agreement for the 2004-05 fiscal year and whether TSJ has met all of the key requirements in the Management Agreement.

To determine whether TSJ met its Gross Revenues Performance Measure Target we:

[3] Total budget amount does not include Finance Personal Services, Overhead, PRNS Personal Services, Park Maintenance Personal Services, TSJ Management Fee, or Workers' Compensation Claims Payments.

- Reviewed the Management Agreement target for Gross Revenues;
- Obtained and reviewed TSJ's Audited Financial Statements for the 2004-05 fiscal year;
- Interviewed the external auditor, Macias Gini & Company, LLP (MGC), to determine if we could rely on their work;
- Obtained and reviewed TSJ's initial budget;
- Obtained and reviewed the Conventions, Arts and Entertainment Department's (CAE) gross revenues information for 2000-01 through 2003-04;
- Obtained and reviewed TSJ's pricing rate sheets and policies;
- Obtained and reviewed a sample of TSJ's client event files to determine if rental rates were charged in accordance with TSJ's pricing rate sheets and policies; and
- Interviewed TSJ staff to determine why they did not achieve their Gross Revenues Performance Measure Target.

To determine whether TSJ met its Net Loss Performance Measure Target we:

- Reviewed the Management Agreement target for Net Loss;
- Obtained and reviewed TSJ's Audited Financial Statements for the 2004-05 fiscal year;
- Interviewed the external auditor, MGC, to determine if we could rely on their work;
- Obtained and reviewed TSJ's initial budget;
- Obtained and reviewed CAE's net loss information for 2000-01 through 2003-04 the past four years; and
- Interviewed TSJ staff to determine why they did not achieve their Net Loss Performance Measure Target.

To determine whether TSJ met its Economic Impact Performance Measure Target we:

- Reviewed the Management Agreement target for Economic Impact;

- Obtained and reviewed TSJ's annual attendance report for the 2004-05 fiscal year;
- Obtained and reviewed TSJ's attendance reporting policies and procedures;
- Obtained and reviewed a sample of TSJ's client event files to determine if attendance data reported in the client event files were in accordance with TSJ's annual attendance report; and
- Interviewed TSJ staff to determine how they developed their economic indicators.

To determine whether TSJ met its Customer Service Results Performance Measure Target we:

- Reviewed the Management Agreement target for Customer Service Results, and
- Obtained and reviewed TSJ's customer service surveys for the 2004-05 fiscal year.

To determine whether TSJ has met all of the key requirements in the Management Agreement we:

- Obtained and reviewed the Management Agreement;
- Compiled a list of TSJ's key requirements from the Management Agreement;
- Requested TSJ to describe how it has met each of the key requirements;
- Requested City staff to verify TSJ had met some of the key requirements; and
- Obtained and reviewed documents to assess whether TSJ had met each of the key requirements in the Management Agreement.

In our audit, we also compared TSJ's gross revenues and net loss in 2004-05 to CAE's gross revenues, expenses, and net losses for the prior four years that it managed the Facilities. To determine CAE's revenues in the prior years, we only included those revenues that are comparable to the revenues that TSJ currently generates. To estimate CAE's expenses, we obtained and analyzed cost information for 2000-01 through 2003-04. We estimated CAE's net losses by deducting its expenses from its gross revenues.

The scope of our audit included a review of the attendance report for the 2004-05 fiscal year in TSJ's database. Although we did not perform testing on the adequacy of controls over TSJ's database, we did perform testing on the accuracy of the attendance report data and found no exceptions.

Major Accomplishments Related To This Program

In Appendix E, the CEO of Team San Jose informs us of Team San Jose's accomplishments.

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Finding I Team San Jose Did Not Meet Two Of Its Four Performance Measure Targets In 2004-05

In accordance with the Management Agreement, the City Auditor's Office audited Team San Jose, Inc. (TSJ) to determine whether it met the four Performance Measure Targets in the Management Agreement for 2004-05. We found that TSJ:

- Did not meet its Gross Revenues Performance Measure Target by $1,539,187;
- Did not meet its Net Loss Performance Measure Target by $884,067;
- Did meet its Economic Impact Performance Measure Target; and
- Did not gather sufficient information for us to assess whether it met its Customer Service Results Performance Measure Target.

The exhibit below summarizes TSJ's performance:

Exhibit 1 TSJ's Performance Overview Fiscal Year 2004-05

Performance Measure	Management Agreement Target	Actual	Performance Measure Met	Positive (Negative) Variance Of Actual To Management Agreement
Gross Revenues	$8,698,000	$7,158,813	No	($1,539,187)
Net Loss	($3,745,000)	($4,629,067)	No	($884,067)
Economic Impact	577,200	1,121,704	Yes	544,504
Customer Services Results	Not clearly stated	Unable to determine	Unable to determine	Unable to determine

As shown above, we found that TSJ did not meet two of its four performance measures. Specifically, TSJ generated gross revenues of $7,158,813, thereby missing its Management Agreement Gross Revenues Performance Measure Target of $8,698,000 by $1,539,187.

We also found that TSJ incurred a net loss of $4,629,067, or $884,067 more than its Management Agreement Net Loss Target of $3,745,000. TSJ missed its Net Loss Performance Measure Target despite spending $655,734 less than it budgeted for 2004-05. We also found that TSJ more than met its Economic Impact Performance Measure Target. Specifically, TSJ reported:

- Local/social visitors of 996,478, exceeding its target of 507,000 by 489,478;
- Out of town visitors of 93,635, exceeding its target of 60,200 by 33,435; and
- Exhibitors of 31,591, exceeding its target of 10,000 by 21,591.

However, in our opinion, the Management Agreement Economic Impact Target is set too low and the City needs to amend the Management Agreement to incorporate a more challenging Economic Impact Target and to include actual hotel room nights booked in the amended Economic Impact Target.

Finally, TSJ did not collect sufficient survey information for us to determine whether it met its Customer Service Results Performance Measure Target. Moreover, the Customer Service Results Performance Measure Target in the Management Agreement is unclear and lacks specificity. As a result, we could not assess if TSJ met its Customer Service Results Performance Measure Target. In our opinion, the City should amend the Customer Service Results Performance Measure Target in the Management Agreement to incorporate a clearer and more specific Customer Service Results Performance Measure Target.

Team San Jose Did Not Meet Its Performance Measure For Gross Revenues For 2004-05

The first Performance Measure, Gross Revenues, requires TSJ to achieve specific Gross Revenue Targets for each fiscal year of the agreement. The Gross Revenues Performance Measure stated in the Management Agreement is as follows:

> ***(a) Gross Revenues:*** *Operator will focus on increasing gross revenues for the facilities. Gross Revenues will be aggregated from all sources for all facilities and detailed by category, including: Rental Income; Food and Beverage Commissions; Services and other revenue streams. TSJ is projected to achieve the following gross revenue targets, for each fiscal year.*
>
> | | |
> |---|---|
> | *Fiscal Year 1:* | *$8,698,000* |
> | *Fiscal Year 2:* | *$9,943,000* |
> | *Fiscal Year 3:* | *$10,600,000* |
> | *Fiscal Year 4:* | *$11,303,000* |
> | *Fiscal Year 5:* | *$11,739,000* |

According to the Independent Auditor's Report and Financial Statements, operating revenues are derived from charges for building rental, audio/visual services, electrical/utility services, equipment rental, catering, concessions, networking services, telecommunication services, and other services. All other revenues not derived from these sources, such as the City's operating subsidies, are classified as non-operating in the audited statement of revenues, expenses, and changes in net assets (deficit).

