



AGENDA REPORT

Meeting Date: May 20, 2008
Item Number: F-11
To: Honorable Mayor & City Council
From: Alison Maxwell, Director Economic Development and Marketing
Ara Maloyan, Deputy City Engineer
Subject: AMENDMENT NO. 3 TO AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND UTOPIA ENTERTAINMENT, INC. FOR HOLIDAY PROGRAM MANAGEMENT IN THE AMOUNT OF \$24,256 FOR SITE SURVEY WORK.
Attachments: 1. Amendment No. 3

RECOMMENDATION

Staff recommends that City Council approve amendment No. 3 to an agreement between the City of Beverly Hills and Utopia Entertainment, Inc. for holiday program management in the amount of \$24,256 for site survey engineering work.

INTRODUCTION

The City Council is requested to approve Amendment No. 3 between the City and Utopia Entertainment, Inc. for holiday program management, more specifically for a change order to a) include necessary site survey work required to complete the engineering, design and placement of a pole to support holiday decorations (Santa Pole), at southwest corner of Wilshire Boulevard/Beverly Drive and b) site surveys for the existing holiday decoration poles along Wilshire Boulevard.

DISCUSSION

In July 2007, the City Council approved the engagement of Utopia Entertainment, Inc. to provide overall management, design, and implementation of all elements of the City's holiday program including management of subcontractors for decorations and entertainment, in the amount of \$602, 500. In October 2007 the City Council approved amendment No. 1 to the agreement in the amount of \$230,825 for the design, development, implementation and overall management of the Holiday Lighting

Ceremony. This was following the cancellation of sponsorship and management of the Lighting Ceremony by Baccarat.

As Council will recall, in 2007 multi and various structural engineering issues led to the aerial Santa and Reindeer display being temporarily pastured on the ground in Beverly Gardens Park. Council directed staff to resolve the structural issues in readiness for the 2008 holiday program so that Santa may again "fly" across Wilshire Boulevard at the Beverly Drive intersection.

Early in 2007 engineering staff elected to utilize the management contract with Utopia Entertainment to oversee the engineering subcontracting for the design and construction of the Santa pole.

Amendment No. 2 with Utopia Entertainment was executed in the amount of \$45,500 under the City Manager's signature authority. Amendment No. 2 included \$32,500 for structural engineering design and development of construction bid documents; the remainder to be utilized for forward planning and design for the 2008 holiday season.

Amendment No. 3 in the amount of \$24,265 is required to address site survey work that is necessary for a) the construction and location of the new pole – including an underground survey for utilities and other potential obstructions b) locating the existing Montage end anchors and c) determining as-built locations and condition of the existing decoration poles along Wilshire Boulevard.

FISCAL IMPACT

Funds for Amendment No. 3 in the amount of \$24,265.00 are budgeted in account number 35060195 -Infrastructure Capital Fund.

Scott G. Miller, Director of
Administrative Services and Chief
Financial Officer



Alison Maxwell, Director of Economic
Development and Marketing



Ara Maloyan, Deputy City Engineer



AMENDMENT NO. 3 TO AN AGREEMENT BETWEEN THE
CITY OF BEVERLY HILLS AND UTOPIA
ENTERTAINMENT, INC. FOR HOLIDAY PROGRAM
MANAGEMENT

NAME OF CONTRACTOR: Utopia Entertainment, Inc.

RESPONSIBLE PRINCIPAL
OF CONTRACTOR: Norman Kahn, Chief Executive Officer

CONTRACTOR'S ADDRESS: 23404 W. Lyons Avenue, Suite 437
Newhall, CA 91321-2669

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: Alison Maxwell, Director of
Economic Development and Marketing

COMMENCEMENT DATE: Upon Notice to Proceed

TERMINATION DATE: June 30, 2008

CONSIDERATION: Not to exceed \$903,090.00

AMENDMENT NO. 3 TO AN AGREEMENT BETWEEN THE
CITY OF BEVERLY HILLS AND UTOPIA
ENTERTAINMENT, INC. FOR HOLIDAY PROGRAM
MANAGEMENT

This Amendment No. 3 is to that certain Agreement between the City of Beverly Hills (hereinafter called "CITY"), and Utopia Entertainment, Inc. (hereinafter called "CONTRACTOR") dated June 19, 2007 and identified as Contract No. 225-07, as amended by Amendment No. 1, dated October 10, 2007 and identified as Contract No. 412-07, and further amended by Amendment No. 2, dated April 9, 2008 and identified as Contract No. 107-08, for Holiday Program management services.

