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Report to Mayor and City Council

Tuesday, March 19, 2019

Discussion

SUBJECT:

CONSIDER DIRECTING STAFF TO AUDIT THE CITY OF CARSON'S CASH AND IN-KIND CONTRIBUTIONS TO ALL NON-PROFIT ORGANIZATIONS THAT PARTICIPATE IN CITY SPECIAL EVENTS (CITY COUNCIL)

I. SUMMARY

Prior to the March 5 meeting, Mayor Robles had made a request that Staff undertake an audit of a specific non-profit organization that has been active in organizing or assisting with numerous community events, including all revenues and expenditures.

The Mayor was concerned about the appearance of potential "City" monies being directed to another group without the consent or knowledge of the City.

Staff was uncertain about its authority to order an "audit" of all of the Organization's revenues and expenditures if they do not originate from or relate to the City of Carson, but some audit rights may exist under any arrangement that exists between the parties. Furthermore, all non-profit organizations have certain minimum obligations for reporting and transparency under Federal and state laws, so some information should be readily available on-line, but not to the level of detail requested by the Mayor.

Unlike simpler audits of, say, Cultural Arts Funding recipients, events staged and organized by some larger entities are often highly intertwined with the City's resources. Such an audit could be a lengthy process, and consume significant staff time during a critical time - budget season. Staff believed it was important to place the question of whether to even undertake such an audit before the City Council to make sure that this information is being requested by at least three members of the Council. If the City Council did not approve moving forward, Staff will not undertake the work necessary to produce the required.

The Council considered the staff report and directed Staff to return at this meeting with a broader, more general recommendation to undertake an audit process on all of its non-profit special event partners to the extent they receive cash or in-kind resources from the City of Carson, including the City paying vendors on the non-profit's behalf in lieu of the City making a cash contribution to the organization.

Similarly, Council has requested more detailed information from staff regarding the Carson Community Foundation, which also has received funds from the City and receives regular in-kind support in the form of administrative support (the Director of Community Services is its Executive Director) and legal support (the City Attorney's office provides legal guidance to the Foundation), among other supporting services. While the Foundation Board receives a regular Treasurer's Report each month detail contributions and expenditures, a fuller accounting of the entire cost of running the Foundation would be looked at.

II. RECOMMENDATION

1. DIRECT staff to audit the city of Carson's cash and in-kind contributions to all non-profit organizations that organize or participate in city special events

III. ALTERNATIVES

1. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

Prior to the March 5 meeting, Mayor Robles had made a request that Staff undertake an audit of a specific non-profit organization that has been active in organizing or assisting with numerous community events, including all of its revenues and expenditures. The Mayor was concerned about the appearance of potential "City" monies being directed to another group without the consent or knowledge of the City. The Mayor requested the City demand the following:

1. The source of all funding for the organization's (i.e. donor list);
2. Recipients of any grants and/or funding from the organization (i.e. grantee list);
3. The amount of cash contributions made by the City of Carson to the organization;
4. The dollar value of in-kind contributions made by the City of Carson to the organization;
5. The dollar value of in-kind or donated advertising (including billboard

- advertising) made to the organization for its activities;
6. Any and all contracts or payments made by City for the organization.

Prior to undertaking any review of the Organization, however, Staff want to be certain that it is the desire of the Council (as expressed by a majority) to bring back the information at a future date.

The Council considered the staff report and recommendation at its March 5 meeting and directed Staff to return at this meeting with a broader, more general recommendation to consider an audit process on all of the City's non-profit special event partners to the extent they receive cash or in-kind resources from the City of Carson, including the City paying vendors on the non-profit's behalf in lieu of the City making a cash contribution to the organization.

Staff will initially assess the scope of the assignment and, if it can be tightly defined, may select an outside audit firm to undertake all or part of the work if it can be conducted for a cost under the City Manager's signing authority. Otherwise, City staff will perform the audit.

This general information on the reporting obligation of non-profits and the City's audit rights was also provided to Council on March 5.

Non-Profit Transparency

State and federal laws require non-profits to be transparent and observe both legal and ethical standards of financial transparency. Specific IRS-required legal obligations stem from the tax-exempt status of nonprofits. Ethical obligations are less strict, intended to honor the public trust poured into nonprofits. Most nonprofits are required to publicly disclose current tax forms and other financial information. The IRS refers to these as "required disclosures," including:

- Annual returns for up to three years after the due date, including Forms 990 (or 990-EZ or 990-N), 990-PF and 990-T (filed after August 17, 2006, including extensions)
- Form 990 schedules (except portions of Schedule B), including attachments and supporting documents
- Application for tax-exempt status (Form 1023) and all supporting documents
- The determination letter from the IRS stating the organization's classification as a public charity
- Receipts and acknowledgements for donors
- Details of quid pro quo exchanges, where the donor makes a purchase and can therefore deduct only the amount of the donation above the true cost of the purchase - for example, a donor who buys a \$40 ticket for \$100 is allowed to deduct \$60

As public information, these documents must be made available in a timely fashion to anyone who requests them. The public disclosures required by the IRS set a standard of public accountability for nonprofits that extends beyond basic tax requirements. In the current nonprofit landscape, ethical transparency is also a requirement.