We should note that TSJ's Gross Revenues Performance Measure Target in the Management Agreement is less than it originally proposed to the City during the RFP process. The City initially allowed the proposers to revise their revenue and cost estimates to adjust for parking revenues and additional staffing costs. At the conclusion of the RFP process, the City Council directed the City to enter into negotiations with TSJ. These negotiations lead to an additional decrease in TSJ's proposed Gross Revenues Target and an additional increase in its Net Loss Target (Appendix C provides a timeline of the RFP process, the proposal and evaluation process, and the negotiation process that led to the revised Gross Revenue and Net Loss Targets specified in the Management Agreement).

TSJ did not meet its Gross Revenues Performance Measure Target specified in the Management Agreement. The exhibit below compares TSJ's Management Agreement Gross Revenues Target and the actual gross revenues that TSJ generated in its first year of managing the Facilities.

Exhibit 2 Comparison Of TSJ's Management Agreement Gross Revenues Target To Actual Gross Revenues For 2004-05

Management Agreement Gross Revenues Target	Actual Gross Revenues	Variance Of Actual Gross Revenues To Management Agreement Target	% Variance
$8,698,000	$7,158,813	($1,539,187)	(18%)

As shown above, in 2004-05, TSJ's gross revenues were $7,158,813, or 18 percent less than the Gross Revenues Target specified in the Management Agreement. TSJ's gross revenues total includes $300,000, which represents a collection for an Apple Computer event which was held in January of 2004. The Conventions, Arts and Entertainment Department (CAE) booked the event which was held during CAE's last year of managing the Facilities and the $300,000 was included in CAE's 2003-04 gross revenues. However, CAE was unable to collect the revenues from this event. TSJ collected the $300,000 in 2004-05 and included it in its revenue totals. In addition to the $300,000, TSJ also included $202,379 in its gross revenues, which represents the value of the City's free use of the Facilities.

The exhibit below compares the operating revenues that CAE generated for 2000-01 through 2003-04 to TSJ's operating revenues in 2004-05. For comparison purposes, the $300,000 noted above is included in both CAE's 2003-04 gross revenues and TSJ's 2004-05 gross revenues.

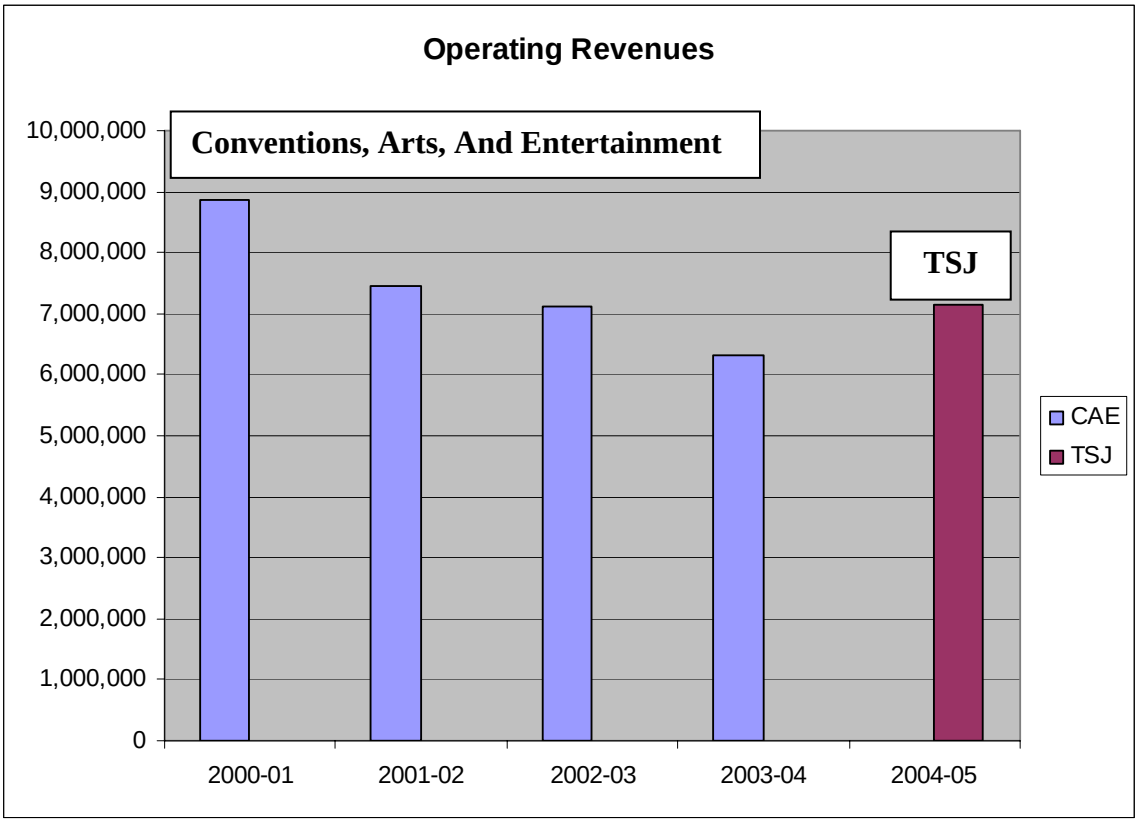
Exhibit 3 **Comparison Of The Revenues Generated Under CAE Management From 2000-01 Through 2003-04 To TSJ Management In 2004-05**

Fiscal Year	CAE Operating Revenue	TSJ Operating Revenue
(Pre-911) 2000-01	$8,877,431	
2001-02	7,451,534	
2002-03	7,109,733	
2003-04	6,307,804	
2004-05		**$7,158,813**
Average	**$7,436,626**	
Average Excluding 2000-2001	**$6,956,357**	

TSJ's 2004-05 revenues of $7,158,813, were higher than CAE's 2003-04 and 2002-03 revenues by $851,009 and $49,080, respectively. Moreover, TSJ's 2004-05 revenues were below CAE's revenues for 2000-01 and 2001-02 and CAE's four-year average of $7,436,626. However, excluding CAE's 2000-01 pre-911 revenue year from CAE's average gross revenues results in TSJ's 2004-05 revenues of $7,158,813 being higher than the CAE's three year average of $6,956,357**.**

The graph in the exhibit below compares the operating revenues CAE generated in 2000-01 through 2003-04 to TSJ's operating revenues in 2004-05.

Exhibit 4 Comparison Of CAE's Operating Revenues From 2000-01 Through 2003-04 To TSJ's 2004-05 Operating Revenues



We should note that 2004-05 was a transition year. As TSJ took over the management of the Facilities from CAE, it booked both new business and fulfilled business that CAE booked in 2003-04 or even earlier. We determined that CAE management negotiated the majority of the events occurring in 2004-05. Specifically, we estimate that CAE management negotiated 62 percent of the events that occurred during 2004-05.

When we compared TSJ's First Year Operating Budget[4] to actual revenues, we found several individual revenue components with large variances. The exhibit below compares TSJ's Management Agreement First Year Operating Budget to TSJ's actual revenues.

[4] TSJ's First Year Operating Budget, Management Agreement, Exhibit J-2, varies from the Gross Revenues Performance Measure Target stated in 4.8 (a) of the Management Agreement by $206.