RECITALS

A. CITY entered into a written agreement with CONTRACTOR for the CITY's Holiday Program management services, which has been previously amended.

B. CITY desires to amend the Agreement to modify the Scope of Services to include additional civil engineering design and increase the Consideration to include the cost of these additional services.

NOW, THEREFORE, the parties agree as follows:

Section 1. The Consideration shall be amended as set forth above.

Section 2. Sections 14 through 23 of the Agreement shall be renumbered Sections 15 through 24, respectively.

Section 3. A new Section 14, entitled "Limit on Liability," shall be added to read as follows::

"Section 14. Limit on Liability. The liability of CONTRACTOR for all damages, injury, and liability incurred by CITY in connection with the site survey of the holiday decoration poles ("survey services") required by this Agreement shall not exceed Two Hundred Thousand Dollars (\$200,000). This limitation on liability does not apply to any subcontractor(s) hired by CONTRACTOR to perform the design services."

Section 4. Exhibit A-1, Scope of Additional Services, shall be amended as attached hereto and incorporated herein by this reference.

Section 5. Exhibit C, Compensation, shall be amended as attached hereto and incorporated herein by this reference.

Section 6. Except as specifically amended by Section 2 of Amendment No. 1 and this Amendment No. 3, the Agreement shall remain in full force and effect.

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

CITY OF BEVERLY HILLS

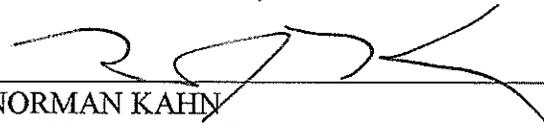
BARRY BRUCKER
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

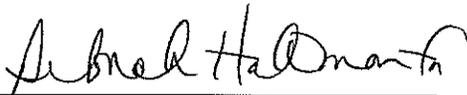
[Signatures continue]

CONTRACTOR: UTOPIA
ENTERTAINMENT, INC.



NORMAN KAHN
Chief Executive Officer and President

APPROVED AS TO FORM:



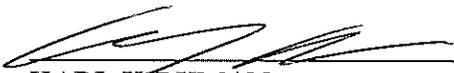
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager



ALISON MAXWELL
Director of Economic Development and
Marketing



KARL KIRKMAN
Risk Manager

EXHIBIT A-1

SCOPE OF ADDITIONAL SERVICES

CONTRACTOR shall provide the following engineering and design services for the 2008 Holiday Season.

Santa Pole Engineering	\$30,000.00
Santa Pole Engineering UEI Management	\$ 2,500.00
Art Direction (revised graphics, signage and new wrap designs)	<u>\$ 5,000.00</u>
TOTAL ESTIMATED COST:	\$37,500.00
Minus \$27,000 remaining in 2007 Contract/PO	<u>\$27,000.00</u>
TOTAL ADDITIONAL COST:	\$10,500.00

NOTES, ASSUMPTIONS AND EXCLUSIONS:

1. The engineering costs are estimated to be \$27,280.00 plus customary reimbursed fees and any approved additional expenses. It's estimated at this time that the total fees shall be \$30,000.00. Utopia shall bill only actual costs for these services.
2. Art Direction fees are for: new and/or revised sidewalk graphic art, entertainment signage art, parking or city structure bow/wrap designs and any other design elements that may be needed.
3. The payment schedule shall be 50% due upon approval of this proposal and the remaining 50% upon completion of the Engineering Services.