The City has considerable experience with contracting with non-profit organizations and includes fairly significant reporting obligations in its agreements. For example, the City annually allocates Community Development Block Grant Funds to approximately six nonprofit organizations. All of the CDBG Subrecipient Agreements contain the following language (underlining is added for clarification purposes):

1.7 Reports. No later than fifteen (15) days prior to any payment date specified in Section 2.1 of this Agreement, within fifteen (15) days following the termination of this Agreement, and at such other times as the Contract Officer shall request, Subrecipient shall provide the Contract Officer with a written report describing the services provided during the period of time since the last report and accounting for the specific expenditures of any portion of the Contract Sum, if applicable. At the times and in the manner required by law, the Subrecipient shall provide to the City, HUD, the Comptroller General of the United States, and any other individual or entity, or their duly authorized representatives, any and all reports and information required for compliance with the Act and/or the Regulations.

1.8 Financial Reporting. Any Subrecipient receiving or due to receive \$20,000.00 or more from the City during the current fiscal year (July 1, 2017 through June 30, 2018) (the "Fiscal Year") shall provide the City with a financial statement which has been completed within the most recent twelve (12) months and which shows that the Subrecipient's financial records have been kept in accordance with generally accepted accounting standards ("Financial Statement"). This Financial Statement shall be prepared by a recognized accounting firm that is approved by or satisfactory to City's Chief Financial Officer, and shall include a general ledger balance sheet which identifies revenue sources and expenses in sufficient detail to demonstrate compliance with this Agreement and which is balanced with Subrecipient's bank statements. Any organization receiving or due to receive less than \$20,000.00 from the City in the Fiscal Year shall provide the City with a copy of the organization's most recent charitable trust report to the Attorney General, or other financial information satisfactory to the City's Chief Financial Officer. The financial information that must be provided pursuant to this paragraph shall be furnished to the City's Chief Financial Officer not later than January 31st of the current Fiscal Year.

1.9 Audits and Inspections. All Subrecipient records concerning any matter covered by this Agreement shall be made available to the City, HUD, and the Comptroller General of the United States, or any of their authorized representatives, at any time during normal business hours, as often as is deemed necessary by those entities in order to audit, examine, and make excerpts or transcripts of all relevant data.

Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within thirty (30) days after receipt of such reports by the Subrecipient. Failure by the Subrecipient to comply with these audit requirements will constitute a breach of this Agreement and may result in the withholding of future payments thereunder. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Subrecipient audits and 2 CFR 200.

Furthermore, the City also uses a simpler form of agreement for its Cultural Arts funding

recipients, a Contract Services Agreement. Such agreements also contain budgetary approval and control by the City as well as post-activity reporting obligations, shown as follows:

- A. Funds may only be expended in accordance with a budget to be prepared by the Contractor and approved by the Director of Community Services or designee. The budget should be prepared as a line item budget, and shall be broken down by event.

The budget must be in a format prescribed by the City. It shall be detailed and must provide specific sums for such items as salaries, fringe benefits, sets, rentals, musical scores, orchestration, publicity, props, costumes, printing, insurance, transportation, make-up, band and all other expenses.

- B. The Contractor shall submit the approved final budget to the Human Services Department three (3) weeks in advance of the scheduled payment date. No funds will be released to the Contractor until the approved final budget is received by the City.
- C. Invoices and/or official receipts for actual expenditures must be submitted by [Date] to the Human Services Department. In addition, within thirty (30) days after the conclusion of the event, the Contractor must submit a final accounting of actual revenues and expenditures for the event in a format prescribed by the City. Failure to submit the required documentation in a timely manner may result in a delay of payments to the Contractor.
- D. A separate bank account shall be maintained for each City funding source. Proof of compliance with this provision such as bank statements may be required for audit purpose by the Accounting Division.
- E. The City requires that all gross revenues, donations, interest income, etc. must be reported.
- F. All City-funded performances, concerts, or other programming shall be offered at no cost to the participants/attendees.
- G. Contractor shall provide the City by [Date] to the Human Services Department, with an inventory of all equipment, props, uniforms, musical instruments, and costumes purchased with City funds. In addition, within thirty (30) days after the conclusion of each event, the Contractor must submit a final inventory list to the Human Services Division. This list must be attached to the Reports required in Section 2.D. The inventory list shall conform to the format prescribed by the City.
- H. All materials purchased with City funds shall be the property of the City and will be given to the City upon termination of the contract.
- I. At the conclusion of the contract term, any funds not spent or unaccounted for will be returned to the City. Contractor may be subject to an audit by the accounting Division.

V. FISCAL IMPACT

The cost of such audit, if performed by in-house (City) staff, is undetermined.

VI. EXHIBITS

None.

Prepared by: John S. Raymond, Acting City Manager