Exhibit 5 Comparison Of TSJ's 2004-05 Budgeted Revenues To Actual Revenues

2004-2005 TSJ Revenue Analysis	Management Agreement	Actual	Variance Of Actual To Management Agreement	% Variance
Operating Revenues:				
Building Rental	$4,734,350	$4,194,140	($540,210)	(11.41%)
Food And Beverage Services	1,542,615	1,209,721	(332,894)	(21.58)
Event electrical/utility Services	540,000	460,927	(79,073)	(14.64)
Audio/visual Services	110,000	266,438	156,438	142.22
Networking Services	200,000	245,000	45,000	22.50
Telecommunications Services	210,000	99,731	(110,269)	(52.51)
Equipment Rentals	476,241	56,988	(419,253)	(88.03)
Labor	116,000	14,669	(101,331)	(87.35)
Other Revenues	769,000	611,199	(157,801)	(20.52)
Total Operating Revenues	$8,698,206	$7,158,813	($1,539,393)	(17.70%)

As shown above, TSJ's actual revenues were below Management Agreement amounts for all but two revenue categories. Specifically, TSJ's actual revenues were less for building rental ($540,210), equipment rentals ($419,253), food and beverage services ($332,894), other revenues ($157,801), telecommunications services ($110,269), labor ($101,331), and event electrical/utility services ($79,073). Audio/visual, $156,438, and networking services, $45,000, were the only two categories where TSJ met or exceeded its Management Agreement gross revenues amounts.

Client Event Files Did Not Consistently Contain Adequate Documentation And Justification For Waived/Reduced Rental Fees

In order to be competitive with other convention facilities, CAE and TSJ frequently reduced or waived rental fees. This is usually based on the client providing an economic benefit to the City such as traceable hotel room nights and/or food and beverage revenues. When we reviewed client event files we found that there may be up to three files for each event and that the files did not consistently contain adequate notation and/or justification for the reduction of and/or waiving of rental fees. We noted that TSJ provided pricing sheets for events occurring in 2004-05 which TSJ negotiated. These pricing sheets did contain justification for waived or reduced rental fees.

However, in our opinion, when TSJ reduces or discounts rental fees, it should document in client event files the justification for such reductions or waivers.

We recommend that TSJ:

Recommendation #1

Develop well-defined price negotiation policies and procedures that ensure all client event files include proper documentation for waived/reduced rental fees. (Priority 3)

TSJ Did Not Meet Its Performance Measure For Net Loss For 2004-05

The second Performance Measure, Net Loss, requires TSJ to achieve specific net loss targets for each fiscal year of the agreement. The Net Loss Performance Measure is stated in the Management Agreement as follows:

> *(b) **Net Profit or Loss financial performance**: Operator will focus on reducing the City's operational subsidy to support the Convention and Cultural Facilities. This category is measured through Net Profit or Loss (year-over-year) comparisons expressed as EBITDA (Earnings before Interest, Taxes, Depreciation and Amortization) and detailed on a comprehensive Profit and Loss (P & L) statement. TSJ is projected to achieve the following Net Profit/Loss results, for each fiscal year:*
>
> *Fiscal Year 1: ($3,745,000)*
> *Fiscal Year 2: ($1,966,000)*
> *Fiscal Year 3: ($1,432,000)*
> *Fiscal Year 4: ($975,000)*
> *Fiscal Year 5: ($836,000)*

According to the Statement of Revenues, Expenses, and Changes in Net Assets (Deficit) for the Year ended June 30, 2005 in the Independent Auditor's Report, operating expenses are derived from charges for City of San José management and administrative charges, utilities, administrative and general salaries – Team San Jose, other expenses, overhead – City of San José, contracted outside services, contracted services – City of San José, operating supplies, insurance, repairs and maintenance, workers' compensation insurance premiums, and TSJ's management fee.

For performance measurement purposes, TSJ's expenses do not include depreciation expense on its own assets and City oversight expenses. As noted earlier, TSJ's net loss will be expressed as earnings before interest, taxes, depreciation, and amortization. Accordingly, we did not include $5,682 in depreciation expense for purposes of determining if TSJ met its Management Agreement Net Loss Performance Measure Target. In addition, the Management Agreement states that the costs of the City Auditor's annual performance audit and the annual financial audit "will be paid by and allocated as operating costs of the facilities." However, Exhibit J-2 in the Management Agreement shows the cost of the City Auditor's performance audit and the annual financial audit as part of "City Oversight Expenses" that are not allocated as operating costs of the facilities for purposes of calculating TSJ's $3,745,000 Net Loss Performance Measure Target. Accordingly, for purposes of determining if TSJ met its Management Agreement Net Loss Performance Measure Target, we excluded $93,929 in City Oversight Expenses that the financial auditors included in the audited financial statements.

As discussed earlier, TSJ's Net Loss Target in the Management Agreement was higher than it initially proposed (See Appendix C for the timeline that shows the changes in TSJ's proposed net loss to the amount specified in the Management Agreement).

The exhibit below compares TSJ's Management Agreement Net Loss Target to the actual net loss that TSJ incurred in their first year of managing the Facilities.

Exhibit 6 Comparison Of TSJ's Management Agreement Net Loss Target To Actual Net Loss For 2004-05

Management Agreement Net Loss	Actual Net Loss	$ Variance Of Actual To Management Agreement Net Loss	% Variance From Actual To Management Agreement Net Loss
($3,745,000)	($4,629,067)	($884,067)	(24%)

As the exhibit above shows, TSJ incurred a net loss of $4,629,067, which is $884,067 (24 percent) more than the Management Agreement's Net Loss Performance Measure Target of $3,745,000.

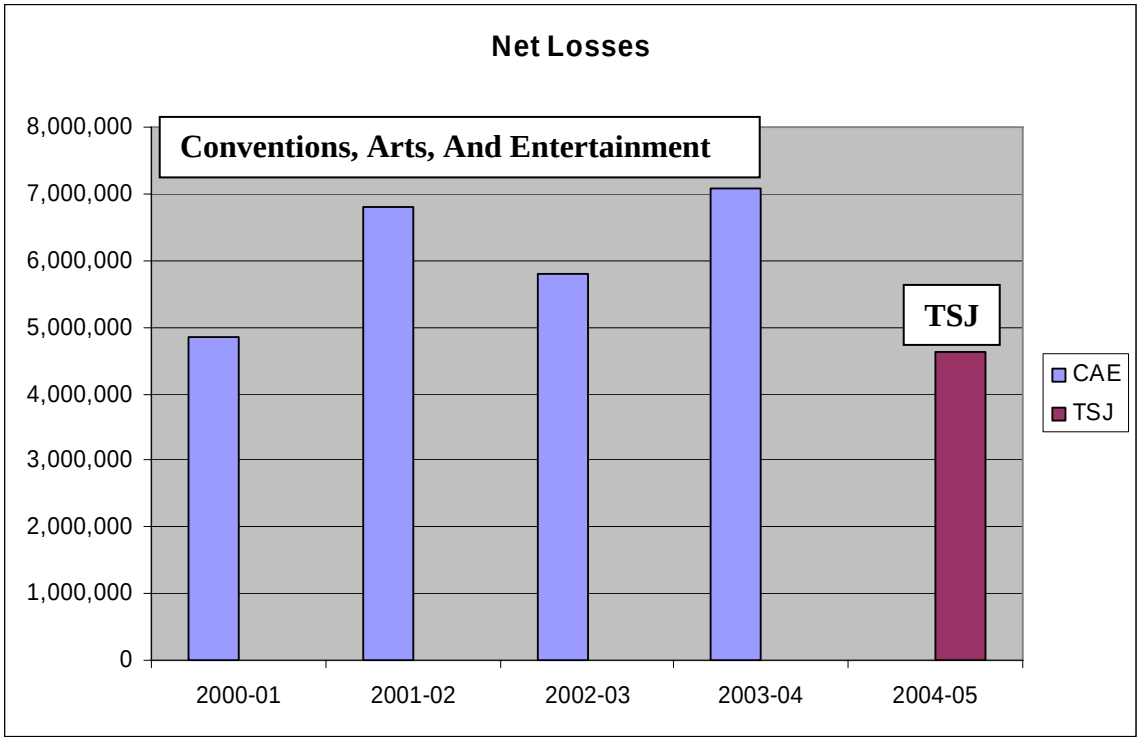
We compared the net loss that TSJ incurred in 2004-05 to the net losses CAE incurred from 2000-01 through 2003-04. The exhibit below compares the net loss CAE generated for 2000-01 through 2003-04 to TSJ's first year of managing the Facilities.

