



AGENDA REPORT

Meeting Date: August 4, 2009

Item Number: F-5

To: Honorable Mayor & City Council

From: Scott Miller, Director of Administrative Services and CFO
Noel Marquis, Assistant Director of Administrative Services - Finance

Subject: APPROVALS RELATED TO VARIOUS CITY PURCHASING AND BUDGET TRANSACTIONS AS DESCRIBED HEREIN

Attachments: 1. Agreements (1)

Item A. APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND DIEGO CEVALLOS D.B.A. BEVERLY HILLS AQUATICS FOR SWIM INSTRUCTION AND PROGRAMS THROUGH THE CITY'S COMMUNITY SERVICES DEPARTMENT; AND,

APPROVAL OF A BLANKET PURCHASE ORDER IN AN AMOUNT NOT-TO-EXCEED \$140,000

RECOMMENDATION

Staff recommends that the City Council approve the agreement and blanket purchase order in the amount not-to-exceed \$140,000 with Diego Cevallos d.b.a. Beverly Hills Aquatics for swim instruction and programs through the City's Community Services Department.

INTRODUCTION

Beverly Hills Aquatics has been providing the City of Beverly Hills with quality aquatic programming for the past three years. The program has grown tremendously due to the excellent teaching staff, class instruction content, and level of improvement of the skills shown by many who participate. Under the tutelage of Diego Cevallos, registration for the classes has increased dramatically as evidenced by the popular enrollment in a number of weekend classes and the addition of a summer Swim Camp.

DISCUSSION

For the fiscal year 2009/2010 staff is estimating costs of the program to be \$140,000 and is requesting a blanket purchase order in that amount.

FISCAL IMPACT

This program is self-supporting where revenues are shared between the vendor (70%) and the City (30%).

Item B. APPROVAL OF A BLANKET PURCHASE ORDER TO MONTAGE BEVERLY HILLS IN A TOTAL NOT-TO-EXCEED AMOUNT OF \$135,070 FOR THE REIMBURSEMENT OF GARDEN MAINTENANCE

RECOMMENDATION

Staff recommends that the City Council approve a blanket purchase order to Montage Beverly Hills in a total not-to-exceed amount of \$135,070 for the reimbursement of garden maintenance per the terms of the agreement between the City and the Hotel.

INTRODUCTION

In November 2006, Council approved the Reciprocal Easements and Operations agreement between the City and Beverly Hills Luxury Hotel LLC which states that the City will reimburse the Montage Beverly Hills for maintenance of the City owned Beverly Canon Gardens.

DISCUSSION

An annual operating cost that the City would otherwise commit to in providing care and maintenance to the Beverly Canon Gardens was considered and was agreed to be paid by the City to the Montage Beverly Hills for their assumption of all expenses and oversight of the facility's daily maintenance. The fee for fiscal year 2009/2010 is \$10,379.61 per month. Each year the monthly fee is adjusted by the raise in the CPI (Consumer Price Index). The requested not-to-exceed amount of \$135,070 includes contingency.

FISCAL IMPACT

Funds were budgeted and are available in the Community Services Department's operating budget for this purpose.


Noel Marquis

Finance Approval


Scott G. Miller

Approved By

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND DIEGO CEVALLOS D.B.A. BEVERLY HILLS
AQUATICS FOR SWIM INSTRUCTION AND PROGRAMS
THROUGH THE CITY'S COMMUNITY SERVICES
DEPARTMENT

NAME OF CONTRACTOR: Diego Cevallos d.b.a Beverly Hills Aquatics

RESPONSIBLE PRINCIPAL
OF CONTRACTOR: Diego Cevallos

CONTRACTOR'S ADDRESS: 3428 12th Avenue
Los Angeles, California 90018

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: Steve Zoet, Assistant Director of
Community Services/Recreation and Parks

COMMENCEMENT DATE: July 1, 2009

TERMINATION DATE: August 31, 2012 unless terminated sooner
pursuant to Section 11 of the Agreement

CONSIDERATION: Not to exceed \$140,000 per year, as more
fully set forth in Section 3 of the Agreement

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND DIEGO CEVALLOS D.B.A. BEVERLY HILLS
AQUATICS FOR SWIM INSTRUCTION AND PROGRAMS
THROUGH THE CITY'S COMMUNITY SERVICES
DEPARTMENT

THIS AGREEMENT is made by and between the City of Beverly Hills, a municipal corporation (hereinafter called "CITY"), and Diego Cevallos, an individual (hereinafter called "CONTRACTOR").