CONTRACTOR shall provide additional design services for the 2009 Beverly Hills Holiday Season. as follows:

Conceptual Plan: CONTRACTOR shall provide a conceptual design package to include written narrative of theme(s) and art/sketches that depict the planned overall holiday concept and supporting design elements. \$25,000.00

Night Show Experience: CONTRACTOR shall provide conceptual design plan for the evening night show to include written narrative, conceptual artwork and preliminary technical support data. (Phase one of two phases.) \$10,000.00

TOTAL COST \$35,000.00

NOTES, ASSUMPTIONS AND EXCLUSIONS:

1. Services are to commence May 5, 2008 and shall be complete on July 9, 2008.
2. Deliverables: Written Narrative(s) Due June 2. Concept images and art *Due June 23*. Prelim Technical Specifications *Due June 30*. Entire package *Due July 9*.
3. The payment schedule shall be 50% upon start up (May 5, 2008) and 50% upon completion of the project (July 9, 2008).

SITE SURVEY.

CONTRACTOR shall provide site survey engineering services for the 2008 Holiday Season, as follows:

- hire a qualified consultant to undertake site survey and analysis related to the positioning of the proposed Santa Pole and the other nine decoration poles on Wilshire Boulevard.
- Provide drawings, analyses and calculations detailing the underground facilities at the SW corner of Beverly Drive and Wilshire Boulevard in Beverly Hills, California. The intent is to sink a pole footing to support a 40ft. pole that will support an 850 lbs. Santa piece on aircraft cable. The surveyed items include, but are not limited to: electrical, water, sewage, drainage, footings, road/sidewalk beds. CONTRACTOR's final drawings and documents shall be submitted by CITY to Construction Vendor for fabrication and installation.
- Research of old drawings and a ground survey.

- Make at least one (1) site visit to inspect the area before any work is to commence. CITY and CONTRACTOR shall be present at this visit. CONTRACTOR shall assist, if necessary, with coordination of these efforts.
- Make recommendations as to the best location for the Santa Support Pole.
- Be available for meetings with the Engineering & Construction contractor to discuss drawings and details.
- Be available for emails and questions during the fabrication and installation of the Santa Support Pole, if necessary.

SITE SURVEY COST:

Psomas Survey and Mapping Services	\$18,250.00
B& J Conduit Design CCTV/Power	\$ 2,000.00
Survey Engineering UEI Management	\$ 850.00
Contract Administration, Overhead, Profit @15%	<u>\$ 3,165.00</u>
TOTAL SITE SURVEY	\$24,265.00

EXHIBIT C

COMPENSATION

A. Management Fee. For satisfactory performance of the services in this Agreement (Project Management, Artistic Management, Technical Management and Contract Administration of all Vendors listed in the General Specifications), CITY shall pay CONTRACTOR a fixed fee of Fifty Thousand Dollars (\$50,000).

B. Payment of Vendors. In addition, CONTRACTOR shall be provided an additional amount of compensation to be solely utilized to pay third party vendors (i.e. Program Vendors) to provide the Holiday Elements. This amount shall include compensation for repairs directed by the City Manager or his designee and caused by damage to the Holiday Elements due to vandalism or other events outside the control of CONTRACTOR.

Attachment 1 to this Exhibit is an estimated budget for the Program, attached hereto and incorporated herein. Final subcontract amounts shall be negotiated by CONTRACTOR and approved by CITY in accordance with the terms of the Agreement. Said compensation shall not exceed Seven Hundred and Seventy-three Thousand Three Hundred Twenty-five Dollars (\$773,325) and shall be based on the bids provided to CITY from CONTRACTOR from the Program Vendors. Accordingly, the total amount of compensation for the satisfactory performance of all services required by this Agreement shall not exceed Eight Hundred and Thirty-three Thousand Three Hundred Twenty-five Dollars (\$833,325).

Summary of Fees and Costs

Item	Amount
Program Costs (includes Holiday Lighting Ceremony)	\$ 773,325
Management Fee	\$ 50,000
Sales Tax (Estimated)	\$ 10,000
Total (Not to Exceed)	\$ 833,325

Compensation for the services required by Exhibit A-1 are set forth in Exhibit A-1