Exhibit 7 Comparison Of CAE's Net Losses For 2000-01 Through 2003-04 To TSJ's Net Loss In 2004-05

Net Loss		
Fiscal Year	**CAE**	**TSJ**
2000-01	$4,847,055	
2001-02	6,789,198	
2002-03	5,792,240	
2003-04	7,091,074	
2004-05		**$4,629,067**
Average	**$6,129,892**	

As shown above, TSJ's net loss was from $217,988 to $2,462,007 less than CAE's net losses for each of the prior four years. Moreover, TSJ's net loss of $4,629,067, was $1,500,825 less than the average net loss CAE incurred during the previous four years. As mentioned earlier, both CAE's and TSJ's net losses include $300,000 in revenues for the Apple Computer event held in January 2004. However, CAE was unable to collect this $300,000. Accordingly, it recognized an uncollectible expense of $300,000 in 2003-04. Thus, this $300,000 did not affect CAE's net loss calculation for 2003-04. The exhibit below graphs CAE's net losses for 2000-01 to 2003-04 to TSJ's net loss for 2004-05.

Exhibit 8 Comparison Of CAE's Net Losses From 2000-01 To 2003-04 To TSJ's Net Loss For 2004-05



TSJ missed its Net Loss Target in 2004-05 despite spending $655,734 less than it budgeted in 2004-05. The exhibit below compares TSJ's Management Agreement First Year Operating Budget to TSJ's actual expenses for 2004-05.

Exhibit 9 Comparison Of TSJ's Management Agreement Budgeted Operating Expenses To Actual Operating Expenses For 2004-05

2004-2005 TSJ Net Loss Analysis	Management Agreement Budget	Actual	(Over)/Under Budget	% (Over)/Under Budget
Operating Expenses:				
City of San Jose Management and administrative charges	$6,454,643	$6,228,160	$226,483	3.51%
Utilities	2,200,000	2,335,139	(135,139)	(6.14)
Administrative and general salaries - Team San Jose	646,450	645,366	1,084	0.17
Other expenses	542,575	317,857	224,718	41.42
Overhead - City of San Jose	542,369	542,368	1	0.00
Contracted outside services	441,000	516,980	(75,980)	(17.23)
Contracted services - City of San Jose	166,827	117,403	49,424	29.63
Operating supplies	346,000	302,600	43,400	12.54
Insurance	265,000	276,064	(11,064)	(4.18)
Repairs and maintenance	383,750	231,123	152,627	39.77
Workers' compensation insurance premiums	155,000	124,820	30,180	19.47
Management Fee - Team San Jose	150,000	150,000	0	0.00
Emergency repairs	150,000	0	150,000	100.00
Total Operating Expenses	$12,443,614	$11,787,880	$655,734	5.27%

As the exhibit above shows, TSJ spent less than its 2004-05 budget for several operating expense categories. Most notably, TSJ spent $226,483 less than budgeted for City of San José management and administrative charges. This operating expense category is primarily the cost attributed to TSJ for City employees. TSJ spent less than budgeted for this category because there were a number of unfilled City positions during 2004-05.

TSJ spent more than budgeted for the following operating expense categories: utilities, contracted outside services, and insurance. According to the CEO, the California Theater was more expensive to run than planned. Furthermore, the Cogeneration facility contributed to higher than estimated

utility costs. Finally, TSJ spent more on outside services because it was not able to fill City staff vacancies as quickly as needed.

As mentioned earlier, 2004-05 was a transition year. As TSJ took over the management of the Facilities from CAE, it booked both new business and fulfilled business that CAE booked in 2003-04 or even earlier. Given the long lead time between event bookings and the dates events are held, it may take until 2006-07 before TSJ can be held solely responsible for meeting the Gross Revenues Performance Measure Target and Net Loss Performance Measure Target as specified in the Management Agreement.

TSJ Met Its Economic Impact Performance Measure Target For 2004-05

The third Performance Measure, Economic Impact, requires TSJ to achieve specific attendee day figures for local/social visitors, out of town visitors, and exhibitors for each fiscal year of the agreement. By managing the strategic mix of business and visitor types, TSJ is to focus on increasing the total attendance for events held at the Convention and Cultural Facilities. The Economic Impact Performance Measure is stated in the Management Agreement as follows:

> *(c) Economic Impact: By managing the strategic mix of business and visitor types, Operator will focus on increasing the total attendance for events held at the Convention and Cultural Facilities. Attendance will be measured and reported as "attendee days" (e.g., one attendee for one day = one attendee day; one attendee for three days = three attendee days)…Operator is projected to achieve the following attendee day figures for each fiscal year:*
>
> *Fiscal Year 1*
> *a. Local/Social Visitors: 507,000*
> *b. Out of Town Visitors: 60,200*
> *c. Exhibitors: 10,000*
>
> *Fiscal Year 2*
> *a. Local/Social Visitors: 515,100*
> *b. Out of Town Visitors: 87,300*
> *c. Exhibitors: 18,500*

Fiscal Year 3
a. Local/Social Visitors: 600,400
b. Out of Town Visitors: 92,700
c. Exhibitors: 19,700

Fiscal Year 4
a. Local/Social Visitors: 660,000
b. Out of Town Visitors: 103,600
c. Exhibitors: 22,000

Fiscal Year 5
a. Local/Social Visitors: 690,400
b. Out of Town Visitors: 108,000
c. Exhibitors: 22,900

Stimulating new spending locally by attracting visitors and the degree to which the event or attraction draws visitors from outside the local area is the basis of this Performance Measure. Attendance is measured and reported as attendee days. For example, one visitor attending an event for one day equals one attendee day. The same visitor attending an event for three days equals three attendee days.

The amount of dollars spent per day differs according to the type of visitor as defined below:

- Local Visitors: Delegates who reside in the metropolitan area of the host event and do not require overnight accommodations are expected to spend the least.
- Out of Town Visitors: Delegates who do not reside in the metropolitan area of the host event and require overnight accommodations. Overnight delegates spend much more per event than local visitors since lodging represents a large portion of their expenditures.
- Exhibitors: Attendees whose focus is to exhibit products, services, etc. to other delegates attending the host event. Exhibitors are generally out of town attendees.

Depending on the visitor type, a certain dollar amount is expected to be spent on a single day as follows:

Exhibit 10 Estimated Visitor's Daily Spending By Visitor Type

Visitor Type	$ Amount Spent In A Single Day
Local Visitors	$ 81.67
Out Of Town Visitors	142.44
Exhibitors	215.21

As shown above, exhibitors are expected to spend the most, $215.21 per day, out of town visitors are expected to spend $142.44 per day, and local visitors are expected to spend the least, $81.67 per day.

TSJ more than met its Economic Impact Performance Measure Target for 2004-05. The exhibit below compares the 2004-05 targets for each visitor type to the actual attendee days.

Exhibit 11 2004-05 Comparison Of Economic Impact Performance Measure Targets Specified In The Management Agreement To The Actual Attendee Days

Visitor Type	2004-05 Performance Measure Target As Stated In The Management Agreement	Actual Attendee Days	Positive Variance	% Variance Of Target
Local/Social Visitors	507,000	996,478	489,478	197%
Out Of Town Visitors	60,200	93,635	33,435	156
Exhibitors	10,000	31,591	21,591	316
Total	**577,200**	**1,121,704**	**544,504**	**194%**

As shown above, TSJ exceeded its attendee targets - local/social visitors target by 489,478 (197 percent of its target), out of town visitors target by 33,435 (156 percent of its target), and its exhibitors target by 21,591 (316 percent of its target). In total, TSJ achieved attendee figures of 1,121,704, exceeding the total attendee target figures by 544,504 or 194 percent of the total attendee day figures.

