AGENDA REPORT

Meeting Date: August 18, 2009

Item Number: F-11

To: Honorable Mayor & City Council

From: Cheryl Friedling, Deputy City Manager

Subject: AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND THE FERGUSON GROUP, LLC FOR FEDERAL REGULATORY REPRESENTATION AND LEGISLATIVE SERVICES; AND

AUTHORIZATION OF A PURCHASE ORDER IN THE AMOUNT OF $75,000 TO FERGUSON GROUP LLC FOR THESE SERVICES

Attachments:
1. Agreement

RECOMMENDATION

Staff recommends adoption of the contract with The Ferguson Group LLC to provide federal legislative advocacy services in Washington, D.C.

INTRODUCTION

The City has successfully utilized the services of a federal lobbying firm to seek federal funding and achieve legislative objectives for the past three years. The City's incumbent firm declined to re-bid this opportunity as a result of budget decreases for this service.

A selection panel composed of City staff and Councilmembers of the Legislative Committee interviewed finalist firms that submitted qualifications in response to the City's RFP. The Ferguson Group LLC was selected as the most highly-qualified firm as a result of that process.

The Ferguson Group is a bipartisan professional services firm founded in 1982. The firm specializes in securing federal appropriations, policy and regulatory changes for local government clients, and has been ranked among the 'Top 20' non-law, lobbying firms in Washington, D.C.

DISCUSSION

Ongoing representation of the City's interests in Washington, D.C. will provide the City with representation before the federal government, the U.S. Congress, regulatory agencies and national associations.

FISCAL IMPACT

The contract amount of $75,000 annually has been included in the annual budget approved for Fiscal Year 2009-10.

Funds for this project are provided as follows:

Dept.	Fund	Program -Account	Funding Source	Amount
01	48	4800102-73122	General Fund	$75,000

Scott G. Miller
Finance Approval

Cheryl Friedling
Approved By

Attachment 1

Agreement

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND THE FERGUSON GROUP, LLC FOR FEDERAL REGULATORY REPRESENTATION AND LEGISLATIVE SERVICES

NAME OF CONSULTANT:	The Ferguson Group, LLC
RESPONSIBLE PRINCIPAL OF CONSULTANT:	William Ferguson Jr.
CONSULTANT'S ADDRESS:	1130 Connecticut Ave., NW Washington, DC 20036 Attention: David Grenham
CITY'S ADDRESS:	City of Beverly Hills 455 N. Rexford Drive Beverly Hills, CA 90210 Attention: Cheryl Friedling, Deputy City Manager
COMMENCEMENT DATE:	August 19, 2009
TERMINATION DATE:	June 30, 2010 unless extended pursuant to Section 2 of the Agreement
CONSIDERATION:	Not to exceed $75,000 per year, based on the monthly rate set forth in Exhibit B-1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND THE FERGUSON GROUP, LLC FOR FEDERAL REGULATORY REPRESENTATION AND LEGISLATIVE SERVICES

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and The Ferguson Group, LLC (hereinafter called "CONSULTANT").

RECITALS

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

B. CONSULTANT represents that it is qualified and able to perform the Scope of Work.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Scope of Work. CONSULTANT shall perform the Scope of Work described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. CITY shall have the right to order, in writing, changes in the Scope of Work. Any changes in the Scope of Work by CONSULTANT must be made in writing and approved by both parties. The cost of any change in the Scope of Work must be agreed to by both parties in writing.

Section 2. Time of Performance. CONSULTANT shall commence its services under this Agreement upon Commencement Date or upon a receipt of a written notice to proceed from CITY. CONSULTANT shall complete the performance of the Scope of Work by the Termination Date set forth above and/or in conformance with the project timeline established by the City Manager or his designee in writing. The City Manager or his designee may extend the time of performance in writing for two additional one-year terms or such other term not to exceed two years from the date of termination pursuant to the same terms and conditions of this Agreement.

Section 3. Compensation.

(a) Compensation CITY agrees to compensate CONSULTANT for the services provided under this Agreement, and CONSULTANT agrees to accept in full satisfaction for such services, a sum not to exceed the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein, based on the monthly rate set forth in Exhibit B.

(b) Expenses CONSULTANT shall be entitled to reimbursement only for those expenses expressly set forth in Exhibit B. Any expenses incurred by CONSULTANT which are not expressly authorized by this Agreement will not be reimbursed by CITY.

(c) Additional Services. CITY may from time to time require CONSULTANT to perform additional services not included in the Scope of Work. Such requests for additional services shall be made by CITY in writing and agreed upon by both parties in writing.

Section 4. Method of Payment. CITY shall pay CONSULTANT said Consideration in accordance with the method and schedule of payment set forth in Exhibit B.