RECITALS

A. CITY desires to have certain services provided (the "services") as set forth in Exhibit A, attached hereto and incorporated herein.

B. CONTRACTOR represents that it is qualified and able to perform the services.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONTRACTOR's Services.

(a) CONTRACTOR shall perform the services as described in Exhibit A to the full satisfaction of CITY.

(b) CONTRACTOR shall acquire and maintain at its sole cost and expense such equipment as CONTRACTOR requires to conduct the services required by this Agreement.

Section 2. Time of Performance. CONTRACTOR shall perform the services on or by the Termination Date set forth above.

Section 3. Compensation. CITY shall pay CONTRACTOR at the rate of seventy percent (70%) of an amount to be based on the CITY resident rate multiplied by the number of registrants of the camp and classes provided by CONTRACTOR for CITY under this Agreement. CITY shall make two payments to CONTRACTOR upon receipt of an itemized statement on a form acceptable to CITY for CONTRACTOR 's services performed. The first payment shall be made midway through each session and the second payment shall be made at the end of each session. CITY shall pay CONTRACTOR the amount of such billing within thirty (30) days of receipt of same.

Section 4. Independent Contractor. CONTRACTOR is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth. CONTRACTOR shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 5. Assignment. This Agreement may not be assigned in whole or in part by either party, without the prior written consent of CITY.

Section 6. Responsible Principal.

(a) CONTRACTOR's Responsible Principal set forth above shall be principally responsible for CONTRACTOR's obligations under this Agreement and shall serve as principal liaison between CITY and CONTRACTOR. Designation of another Responsible Principal by CONTRACTOR shall not be made without the prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 7. Personnel.

(a) CONTRACTOR represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All personnel engaged in the work shall be qualified to perform such services.

(b) (b) Prior to CONTRACTOR performing services under this Agreement, CONTRACTOR shall be fingerprinted by the CITY Police Department in order to conduct a State Department of Justice ("DOJ") background check. CITY shall waive the administrative cost of fingerprinting and shall pay the DOJ fees. If CONTRACTOR has been convicted of a misdemeanor or felony involving moral turpitude according to the DOJ report, CITY may terminate this Agreement immediately.

Section 8. Interests of CONTRACTOR. CONTRACTOR affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONTRACTOR.

Section 9. Insurance.

(a) CONTRACTOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive General Liability Insurance, including liquor liability, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONTRACTOR.

(b) CONTRACTOR shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of Comprehensive Vehicle Liability insurance covering personal injury and property damage, with minimum limits in accordance with State law, covering any vehicle utilized by Contractor in performing the services required by this Agreement.

(c) CONTRACTOR agrees to maintain in force at all times during the performance of work under this Agreement workers' compensation and employer's liability insurance as required by law. If CONTRACTOR represents that it is not required by law to maintain workers' compensation insurance coverage and shall sign an affidavit to this effect, attached hereto and incorporated herein as Exhibit B.

(d) CONTRACTOR shall require each of its sub-consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(e) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+,VII in the latest edition of Best's Insurance Guide.

(f) CONTRACTOR agrees that if it does not keep the aforesaid insurance in full force and effect CITY may immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONTRACTOR's expense, the premium thereon.

(g) At all times during the term of this Agreement, CONTRACTOR shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONTRACTOR shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The policies of insurance required by this Agreement shall contain an endorsement naming the CITY and the Beverly Hills Unified School District ("the DISTRICT") as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(h) The insurance provided by CONTRACTOR shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(i) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONTRACTOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONTRACTOR shall procure a bond guaranteeing payment of losses and expenses.