We sampled 70 client events files to determine if TSJ's reported attendance numbers were supported by documentation in the event files. We did not note any exceptions. However, we noted that it appears TSJ's count for local/social attendees was overstated by 100,000. Even excluding the 100,000 attendees from TSJ's local/social visitors reported total, it still would have easily met its Economic Impact Performance Measure Target.

Although TSJ's attendance numbers were documented in their client event files, we noted two problems with the targets in the Management Agreement. First, the Economic Impact Target does not include the number of room nights actually booked. Second, the Economic Impact Target is set too low.

As noted above, TSJ's Economic Impact Performance Measure Target categorizes visitor types according to their estimated spending. Specifically, TSJ stated that local visitors do not require overnight accommodations. On the other hand, TSJ stated that out of town visitors and exhibitors require overnight accommodations.

However, during our review of TSJ's attendance reports we noted that the total of out of town attendees and exhibitors does not generate an equal number of hotel room nights. For instance, TSJ reported 6,300 out of town visitors for a State Wrestling Championship; but the actual number of room nights booked for the event was 1,444. In total, for 2004-05, TSJ reported 125,226 out of town visitors and exhibitors. However, the number of hotel room nights booked was about 88,000.

In our opinion, hotel room nights booked is an important piece of the true economic impact of events held in San Jose. Therefore, TSJ should include in its Economic Impact Performance Measure Target the actual number of room nights booked for events held in the Facilities.

We also found that the Economic Impact Performance Measure Target as stated in the Management Agreement appears to be set too low. First of all, TSJ significantly exceeded its Economic Impact Target for 2004-05. On the other hand, TSJ fell well-short of achieving its Gross Revenues Performance Measure Target. Therefore, it seems incongruous that TSJ could significantly exceed its Economic Impact Target while falling short of its Gross Revenues Target.

In addition, TSJ's attendance target was significantly below the attendance levels CAE achieved from 2000-01 through 2003-04 as shown in Exhibit 12.

Exhibit 12 Comparison Of Total Attendance Under CAE Management From 2000-01 Through 2003-04 To TSJ's 2004-05 Total Attendance Target

Fiscal Year	Total Attendance Under CAE Management	TSJ Total 2004-05 Attendance Target	Variance	% Variance
2000-01	1,115,389	577,200	538,189	93%
2001-02	1,004,676	577,200	427,476	74
2002-03	976,951	577,200	399,751	69
2003-04	996,031	577,200	418,831	73
Four Year Average	1,023,262	577,200	446,062	77%

As the exhibit above shows, CAE total attendance for the last four years was from 69 to 93 percent higher than TSJ's 2004-05 attendance targets.

In our opinion, the City should revise TSJ's Economic Impact Performance Measure Target in the Management Agreement to an obtainable but challenging target. TSJ's Economic Impact Target should be based on factors such as historical data, the capacity of the Facilities, and the potential for future growth. This target should also include the actual number of room nights booked for events held in the Facilities.

Therefore, we recommend that TSJ and the City:

Recommendation #2

Develop a new Economic Impact Performance Measure Target based on factors such as historical data, the capacity of the Facilities, and the potential for future growth and amend the Management Agreement accordingly. This target should also include the actual number of room nights booked for events held in the Facilities. (Priority 3)

TSJ Did Not Collect Sufficient Customer Survey Information For Us To Assess If It Met Its Customer Service Results Performance Measure Target

The fourth Performance Measure, Customer Service Results, requires TSJ to create a standard survey asking the event planner of each event to rate their overall satisfaction with the product and services TSJ provided. The Customer Service Results Performance Measure in the Management Agreement is stated as follows:

> *(d) Customer Service Results: Operator will ask the decision maker of each event to rate their overall satisfaction with the product and services provided. The Operator will create a standard survey instrument containing a series of product and service rating metrics including the following summary question, "Based on the services provided, please rate our overall performance."*
>
> > *Using 81% as the baseline, Operator will increase its customer services results by an additional 2% per year until Operator reaches a success rate of 91%. The post facility use survey data will be sent directly to the Contract Administrator for review. Periodically, Contract Administrator and the Operator shall review and discuss the survey data and identify, as necessary, areas for additional Operator attention and improvement.*
>
> *City's Expenditures for capital improvements shall also be considered in review of Operator's revenue generation goals and economic impact goals.*

We were unable to determine if TSJ met its Customer Service Results Target because TSJ did not collect a sufficient amount of survey information. Specifically, in 2004-05, event planners returned surveys for only 46 out of 481 events held in 2004-05 (about a 10 percent response rate). Moreover, event planners returned only 9 surveys out of 349 events over the last eight months of 2004-05 (a 2 .5 percent response rate). The exhibit below compares the number of customer service responses by month to the number of events occurring by month.

Exhibit 13 Fiscal Year 2004-05 Comparison Of Customer Survey Responses By Month And Year To The Number Of Events Occurring By Month And Year

2004-05 Month	# Of Events Occurring	Cumulative Events by Month	# Of Surveys Received	Response Rate	Cumulative Surveys Received	Cumulative % Of Surveys Received
July	23	23	8	39%	8	35%
August	22	45	2	9	10	22
September	40	85	15	38	25	29
October	47	132	12	26	37	28
November	47	179	0	0	37	21
December	40	219	0	0	37	17
January	30	249	0	0	37	15
February	42	291	4	9	41	14
March	49	340	0	0	41	12
April	44	384	5	11	46	12
May	53	437	0	0	46	11
June	44	481	0	0	46	10
Total	**481**	**481**	**46**	**10%**	**46**	**10%**

As the exhibit above shows, TSJ achieved about a 10 percent overall response rate for 2004-05 and TSJ's survey response rate steadily declined after the first four months of 2004-05. Furthermore, TSJ did not receive any survey responses for six months of 2004-05: November, December, January, March, May, and June.

In our opinion, TSJ did not establish an adequate process for obtaining survey information in 2004-05. TSJ stated that their survey response rate for 2005-06 has improved to about 25 percent. We will revisit TSJ's survey process and results when we conduct the 2005-06 audit.

In addition, TSJ has considered implementing additional changes to its Customer Service Results process since July 2004. For instance, TSJ has stated that it will implement an online survey form and change its current rating scale from a

three-point scale to a five-point scale. However, TSJ has yet to implement these changes to its Customer Service Results process.

Therefore, we recommend that TSJ:

Recommendation #3

Implement an online survey form and a revised survey instrument that incorporates a five-point rating scale. (Priority 3)

Although TSJ received a limited number of survey responses, the event planners who did respond reported overall satisfaction with events. The exhibit below shows the customer service categories and responses. The survey is comprised of two general questions and 16 questions related to specific service areas.

