CITY OF BEVERLY HILLS
STAFF REPORT

Meeting Date: June 22, 2010

To: Honorable Mayor & City Council

From: Cheryl Friedling, Deputy City Manager for Public Affairs

Subject: Interim Funding for the Beverly Hills Conference and Visitors Bureau

Attachments: 1. Agreement

INTRODUCTION

This item requests City Council to approve the interim agreement with the Beverly Hills Conference and Visitors Bureau (CVB) for $359,693.33 for visitor marketing and attraction services for the months of July and August, 2010.

DISCUSSION

The Beverly Hills Conference and Visitors Bureau is contracted by the City to conduct a variety of tourism and marketing programs promoting Beverly Hills.

This item provides the Beverly Hills Conference and Visitors Bureau with funding to meet ongoing expenses through August, 2010. Although the CVB's fiscal year funding will end on June 30, 2010, additional time is required to align the organization's new marketing plan with its fiscal year 2010-2011 budget request and present both to the City Council in early August.

FISCAL IMPACT

Funds for CVB programs have been budgeted in Tourism and Marketing Program account 0101311 for fiscal year 2010-2011. Any change in the CVB's annual funding amount will result in an adjustment in the CVB's remaining budget appropriation.

RECOMMENDATION

Staff recommends that the City Council:

1. Approve an interim agreement between the City of Beverly Hills and Beverly Hills Conference and Visitors Bureau.
2. Approve issuance of related purchase orders.

Cheryl Friedling
Approved By

INTERIM FUNDING AGREEMENT BY AND BETWEEN THE CITY OF BEVERLY HILLS AND THE BEVERLY HILLS CONFERENCE AND VISITORS BUREAU FOR PROMOTION OF THE CITY

THIS AGREEMENT is made and entered into in the City of Beverly Hills by and between the City of Beverly Hills, a municipal corporation ("City") and the Beverly Hills Conference and Visitors Bureau ("CVB"), a non-profit corporation.

RECITALS

A. CVB is located in the City of Beverly Hills and has special knowledge and experience to conduct or participate in promotional, publicity, and advertising activities for the benefit of City.

B. The City's agreement between the City and CVB is set to terminate on June 30, 2010.

C. City desires to continue to engage the services of the CVB for promotional activities for an interim period while the CVB and City conclude its negotiations for promotional and other services for fiscal year 2010-2011.

D. Section 37110 of the State Government Code authorizes the expenditure of monies for promotion.

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto, the parties hereby agree as follows:

Section 1. Fund Authorization/Use of Funds.

a. For the interim period of July 1, 2010 through August 31, 2010 ("Interim Period"), City shall provide the CVB with interim funding in an amount not to exceed $359,693.33 for expenditures in support of the City and CVB's visitor and marketing programs as detailed in Exhibit A, attached hereto and incorporated herein. If there are any funds remaining from this allocation to the CVB, such funds shall be reallocated to the CVB for the remainder of fiscal year 2010-2011 at discretion of City.

b. CVB shall use such funds for the visitor and marketing programs set forth in Exhibit A to be performed during the Interim Period.

c. In connection with CVB's marketing and promotional programs, CVB may, on behalf of and at the sole discretion of City, use the funds to produce, purchase, install and de-install light pole banners or other displays in the public-right-of-way. All such light pole banners

shall comply with the City's adopted Banner Policy, copies of which are available from the Office of Communications and Marketing, and shall be approved in writing in advance by City prior to installation. City shall have sole discretion over the design, placement, and duration of display and shall retain ownership of all banners funded under this Agreement.

Section 2. Payments. CVB shall submit written requests for advanced payments for expenditures based on the CVB's adopted budgets for the various projects as set forth in Exhibit A. City shall provide payment to the CVB upon approval of the request by the City's Chief Financial Officer. City shall use its best efforts to make payment to CVB within 15-days of receipt of request. Any monies not expended in the Interim Period may be carried over to the remainder of fiscal year 2010-2011 at the discretion of the City. If not carried over, any excess monies not expended shall be returned to the City. In any event, the funding provided herein shall be made part of any future agreement for support of the CVB's funding during fiscal year 2010-2011.