Section 10. Indemnification. CONTRACTOR agrees to indemnify, hold harmless and defend CITY, DISTRICT, City Council and each member thereof, and every officer, employee and agent of CITY or DISTRICT, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONTRACTOR or any person employed by CONTRACTOR in the performance of this Agreement.

Section 11. Termination.

(a) CITY may cancel this Agreement at any time upon five (5) days written notice to CONTRACTOR. CONTRACTOR agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONTRACTOR, CONTRACTOR shall be paid full compensation for all services performed by CONTRACTOR, in an amount to be determined as follows: For work done in accordance with all of the terms and provisions of this Agreement, CONTRACTOR shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation based on the rates set forth in Exhibit A, provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid CONTRACTOR for the full performance of the services required by this Agreement.

Section 12. Notice. Any notice required to be given to CONTRACTOR shall be deemed duly and properly given upon delivery, if sent to CONTRACTOR postage prepaid to the CONTRACTOR's address set forth above or personally delivered to CONTRACTOR at such address or other address specified to CITY in writing by CONTRACTOR.

Any notice required to be given to CITY shall be deemed duly and properly given upon delivery, if sent to CITY postage prepaid to CITY's address set forth above or personally delivered to CITY at such address or other address specified to CONTRACTOR in writing by CITY.

Section 13. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONTRACTOR, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONTRACTOR.

Section 14. Attorney's Fees. In the event that CITY or CONTRACTOR commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees.

Section 15. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 16. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the _____ day of _____, 200____, at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

NANCY KRASNE
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

CONTRACTOR: DIEGO CEVALLOS
d.b.a. BEVERLY HILLS AQUATICS



DIEGO CEVALLOS
Owner

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:



RODERICK J. WOOD, CCM
City Manager



STEPHEN M. MILLER
Director of Community Services



KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF SERVICES

CONTRACTOR shall provide all aquatic programs and instruction for CITY's Community Services Department programs on DISTRICT property in accordance with a schedule approved by CITY in writing. The schedule is subject to change by CITY, which may reschedule or cancel any or all classes at its discretion.

EXHIBIT A

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EXHIBIT B

CITY OF BEVERLY HILLS
WORKER'S COMPENSATION STATEMENT

FY 2009-2010
July 1, 2009 TO JUNE 30, 2010

(For Vendor not Subject to California Worker's Compensation Laws)

I, Diego Cevallos, certify that in the performance of my agreement with the City of Beverly Hills, shall not employ any person in any manner so as to become subject to the Worker's Compensation Laws of California.

I agree that should I become subject to the Worker's Compensation Laws of California during the term of the agreement, I will notify the City of Beverly Hills and I will comply with those laws immediately.

VENDOR USE ONLY:

<u>Diego Cevallos / DBA Beverly Hills Aquatics</u> (NAME AS IT APPEARS ON CONTRACT)	_____
<u>Diego Cevallos</u> (SIGNATORY'S PRINTED NAME)	_____
<u>[Signature]</u> (SIGNATURE)	_____

	VENDOR NUMBER
	(TELEPHONE NUMBER)
	(DATE SIGNED)

REVIEWED/APPROVED BY:

[Signature]
Risk Management Division

7/16/09
Date Signed

Revised 09/14/07 T-Workers waiver 07-08



EXHIBIT C

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

- A.
- B.
- C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	<u>LIMITS</u> P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION					

It is hereby understood and agreed that the **City of Beverly Hills**, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the **City of Beverly Hills** and the named insured is covered under the policy: Contractor agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of contractor's officers, employees, agents or others employed by Contractor while engaged by Contractor in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the **City of Beverly Hills**.

In the event of cancellation or material change in the above coverage, the company will give **30 days** written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____
 Authorized Insurance Representative

AGENCY: _____

TITLE: _____
 ADDRESS: _____