Exhibit 14 2004-05 Summary Of Customer Service Responses By Service And Product Category

Customer Service Category	Number Exceeding Expectations	Percentage Exceeding Expectations	Number Meeting Expectations	Percentage Meeting Expectations	Number Not Meeting Expectations	Percentage Not Meeting Expectations	Number Not Responding	Number Responding Outside Of Categories Available
Overall Performance	13	32%	28	68%	0	0%	1	4
Sales & Marketing	8	32	16	64	1	4	21	0
Contracting Process	13	33	23	59	3	8	7	0
Event Management Documentation	9	23	30	75	1	3	6	0
Overall Effectiveness Of Housing Staff	14	47	14	47	2	7	16	0
Professionalism Of Registration Staff	7	41	10	59	0	0	29	0
Availability And Responsiveness Of Services Staff	12	30	23	58	5	13	6	0
Food & Beverage Planning & Service	5	19	17	65	4	15	20	0
Quality & Preservation Of Food & Beverage	11	38	17	59	1	3	16	1
Timeliness Of Service	10	33	14	47	6	20	16	0
Appearance Of Building	9	20	29	66	6	14	0	2
Housekeeping Services	5	14	25	69	6	17	10	0
Technical Services (Computer Access)	3	23	8	62	2	15	33	0
Security Services	7	27	16	62	3	12	20	0
Accounting & Invoicing Procedure	4	10	34	83	3	7	4	1
Attitude & Service Delivery	20	47	19	44	4	9	2	1
Appearance	18	44	23	56	0	0	5	0

As shown above, most of the limited number of event planners that returned a survey reported that TSJ met or exceeded their expectations for all of the service and product areas. In addition, of the 38 respondents, 92 percent stated that they

would host another event in San José. Of the remaining four respondents, three stated that they would not host another event in San José and one reported "maybe".

The five areas that had the highest number of respondents reporting that their expectations were not met were: timeliness of service, housekeeping services, appearance of the building, food and beverage planning & service, and technical services.

We noted that the Management Agreement requires that the surveys be sent directly to the City's Contract Administrator. According to the City's Contract Administrator, she received the surveys directly at one time but, currently, TSJ receives the surveys and reports the results of the surveys on a monthly basis to the Contract Administrator. In our opinion, TSJ should send the customer surveys directly to the Contract Administrator or the City should amend the Management Agreement to reflect current survey practices.

Therefore, we recommend that TSJ:

Recommendation #4

Send customer service surveys directly to the City's Contract Administrator or the City should amend the Management Agreement to reflect current survey practices. (Priority 3)

In our opinion, the current Customer Service Results Performance Measure Target in the Management Agreement lacks clarity or specificity. A better target would be the percentage of respondents that stated that TSJ either exceeded or met their expectations. For instance, the target could be established to read that 90 percent of the respondents stated that TSJ exceeded or met their overall expectations. The City would have to modify the Management Agreement to implement changes to the Customer Service Results Target.

Therefore, we recommend that the City and TSJ:

Recommendation #5

Develop a clearer and more specific Customer Service Results Performance Measure Target and amend the Management Agreement accordingly. (Priority 3)

CONCLUSION

For 2004-05, Team San Jose, Inc. (TSJ):

- Did not meet its Gross Revenues Performance Measure Target by $1,539,187;
- Did not meet its Net Loss Performance Measure Target by $884,067;
- Did meet its Economic Impact Performance Measure Target; and
- Did not gather sufficient information for us to assess whether it met its Customer Service Results Performance Measure Target.

Besides not meeting all of its performance targets, we also noted that TSJ's client event files did not consistently contain adequate documentation and/or justification for waived/reduced rental fees. Additionally, in our opinion, TSJ's Economic Impact Performance Target is set too low and should be revised. This target should also be revised to include the actual room nights booked. Finally, we found that TSJ did not collect sufficient survey information for us to determine whether it met its Customer Service Results Performance Measure Target and did not establish an adequate process for obtaining survey information in 2004-05.

RECOMMENDATIONS

We recommend that TSJ:

Recommendation #1

Develop well-defined price negotiation policies and procedures that ensure all client event files include proper documentation for waived/reduced rental fees. (Priority 3)

We recommend that TSJ:

Recommendation #2 **Develop a new Economic Impact Performance Measure Target based on factors such as historical data, the capacity of the Facilities, and the potential for future growth and amend the Management Agreement accordingly. This target should also include the actual number of room nights booked for events held in the Facilities. (Priority 3)**

Recommendation #3 **Implement an online survey form and a revised survey instrument that incorporates a five-point rating scale. (Priority 3)**

Recommendation #4 **Send customer service surveys directly to the City's Contract Administrator or the City should amend the Management Agreement to reflect current survey practices. (Priority 3)**

We recommend that the City and TSJ:

Recommendation #5 **Develop a clearer and more specific Customer Service Results Performance Measure Target and amend the Management Agreement accordingly. (Priority 3)**

Finding II

Team San Jose Has Implemented 49 Of The 59 Requirements In The Management Agreement And Partially Implemented The Remaining 10 Requirements

The Management Agreement between the City of San José and Team San Jose (TSJ) addresses the operation and management of the San José Convention Center and Cultural Facilities. We identified 59 specific requirements with which TSJ is responsible for complying. During our review of TSJ's compliance with the requirements in the Management Agreement, we found that TSJ has implemented 49 out of the 59 Management Agreement requirements and partially implemented the remaining 10 requirements. By performing various additional tasks, TSJ, with the assistance of the City, can fully meet the above requirements of the Management Agreement and help ensure future compliance with these requirements.

TSJ Has Complied With Or Implemented 49 Requirements And Partially Complied With Or Implemented 10 Requirements

The Management Agreement addresses the operation and management of the San José Convention Center and Cultural Facilities. We identified 59 specific requirements with which TSJ is responsible for complying. Of these 59 requirements, TSJ has implemented 49 and has partially implemented the remaining 10 requirements. Exhibit 15 below summarizes the requirements which TSJ has either met or has partially met.

Exhibit 15 Summary Of Team San Jose's Compliance With The Management Agreement Requirements

Agreement Section	Section Name	Met	Partially Met
4.3	General Scope/Operations Manual		X
4.4	Administrative And Management Services		
4.4 (a)	Insurance Requirements	X	
4.4 (b)	Pricing Policies	X	
4.4 (c)	Financial Success Factors Notification	X	
4.4 (e)	Staff Supervision and Training		X
4.4 (f1)	Revenue and Expense	X	
4.4 (f2)	Short and Long Term Objectives		X
4.4 (h)	Parking Agreements and Rates	X	
4.5	Operating Services		
4.5 (a)	Facilities Maintenance	X	
4.5 (c)	Schedule of Facilities Maintenance	X	
4.5 (c)	Facilities Maintenance Reporting		X
4.6	General Sales and Marketing Services		
4.6 (c)	Customer Service Program	X	
4.6 (d)	Contract Forms	X	
4.6 (e)	Pricing Policies and Procedures	X	
4.7	Convention Marketing and Sales Support Services		
4.7 (a & b)	Strategic Sales and Marketing Plan	X	
4.7 (c)	Event Scheduling	X	
4.8	Performance Measures		
4.8 (c)	Attendance Figures Survey	X	
4.8 (d)	Survey Data Review	X	
4.9	Reporting Requirements		X
6.3	Termination for Failure to Meet Performance Measurements		X
8.4	Inventory		
8.4	Delivery of Written Report	X	
8.4	Loss Reporting Policy & Procedure	X	
8.5 (c)	Compliance with Agreements and Subordination	X	
8.6	Bond Financing	X	
8.7	Use by City	X	
8.8	City Transfer of Vehicles	X	
9.2	Initial Operating Budget	X	
9.3	Establishment of Operating Budget		
9.3	Proposed Annual Budget	X	
9.3	Annual Budget Reports	X	

Agreement Section	Section Name	Met	Partially Met
10.1	Receipts Account		
10.1	Receipts and Credit Card Account	X	
10.1	Monthly Reports	X	
10.2	Operating Account		
10.2	TSJ Operational Account	X	
10.2	TSJ Employee Bonding & Insurance	X	
10.4	Operating Account Balance	X	
10.6	Approved Annual Budget Compliance	X	
11.2	Taxes and Assessments		
11.2 (a)	Payment of Taxes, Fees	X	
11.2 (b)	Possessory Interest Tax	X	
11.2 (c)	Business License	X	
11.3	Internal Control Structure	X	
11.4	Duty to Keep City Informed	X	
12.1	Capital Improvements	X	
12.2	Capital Repairs	X	
13.1	Employees of Operator	X	
14.1	Monitoring Designee	X	
14.3	Chief Executive Officer	X	
15.1	Contracts		
15.1 (a)	Contracts in Accordance with the Budget	X	
15.1 (b)	Assignability of Contract	X	
15.2	Purchase of Supplies and Services		X
15.3	Facility Use Agreements	X	
16	Labor Compliance		X
18	Dispute Resolution	X	
19.2	Use and Storage of Hazardous Materials Prohibited	X	
20	Americans with Disabilities Act		X
22	Insurance Requirements	X	
23	Claims Reporting	X	
26	Conflict of Interest		X
31.6	Annual Facilities Audit Process	X	
33.1	Authorized Subcontractors	X	
33.2	Compliance with Agreement	X	
	Total	49	10

Below is our analysis of the 10 remaining requirements that TSJ needs to comply with or implement.

