



AGENDA REPORT

Meeting Date: June 3, 2010
Item Number: F-11
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: Agreement (1)

Item A. APPROVAL OF THE AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND CHERYL BAYER BRADY D.B.A CREATIVE SPACE LLC FOR CHILDREN'S CRAFT AND MUSIC INSTRUCTION AND SUMMER CAMP AT A BEVERLY HILLS UNIFIED SCHOOL THROUGH THE DEPARTMENT OF COMMUNITY SERVICES; AND

APPROVAL OF A BLANKET PURCHASE ORDER FOR A NOT-TO-EXCEED AMOUNT OF \$350,000

RECOMMENDATION

Staff recommends that the City Council approve the agreement and purchase order between the City Of Beverly Hills and Cheryl Bayer Brady D.B.A Creative Space LLC for children's craft and music instruction and summer camp at a Beverly Hills Unified School through the Department Of Community Services for a not-to-exceed amount of \$350,000.

INTRODUCTION

Cheryl Bayer Brady dba Creative Space LLC has provided art and music instruction for the City for the past several years. For the second year, they return for a summer camp for children ages 3-15 years of age.

Last year's Creative Space Camp, LLC was the most successful camp Beverly Hills has conducted. With over 303 participants, they brought in revenue of over \$333,000 and netting the City close to \$124,000 in our percentage share. Registration for this year's

summer camp has again been positive with over \$100,000 in revenue collected thus far. As other camps struggled last summer to maintain enrollment numbers due to the economic downturn, Creative Space Camp, LLC surpassed the City's expectations in revenue, attracting residents to their camp that had not previously been enrolled in other Department programs, as well as providing an enriching camp experience to youth in the older age group that generally have outgrown most other camp-type offerings.

DISCUSSION

Due to the Creative Space Camp overwhelming success, the scope of services in their agreement is slightly different than other summer camp vendors as they have an opportunity to receive an eighty percent (80%) revenue share if over 200 participants are registered by the conclusion of the summer.

The contract consideration is not to exceed \$350,000 in the rate of 70% of the registration fees (up to 200 registrants) and 80% of registration fees (210 and above registrants) as described in Section 3 of the Agreement.

FISCAL IMPACT

City shall pay vendor 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 classes.


Noel Marquis
Finance Approval


Scott G. Miller
Approved By

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND CHERYL BAYER BRADY D.B.A. CREATIVE SPACE,
LLC, FOR CHILDREN'S CRAFT AND MUSIC INSTRUCTION
AND SUMMER CAMP AT A BEVERLY HILLS UNIFIED
SCHOOL THROUGH THE DEPARTMENT OF COMMUNITY
SERVICES

NAME OF VENDOR: Cheryl Bayer Brady d.b.a. Creative
Space, LLC

VENDOR'S ADDRESS: 11916 W. Pico Boulevard
Los Angeles, California 90064

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: Stephen M. Miller
Director of Community Services

COMMENCEMENT DATE: June 18, 2010

TERMINATION DATE: June 30, 2011

CONSIDERATION: Not to exceed \$350,000 at the rate of 70% of
the registration fees (up to 200 registrants) as
described in Section 3; 80% of registration
fees (201 and above registrants) as further
described in Section 3

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND CHERYL BAYER BRADY D.B.A. CREATIVE SPACE,
LLC, FOR CHILDREN'S CRAFT AND MUSIC INSTRUCTION
AND SUMMER CAMP AT A BEVERLY HILLS UNIFIED
SCHOOL THROUGH THE DEPARTMENT OF COMMUNITY
SERVICES

THIS AGREEMENT is made as of the Commencement Date set forth above, by and between the City of Beverly Hills, a municipal corporation (hereinafter called "CITY"), and Cheryl Bayer Brady d.b.a. Creative Space, LLC, an individual (hereinafter called "VENDOR").

RECITALS

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

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

NOW, THEREFORE, the parties agree as follows:

Section 1. VENDOR's Services.

(a) VENDOR shall perform the services as described in Exhibit A, attached hereto and incorporated herein, to the full satisfaction of CITY.

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

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

Section 3. Compensation.

(a) After school classes. CITY shall pay VENDOR 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 after-school classes provided by VENDOR for CITY under this Agreement. CITY shall make two payments to VENDOR upon receipt of an itemized statement on a form acceptable to CITY for VENDOR'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 VENDOR the amount of such undisputed billing within thirty (30) days of receipt of same.

(b) Summer Camp.