Section 3. Reports.

(a) Prior to the conclusion of the Interim Period, the CVB shall submit a report to City and shall be in a form and content acceptable to the City Manager or his designee. The reports shall include, without limitation, information on overall project management and achievement of goals in relation to CVB's work plan and budget as set forth in Exhibit A, including the percentage of services completed and defined measurements of goal achievement for the Interim Period. If the City and CVB enter into an agreement for funding for the remainder of Fiscal Year 2010-2011, the CVB shall be relieved of compliance with this paragraph (a) and is not required to provide the report set forth herein.

(b) CVB shall also supply the City with an Audited Annual Financial report prepared by a Certified Public Accountant for the Interim Period. Such report shall provide consolidated financial reporting for CVB as a whole, and separately detailed accounts for each program funded by City. The report shall be due within six months of the end of CVB's 2010-2011 fiscal year. At City's sole discretion, consolidated annual accounts may be substituted for full audited accounts. This provision shall continue and terminate on January 1, 2012. If the City and CVB enter into an agreement for funding for the remainder of Fiscal Year 2010-2011, the CVB shall be relieved of compliance with this paragraph (b) and is not required to provide the Audited Annual Financial report required herein.

(c) With reasonable notice from City, CVB shall provide to City copies of any and all work product, documents reports, property and books produced by CVB in fulfillment of this Agreement ("Documents"). This shall be solely for the purpose of confirming and evaluating the execution of the programs described in this Agreement and shall not include records and documents unrelated to the execution of such programs (*e.g.*, personnel records). CVB's obligation to maintain such Documents shall continue for three years after the termination of this

Agreement. If the City and CVB enter into an agreement for funding for the remainder of Fiscal Year 2010-2011, the CVB shall be relieved of compliance with this paragraph (c).

(d) CVB shall establish and maintain an accounting system in accordance with generally accepted accounting principles and standards. The system shall detail all costs chargeable to City under this Agreement and shall substantiate all such costs, and comply with any applicable State and Federal standards.

(e) CVB shall endeavor to develop, in consultation with City, a program-based budget for all City-funded programs. Implementation of a program-based budget is not intended to affect the requirements outlined in paragraph (d) of this Section relating to generally accepted accounting principles.

Section 5. Ownership of Work Product.

(a) Unless otherwise agreed upon in writing, all reports, documents, or other written or visual material or any other material in any media, including any images, taglines, logos, or other media created or developed by CVB or any third party contracted by the CVB, in the performance of this Agreement, whether or not paid in whole or in part by the funding provided by this Agreement ("Work Product") shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. All Work Product shall be considered to be "works made for hire", and all such Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City. CVB shall not obtain or attempt to obtain copyright protection as to any of the Work Products.

(b) CVB hereby irrevocably assigns exclusively to City, all right, title and interest in such trademarks and/or copyrights or other intellectual property rights in the Work Products. CVB shall take all acts requested by the City in order to enforce City's rights under this Section.

(c) CVB shall not retain ownership of or any right, title or interest in any of the Work Products, including, but not limited to, in any related trademarks, copyrights, or other proprietary rights. The City and CVB agree that the Work Product and all such rights, title and interest in or to the Work Products belong to and are being sold and assigned in their entirety to City for whatever use it desires, and that City does and shall at all times own, solely and exclusively, complete and unencumbered, all right, title and interest in and to all of the Work Product worldwide, any modifications thereto and any derivative works based thereon (including, but not limited to, all patent, copyright, trademark, service mark and trade secret rights). Nothing contained herein shall be deemed to constitute a mere license or franchise in City. The parties further agree that City will be free to use, modify, distribute, sell, license or otherwise exploit all such Work Products and any modifications to or derivative works based thereon without any restrictions or limitations or any obligations or payments to CVB and that CVB shall have no such rights.

(d) From time to time the CVB will engage photographers to take photographs or will purchase images for use in CVB's marketing campaigns, collateral or other uses. As to those third party photographs or images whereby the CVB negotiates to purchase not only the photograph or image but also the copyright or other intellectual property rights, the provisions of this Section 6 will apply. As to those third party photographs or images whereby the CVB negotiates to purchase only the use of the photograph or image and the copyright is maintained with the photographer, the provisions of this Section 6 will not apply.