Section 4.3 (b)

Section 4.3 (b) states, "Operator's obligations shall include, but not be limited to, the performance of the services herein, subject to controls and restrictions as stated elsewhere in the Agreement and in the Operations Manual. Operator shall prepare, and thereafter update and amend as appropriate, the Operations Manual, which shall be subject to the approval of the Contract Administrator. Operator shall complete the initial version of the Operations Manual within 120 days of the Effective Date."

TSJ submitted a Draft Operations Manual to our office on November 3, 2005. We found that TSJ did not complete the initial version of the Operations Manual by November 1, 2004 as stated in the Management Agreement. We should note that CAE, which managed the Facilities prior to TSJ, did not have an Operations Manual. Therefore, TSJ had to create an entirely new Operations Manual.

We recommend that TSJ, with input from the City:

Recommendation #6

Complete the Operations Manual and obtain formal approval from the City's Contract Administrator. (Priority 3)

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Section 4.4(e)

Section 4.4 (e) states, "Operator shall maintain an adequate staff of courteous employees on duty at the Facility and provide appropriate supervision and training of such employees. Employees of Operator or of any subcontractor will be employees of Operator or subcontractor and not of City. Operator shall employ or otherwise contract for its operations only those persons whom by training, appearance and habits are judged to be suitable workers appropriate to the environment of the Facility."

According to TSJ, it has developed minimum staffing level guidelines for events held in the Facilities and established training programs for some of its employees. However, TSJ did not provide us with documentation supporting its contention regarding City minimum staffing requirements or a formal training program for City staff responsible for maintaining the Facilities.

We recommend that TSJ:

Recommendation #7

Develop minimum City staffing requirements and a formal training program for City staff responsible for maintaining the Facilities. (Priority 3)

Section 4.4 (f2)

Section 4.4 (f2) states, "…Operator shall develop short and long-term objectives for the Facility to enhance financial success of the Facility and annually report same to City."

TSJ reports monthly to the City Manager's Office any operational concerns, performance results, and marketing and sales. However, TSJ did not specifically address short- and long-term objectives for 2004-05 or report its short- and long-term objectives to the City for 2004-05.

We recommend that TSJ:

Recommendation #8

Develop short- and long-term objectives for the Facilities and report annually to the City. (Priority 3)

Section 4.5 (c)

Section 4.5 (c) states, "…Operator shall also provide the Contract Administrator a report on the last day of the Operating Year of all Facility maintenance that was performed during the preceding year and all Facility maintenance scheduled for the following year. This report shall include a list of breakdowns of all major pieces of installed and portable equipment for that year. City shall have access to the Facility at all times for routine maintenance inspections."

While TSJ provided documentation verifying it performed regular maintenance on the Facilities; it still needs to develop a schedule of planned maintenance for the year and report annually whether the planned maintenance was completed.

We recommend that TSJ:

Recommendation #9

Develop a schedule of planned maintenance for the year and report annually to the City whether the planned maintenance was completed. (Priority 3)

Section 4.9

Section 4.9 states, "On or before the 15th of each month Operator shall prepare and deliver to City monthly reports regarding the use and operation of the Facility in a format agreed upon by City. These reports must include information on the activities associated with the operation, management, supervision and maintenance of the Facility; the financial analysis of how the Facility is operating; a list of upcoming events; operating and maintenance issues and concerns; anticipated changes in, operations or maintenance activities; and other information as appropriate or as requested by the City through the Contract Administrator".

The monthly report is due on or before the 15th of each month. Although TSJ has consistently submitted a comprehensive monthly report to the City Manager's Office, it has been consistently late in doing so. According to TSJ, it is late in submitting the monthly report because it incorporates Centerplate's monthly financial report into the reports.[5] As a result, it takes TSJ additional time to complete the reports.

We recommend that TSJ:

Recommendation #10

Meet its 15th of the month reporting due date. (Priority 3)

[5] Centerplate provides concessions, merchandise sales, catering, and restaurant services at various San Jose Convention and Cultural Facilities in accordance with the "Catering Agreement".

Section 6.3

Section 6.3 states, "No later than July 31, 2005 and July 31 of each year of the term of this Agreement thereafter, Operator shall present a report to the City Manager demonstrating the extent to which it has met the Performance Measures set forth in Section 4.8." Furthermore, the Management Agreement states "City Manager shall review Operators report and shall present the report together with any comment or analysis by City staff to the City Council. City and Operator agree that if:

> *(a) Operator fails to achieve at least three of the four measures set forth in Section 4.8 or*
>
> *(b) Operator fails to achieve at least 67% of any of measures (a), (b) or (c) set forth in Section 4.8 or fails to achieve the applicable annual percentage measure set forth in measure (d)*
>
> *then, City Council may terminate this Agreement within the time provided for in Section 6.1.*[6] *The City Council's determination of whether Operator has met the performance measures and to what degree shall be at the City Council's sole discretion. Nothing in this section is intended to limit the City's discretion to terminate this Agreement for convenience or as otherwise provided for in this Agreement*."

In addition, if in Year 4 (July 1, 2007 through June 30, 2008) or Year 5 (July 1, 2008 through June 30, 2009) of the term of the Management Agreement, TSJ fails to meet the performance measures set forth in Section 4.8, the City shall have the right to delete the fixed payment of $150,000 from the fixed management fee. The City may either eliminate the fee from the Operating Budget or require that the budgeted amount be expended for another purpose.

TSJ Did Not Report Against The Gross Revenue and Net Loss Performance Measure Targets Stated In The Management Agreement

As noted above, the Management Agreement requires TSJ to submit a report to the City Manager no later than July 31, 2005 demonstrating the extent to which it has met the performance measures set forth in the Management Agreement. TSJ submitted a year-end report to the City Manager on July 19, 2005. In its report, TSJ reported against the Economic Impact Performance Target in the Management Agreement and also reported that it could not accurately measure its Customer

[6] Section 6.1 states "…City may upon one hundred and eighty (180) days written notice, beginning on the second day after mailing, terminate this Agreement in whole or in part..."

Service Results Performance Target due to challenges in collecting a sufficient amount of information on customer satisfaction. However, in its report to the City Manager TSJ reported actual Gross Revenues and Net Loss against "budget" amounts and not the Performance Measures in the Management Agreement. TSJ did attach as an appendix to its End of the Year Progress Report a Primary Income and Expense Report that showed "Actual," "Revised," and "Adopted" numbers for "Revenues and Net Profit". The "Adopted" numbers were the same as the Management Agreement Performance Measures for the Revenues and Net Loss. Thus, in our opinion, TSJ did not include in its annual report to the City Manager a clear comparison of its actual performance against the Gross Revenues and Net Loss Targets in the Management Agreement.