1) If there are under 200 registrants at the conclusion of VENDOR's 2010 summer camp programs in CITY, CITY shall pay VENDOR 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 summer camp provided by VENDOR for CITY under this Agreement. If there are 200 or more registrants at the conclusion of VENDOR's 2010 summer camp programs in CITY, CITY shall pay VENDOR eighty percent (80%) of an amount to be based on the CITY resident rate multiplied by the number of registrants of the summer camp. CITY shall make up to four payments to VENDOR upon receipt of an itemized statement on a form acceptable to CITY for VENDOR's services performed. CITY shall pay VENDOR the amount of such undisputed billing within thirty (30) days of receipt of same. Two payments in the amount of \$85,000 each shall be made if VENDOR summer camp program revenues ("program revenues") are more than \$121,428 for the June 14, 2010 payment, and more than \$242, 856 for the July 5, 2010 payment.

2) If program revenues are less than \$121,428 for each of those payments, CITY shall make two payments to VENDOR in the amount of 70% of the City resident rate program revenues. Program revenues are determined as of May 17, 2010 for the first June 14, 2010 payment, and June 21, 2010 for the second July 5, 2010 payment. CITY shall pay VENDOR a third payment for registrations received after June 21, 2010 through July 26, 2010 on August 6, 2010. CITY shall pay VENDOR the balance owed if additional registrations are received after July 26, 2010.

Section 4. Independent Contractor. VENDOR 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 VENDOR or any of VENDOR's employees, except as herein set forth. VENDOR 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 without the prior written consent of CITY.

Section 6. Responsible Principal.

(a) VENDOR's Responsible Principal set forth above shall be principally responsible for VENDOR's obligations under this Agreement and shall serve as principal liaison between CITY and VENDOR. Designation of another Responsible Principal by VENDOR 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) VENDOR represents that all of the services required under this Agreement shall be performed by VENDOR. VENDOR further represents that it is qualified to perform such services.

(b) Prior to VENDOR performing services under this Agreement, VENDOR and VENDOR's personnel 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 VENDOR or any VENDOR personnel have 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 VENDOR. VENDOR 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 VENDOR.

Section 9. Insurance.

(a) VENDOR 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, with minimum limits of Five Million Dollars (\$5,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by VENDOR.

(b) VENDOR 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 of Five Millions Dollars (\$5,000,000) per occurrence combined single limit, covering any vehicle utilized by VENDOR in performing the services required by this Agreement.

(c) VENDOR 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.

(d) VENDOR shall require each of its subconsultants 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) VENDOR 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 VENDOR's expense, the premium thereon.

(g) At all times during the term of this Agreement, VENDOR shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit B, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. VENDOR shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The General Liability policies of insurance required by this Agreement shall contain an endorsement naming the CITY

and the Beverly Hills Unified School District ("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 VENDOR 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, VENDOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or VENDOR shall procure a bond guaranteeing payment of losses and expenses.

Section 10. Indemnification. VENDOR agrees to indemnify, hold harmless and defend CITY, DISTRICT, City Council and each member thereof, and every officer, employee and agent of CITY and 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 VENDOR or any person employed by VENDOR 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 VENDOR. VENDOR 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 VENDOR, VENDOR shall be paid full compensation for all services performed by VENDOR, in an amount to be determined as follows: For work done in accordance with all of the terms and provisions of this Agreement, VENDOR shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation; provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid VENDOR for the full performance of the services required by this Agreement.

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

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 VENDOR in writing by CITY.

Section 13. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and VENDOR, 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 VENDOR.

Section 14. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 15. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 20 ____, at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

JIMMY DELSHAD
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

VENDOR: CHERYL BAYER BRADY
D.B.A. CREATIVE SPACE, LLC

CHERYL BAYER BRADY
Owner

APPROVED AS TO FORM:

Laurence S. Wiener for
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager

Stephen M. Miller for
STEPHEN M. MILLER
Interim Director of Community Services

KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF SERVICES

VENDOR shall provide a variety of creative after-school classes for children in grades K-3 and 4-8, including, but not limited to, arts, crafts and music. VENDOR shall also provide Creative Space Project X Summer Camp activities for children ages 3-15, including but not limited to, sports, dance, water play, live animals and field trips to the beach. Both programs shall be conducted at a Beverly Hills Unified School from 9 a.m. until 3 p.m. for the CITY's Community Services Department programs.

After-school classes and Summer Camp activities shall occur at locations and on 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.



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.	LIMITS	
					P.D.	AGGREGATE
	AUTOMOBILE LIABILITY					
	GENERAL LIABILITY					
	PRODUCTS/COMPLETED OPERATIONS					
	BLANKET CONTRACTUAL					
	CONTRACTOR'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: _____