(e) This section shall survive termination of this Agreement.

Section 7. Assignment. This Agreement shall not be assigned by CVB without the written consent of City.

Section 8 . Independent Contractor. At all times during the term of this Agreement CVB shall be independent contractors and CVB, their officers, employees and agents shall not be employees of City.

Section 9 . Term. This Agreement shall remain in full force and effect from July 1, 2010 until August 31, 2010, unless terminated earlier as provided in Section 10 of this Agreement.

Section 10. Termination of Agreement. City may terminate this Agreement at any time, with or without cause, upon fifteen days (15) days written notice to CVB. In the event of such termination, City shall pay CVB for all costs and obligations reasonably incurred by CVB for Visitors Bureau activities in performing its services under this Agreement prior to the date of termination and such payment shall be in full satisfaction of City's obligations hereunder. City shall not be obligated to pay additional funds after issuance or receipt of such notice.

Section 11. Notice. Whenever it shall be necessary for any party to serve notice on another respecting this Agreement, such notice shall be served by certified mail addressed to the City Clerk of the City of Beverly Hills, 455 North Rexford Drive, Beverly Hills, California 90210; or to Beverly Hills Conference and Visitors Bureau, 239 South Beverly Drive, Beverly Hills, California 90212, unless and until a different address may be furnished in writing by any party, and such notice shall be deemed to have been served within seventy-two (72) hours after the same has been deposited in the United States Post Office by certified mail. This shall be valid and sufficient service of notice for all purposes.

Section 12. Indemnification and Insurance.

a. CVB agree 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 claims, liability or financial loss resulting from any suits, claims, losses or actions, and from all cost 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 actions or omissions of CVB or

their officers, employees, agents or others employed by CVB in the conduct of the projects funded by this Agreement.

b. CVB 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 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 CVB.

c. CVB 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 One Million Dollars ($1,000,000) per occurrence combined single limit, covering any vehicle utilized by Contractor in performing the services required by this Agreement.

d. CVB 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.

e. CVB shall require each of its sub-consultants or sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement unless otherwise determined by the City's Risk Manager.

f. 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.

g. If CVB fails to keep the aforesaid insurance in full force and effect, City shall notify CVB that it is in breach of the Agreement and CVB has three (3) days to cure such breach. If such breach is not cured by CVB as required in this paragraph, City may terminate the Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at CVB' s expense, the premium thereon.

h. At all times during the term of this Agreement, CVB shall maintain on file with the City Clerk a certificate or certificates of insurance on the form required by the City, showing that the aforesaid policies are in effect in the required amounts. CVB 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 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.

i. The insurance provided by CVB shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

j. Any deductibles or self-insured retentions must be declared to and approved by City prior to commencing work under this Agreement.

Section 13. Extent of Agreement This Agreement represents the entire and integrated Agreement between the parties on the matters included herein and supersedes any and all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by all parties to the Agreement.

Section 14. City Not Obligated to Third Parties. The City shall not be obligated or liable under this Agreement to any party other than CVB.

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 the

____ day of _____ 2010, at Beverly Hills, California.

CITY OF BEVERLY HILLS,
A municipal corporation

_____
JIMMY DELSHAD
Mayor of the City of Beverly Hills

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

BEVERLY HILLS CONFERENCE AND VISITORS BUREAU

KATHRYN SMITS
Executive Director

Name:
Title: Secretary

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager

CHERYL FRIEDLING
Deputy City Manager for Public Affairs

KARL KIRKMAN
Risk Manager

Exhibit A

Scope of Service and Budget
Beverly Hills Conference and Visitors Bureau

Interim Period

The City shall provide funding in the amount of $359,693 to support the activities and programs outlined in this Scope of Services for the period of July 1, 2010 through August 31, 2010. This amount is based on 1/6 of the total 2009-2010 funding provided to CVB by City for such services. Visitor and marketing programs will be created and promoted in alignment with the CVB's core mission and launch of its new strategic marketing plan, which will be presented to the City Council in August 2010. Accordingly, the tasks are set forth below:

1. CORE/ON-GOING PROGRAMS

a. Mission

Beverly Hills Conference & Visitors Bureau is dedicated to enhancing the economic vitality of Beverly Hills through destination marketing, targeting consumers, trade and media in key markets in local, regional, US and international markets. The CVB's primary marketing focus is on incremental business requiring an overnight stay. In addition, the CVB strives to enhance the overall visitor experience for both hotel guests and day visitors.

b. Scope of Work. The following is a listing of the core/on-going programs to be continued by the CVB for the Fiscal Year 2010-11.

i. Product Development

The CVB will continue to develop product and explore opportunities to expand and improve existing product ranging from themed itineraries and packaging to sightseeing options and partnerships.

ii. Consumer Programs

Advertising

For FY 10/11, the CVB will focus on a variety of advertising initiatives currently underway, as well as those recommended in a new marketing strategic plan.

Website

The CVB website will be a priority for FY 10-11 and beyond.

Collateral and Fulfillment
The CVB produces several collateral materials including Beverly's "little brown book," a VIP brochure, walking maps and one-sheets. Efforts will be made in the coming year to reduce print pieces and drive visitors to the website, ensuring up-to-date information at all times and reducing the rising costs associated with development, production, storage and shipping.

Visitor Services
In 10/11, the CVB will review visitor services and develop a comprehensive plan for a Visitor Center in conjunction with the City.

Research
To supplement findings from the 2008 Tourism Impact Study and to fine-tune marketing efforts, the CVB will continue to rely on additional research such as visitor profiles, luxury surveys and country updates.

iii. Trade Programs

Sales Missions
BHCVB will continue to conduct annual sales missions to New York in conjunction with industry partners.

Trade Shows
The U.S. Travel Association's annual Pow Wow is the premiere international marketplace and allows the CVB to conduct business with trade and media from all over the world.

Familiarization Trips
BHCVB will continue to conduct familiarization trips to showcase Beverly Hills to targeted trade partners, with the ultimate goal of expanding Beverly Hills product and generating bookings.

iv. Media Programs

Public Relations
The CVB will continue to pitch story ideas, generate newsworthy communications, and conduct desk side briefings for media to highlight Beverly Hills and position the destination top-of-mind. PR efforts will also build upon last year's success with social networking and partnerships.

Sales Missions, Trade Shows and Sales Calls
In addition to the focus on travel trade, all sales missions and trade shows both domestically and internationally feature a media

component in which BHCVB participates.

Familiarization Trips
With the ultimate goal of securing positive coverage in key outlets, BHCVB will continue to showcase Beverly Hills through destination visits from leading media.

v. Special Programs

The Beverly Hills CVB will continue to partner with area CVBs as part of a westside partnership and leverage city events and other special programs as they arise.

c. Goals

i. Continue to brand Beverly Hills
ii. Increase tourism revenue in Beverly Hills
iii. Increase visitor arrivals
iv. Increase length of stay for day visitors
v. Maintain visitor satisfaction

d. Core Strategies and Tactics

i. Market overall destination experience
ii. Focus on incremental business
iii. Drive overnight stays
iv. Target leisure market
v. Leverage tactical offers during "need" periods
vi. Provide consistent messaging as the cornerstone of all efforts:
- Walkable
- Accessible
- Safe
- Various Price Points
- Variety of Experiences
- Celebrity Glamour/Feel like a Star
- Luxury Capitol

vii. Differentiate Beverly Hills from competition through branding/unique selling points
viii. Pursue partnerships and cooperative marketing opportunities
ix. Utilize ongoing research to fine-tune efforts

2. REPORTING REQUIREMENT AND PAYENT REQUESTS

CVB shall be provided with the interim funding through a written request to the City. The CVB will also provide the City with ongoing reporting on a bi-monthly basis, as well as a two-month report that details (1) expenditures for the period; (ii) goals met for the period; and (iii) an outline of program goals and associated expenditures for the remainder of the fiscal year.