In our opinion, TSJ should include in its annual report to the City Manager a clear comparison of its actual performance to the Management Agreement Performance Measure Targets.

We recommend that in the future, TSJ:

Recommendation #11

Include in its annual report to the City Manager a clear comparison of its actual performance to the Management Agreement Performance Measure Targets. (Priority 3)

The City Administration also did not comply with the reporting requirements specified in Section 6.3 of the Management Agreement. As noted above, the Management Agreement requires the City Administration to review and present TSJ's report together with any comment or analysis by City staff to the City Council. The City Administration has not yet complied with this requirement for 2004-05.

We recommend that the City Administration:

Recommendation #12

Review and present TSJ's year-end report, along with any analysis, to the City Council. The City Administration's analysis should include TSJ's performance as contrasted with its Management Agreement Performance Measure Targets. (Priority 3)

Section 15.2

Section 15.2 states, "In connection with the purchase by Operator of equipment, materials, goods, supplies and inventories for the Facility, Operator shall endeavor to make all such purchases at the best price available to Operator, considering the quantities required and the quality desired, at the time available for the delivery and the sources of supply whenever possible as part of a volume purchase by Operator. Operator shall pass on to the Facility the full amount of any volume discounts and other discounts available to Operator. Operator shall also comply with City's Environmentally Preferable Procurement Policy, a copy of which is attached as Exhibit G hereto."

TSJ has reviewed the City's Environmentally Preferable Procurement Policy and is currently working with the City to develop "green" purchasing guidelines.

Therefore, we recommend that TSJ:

Recommendation #13

Work with the City to develop and implement "green" purchasing guidelines and procedures. (Priority 3)

Section 16

Section 16 states, "This Agreement is subject to City's Living Wage and Prevailing Wage Policies and the applicable implementing regulations (collectively, the "Policy"). Operator shall comply with the provisions of the attached Labor Compliance Addendum (Exhibit E), which sets forth Operator's obligations under the Policy."

According to Employee Relations, TSJ is in compliance with the City's Living Wage and Prevailing Wage Policies in regards to the City employees. However, TSJ has not provided the City's Office of Equality Assurance with information on its employees and on contracts into which it has entered. As a result, the Office of Equality Assurance has not determined if TSJ is in compliance with the City's Living Wage and Prevailing Wage Policies for its employees or contracted employees.

Therefore, we recommend that TSJ:

Recommendation #14

Work with the Office of Equality Assurance and provide required documentation in order to fully meet the City's Living Wage and Prevailing Wage Policies as required in the Management Agreement. (Priority 3)

Section 19.2

Section 19.2 states, "The use and storage of Hazardous Material by the Operator in the Facilities is prohibited. Upon becoming aware of any release of a Hazardous Material in the Facilities, the Operator shall immediately report such release to City and to any other appropriate public agency. The Operator shall immediately report such release of any Hazardous Material to the City even where the quantities released would not be otherwise reportable to another public entity. This reporting obligation exists with regard to any release of Hazardous Material within the Facilities and is not limited to releases of those Hazardous Materials used by the Operator."

In operating and maintaining the Facilities, TSJ stores and uses chemicals and materials that are classified as hazardous materials. The hazardous materials include but are not limited to freon, fuel, oil-based paints, and carbon dioxide. TSJ has reported this issue to the City Manager's Office and has provided a list of hazardous materials stored and used at the Facilities. TSJ also has a written procedure to notify the City and other appropriate public agencies of an accidental hazardous materials release. TSJ and the City are working to amend the agreement to allow TSJ to store and use any hazardous materials that are needed to operate and maintain the Facilities.

We recommend that TSJ:

Recommendation #15

Work with the City to amend the Management Agreement to allow TSJ to store and use any hazardous materials that are needed to operate and maintain the Facilities. (Priority 3)

Section 20

Section 20 states, "Operator shall be solely and fully responsible for complying with the Americans with Disabilities Act of 1990 ("ADA") in connection with: (a) any use of the facilities by guests or services provided by Operator to Customers; and (b) modifying its policies, practices, and procedures to comply with the ADA. Operator shall develop a work plan to correct or avoid any violations or non-compliance with the ADA. Operator shall perform an assessment of Facilities for ADA compliance and notify City of any compliance issues…"

We found that TSJ assessed the Facilities for ADA compliance. TSJ's assessment found that the Facilities were generally ADA compliant; however, several items need correction. TSJ has not developed a workplan or strategy to correct these ADA noncompliant issues.

We recommend that TSJ:

Recommendation #16

Develop and implement a workplan or strategy to correct ADA noncompliant items and notify the City accordingly. (Priority 3)

Section 26

Section 26 states, "Operator shall avoid all conflicts of interest or the appearance of conflict of interest in performance of this Agreement."

The San Jose Convention & Visitor's Bureau has drafted but not finalized a conflict of interest policy. In our opinion, TSJ needs to develop and implement a procedure that requires TSJ staff to annually sign a form attesting that they are aware of the conflict of interest policy and that they will report any potential conflicts that arise during the course of their work.

We recommend that TSJ:

Recommendation #17

Develop and implement a procedure that requires TSJ staff to annually sign a form attesting that they are aware of the conflict of interest policy and that they will report any potential conflicts that arise during the course of their work. (Priority 2)

CONCLUSION

Based upon our review of the requirements contained in the Management Agreement, we identified 59 specific requirements that TSJ needs to address. Of these 59 requirements, we found that TSJ has implemented 49 and it has partially implemented the remaining 10 requirements. By performing various additional tasks, TSJ, with the assistance of the City, can fully meet the above requirements of the Management Agreement and help ensure future compliance with these requirements.

RECOMMENDATIONS

We recommend that TSJ:

Recommendation #6 **Complete the Operations Manual and obtain formal approval from the City's Contract Administrator. (Priority 3)**

Recommendation #7 **Develop minimum City staffing requirements and a formal training program for City staff responsible for maintaining the Facilities. (Priority 3)**

Recommendation #8 **Develop short- and long-term objectives for the Facilities and report annually to the City. (Priority 3)**

Recommendation #9 **Develop a schedule of planned maintenance for the year and report annually to the City whether the planned maintenance was completed. (Priority 3)**

Recommendation #10 **Meet its 15th of the month reporting due date. (Priority 3)**

Recommendation #11 **Include in its annual report to the City Manager a clear comparison of its actual performance to the Management Agreement Performance Measure Targets. (Priority 3)**

We recommend that the City Administration:

Recommendation #12 **Review and present TSJ's year-end report, along with any analysis, to the City Council. The City Administration's analysis should include TSJ's performance as contrasted with its Management Agreement Performance Measure Targets. (Priority 3)**

We recommend that TSJ:

Recommendation #13 **Work with the City to develop and implement "green" purchasing guidelines and procedures. (Priority 3)**

Recommendation #14 **Work with the Office of Equality Assurance and provide required documentation in order to fully meet the City's Living Wage and Prevailing Wage Policies as required in the Management Agreement. (Priority 3)**

Recommendation #15 **Work with the City to amend the Management Agreement to allow TSJ to store and use any hazardous materials that are needed to operate and maintain the facilities. (Priority 3)**

Recommendation #16 **Develop and implement a workplan to correct ADA noncompliant items and notify the City accordingly. (Priority 3)**

Recommendation #17 **Develop and implement a procedure that requires TSJ staff to annually sign a form attesting that they are aware of the conflict of interest policy and that they will report any potential conflicts that arise during the course of their work. (Priority 2)**

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Administrator's Response

Appendix A

Appendix B

Appendix C

Appendix D

Appendix E