Section 5. Independent Contractor. CONSULTANT 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 CONSULTANT or any of CONSULTANT's employees, except as herein set forth. CONSULTANT 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 6. Assignment. This Agreement shall not be assigned in whole or in part, by CONSULTANT without the prior written approval of CITY. Any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s)

(a) CONSULTANT's Responsible Principal set forth above shall be principally responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible by CONSULTANT shall not be made without 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 8. Personnel. CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 9. Permits and Licenses. CONSULTANT shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 10. Interests of CONSULTANT. CONSULTANT 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 Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT.

Section 11. Insurance.

(a) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, 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 CONSULTANT.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars ($1,000,000)

per occurrence combined single limit, covering any vehicle utilized by CONSULTANT in performing the Scope of Work required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(b) CONSULTANT shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or polices 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.

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

(e) At all times during the term of this Agreement, CONSULTANT 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. CONSULTANT shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance shall contain an endorsement naming CITY 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.

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

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

Section 12. Indemnification. CONSULTANT agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY, 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 CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 13. Termination.

(a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to CONSULTANT. CONSULTANT 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 CONSULTANT, CONSULTANT shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services required by this Agreement. CONSULTANT shall have no other claim against CITY by reason of such termination, including any claim for compensation.

Section 14. CITY's Responsibility. CITY shall provide CONSULTANT with all pertinent data, documents, and other requested information as is available for the proper performance of CONSULTANT's Scope of Work.

Section 15. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by CONSULTANT and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 16. Records and Inspections. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three (3) years. CITY shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

Section 17. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

Section 18. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, 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 CONSULTANT.

Section 19. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 20. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 21. CITY Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

Section 22. 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 _____ 2009, 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

CONSULTANT:
THE FERGUSON GROUP, LLC

W. ROGER GWINN
President

APPROVED AS TO FORM

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

_____
RODERICK J. WOOD, CCM
Interim City Manager

CHERYL FRIEDLING
Deputy City Manager

KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF WORK

CONSULTANT shall perform the following services:

1. Support to lobby aggressively an average of four to five major priority issue areas at any given time, along with four to five lesser priorities as determined by CITY. Support would include proactively searching for potential legislative vehicles relating to those topics and affecting the outcome of those proposals.

2. Research and provide information to CITY on (a) Federal laws or proposed legislation, (b) legislative hearings, reports and testimony (c) Federal regulations/policies, (d) funding opportunities for proposed CITY projects, (e) technical memoranda or reports impacting CITY operations.

3. Take the lead in providing funding, grantsmanship or other program opportunities to enhance CITY's ability to receive Federal funding.

4. Assist in establishing relations between Councilmembers and legislative persons, including Chairs and consultants of key committees and other important decision makers.

5. Develop appropriate partnering relationships with like-minded organizations or advocacy groups which share CITY's positions on key issues.

6. Identify potential future legislative issues or opportunities that may interest CITY, and helping to position CITY to benefit from new laws, programs or funding opportunities.

7. Provide CITY with copies of bills (introduced or amended) or proposals pertaining to issues of concern/interest to CITY, particularly those affecting or relating to CITY's Legislative Program.

8. Track said legislation, and providing CITY advance notice of hearings or critical actions relating to those bills or issues.

9. Provide "value added" services such as webinars, granstmanship symposia, training resources, etc.

10. Prepare briefing materials; providing briefings and/or meeting space and arranging appointments with legislators and agency officials for Councilmembers and CITY staff.

11. Provide monthly reports of activities pursued or accomplished on behalf of CITY.

EXHIBIT B

SCHEDULE OF PAYMENT AND RATES

Rates: The fee for the performance of the Scope of Work shall be $6,000 per month, payable in ten (10) monthly installments for the months of September 2009 through June 2010. August 2009 shall be a payment prorated to relfect a start date of August 19. This monthly fee includes reasonable expenses for a total not to exceed Seventy-Five Thousand Dollars ($75,000) per year.

Expenses reasonably incurred in the performance of this Agreement shall be billed monthly and shall include local travel, long-distance telephone charges, faxes, document reproduction, overnight delivery and courier services. Out of town travel, meals and hotel shall be reimbursed with prior written approval of CITY.

Schedule of Payment : CONSULTANT shall submit an itemized statement to CITY for its services performed in the prior month, which shall include documentation setting forth in detail a description of the services rendered. CITY shall pay CONSULTANT the amount of such billing within thirty (30) days of receipt of same.

EXHIBIT C

CERTIFICATE OF INSURANCE

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

NAMED INSURED

ADDRESS

COMPANIES AFFORDING COVERAGE
A.
B.
C.

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	LIMITS P.D.	AGGREGATE
	☐ AUTOMOBILE LIABILITY ☐ GENERAL LIABILITY ☐ PRODUCTS/COMPLETED OPERATIONS ☐ BLANKET CONTRACTUAL ☐ CONSULTANT'S PROTECTIVE ☐ PERSONAL INJURY ☐ EXCESS LIABILITY ☐ 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

TITLE: _____

AGENCY: _____ ADDRESS: _____

_____ _____

RM02.DOC REVISED 10/14/96.