



AGENDA REPORT

Meeting Date: September 20, 2011
Item Number: F-10
To: Honorable Mayor & City Council
From: Chad Lynn, Director of Parking Operations
Subject: APPROVAL OF A BLANKET PURCHASE ORDER FOR THE MONTAGE BEVERLY HILLS FOR THE REIMBURSEMENT OF INSURANCE PREMIUMS AND GENERAL MAINTENANCE FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$250,000
Attachments: 1. Referenced Agreement #420-06 Sections

RECOMMENDATION

Staff recommends that the City Council approve a purchase order for the Montage Beverly Hills for the reimbursement of insurance premiums and general maintenance associated with the Public Gardens Parking Facility and Gardens Building for a total not-to-exceed amount of \$250,000 pursuant to Agreement #420-06.

INTRODUCTION

The Reciprocal Easements and Operations Agreement (REOA) between the City of Beverly Hills and Beverly Hills Luxury Hotel, LLC states that the City will reimburse the Montage Beverly Hills for the City's portion of the insurance premiums and general maintenance of the Beverly Canon Gardens parking facility and building..

DISCUSSION

The blanket purchase order complies with the terms of Agreement #420-06, sections 2.16, 2.18, 7.1, and 7.2 to provide for reimbursement of funds for the City's portion of collective insurance premiums and for the City's portion of the general maintenance to HVAC, mechanical and other shared systems within the Beverly Canon Gardens parking facility and building.

FISCAL IMPACT

This request is for \$110,000 for insurance premiums for fiscal year 2010/2011, for which funds have been carried over into the current fiscal year and \$110,000 for the 2011/2012 fiscal year, for which funds have been budgeted for these services.

An additional \$30,000 is requested for the City's portion of shared maintenance requirements as billed by the Montage and approved by Staff.

The total not to exceed amount is \$250,000, for which all funds are budgeted in the Parking Enterprise Fund.



Scott Miller

Finance Approval



David Gustavson

Approved By

Attachment 1

ATTACHMENT 1 – Referenced Sections of Agreement #420-06

2.16 Garage Fan Shafts and Rooms. Pursuant to the Project Agreement, the Project will include the Garage fan shafts and related access and equipment rooms in the areas shown on the attached Exhibit 13. The Developer, as the Owner of the Developer Parcel, and the City, as the Owner of the City Parcel, hereby each grant to the Parking Authority an easement for the use, operation, repair, and replacement of such fan shafts and related access and equipment rooms.

The easement granted in this Section 2.16 shall be perpetual; provided, however, that if (x) the Garage is completely destroyed or removed, and (y) the party or parties that then own the Garage has or have no obligation to rebuild or replace the Garage, then the easement granted by this Section 2.16 shall terminate.

Subject to the provisions of Section 8.2(b) below, the Hotel Property Owner shall be entitled and responsible, and the City hereby grants to the Hotel Property Owner an easement over and across the City Parcel, to coordinate and/or conduct any and all repair, maintenance, renewal and replacement of such fans, shafts and access and equipment rooms and all of the fans and equipment located therein in a reasonable manner so as to keep such fans, shafts and access and equipment rooms and all of the fans and equipment located therein in good condition, repair and operation, and the costs and expenses incurred by the Hotel Property Owner in connection with such repair, maintenance, renewal and replacement shall be allocated as follows:

(a) Fifty-five percent (55%) of such costs and expenses shall be allocable to and reimbursed to the Hotel Property Owner by the Parking Authority (as the Party Responsible for the maintenance and repair of the Garage pursuant to Section 3.1 below);

(b) Thirty-eight percent (38%) of such costs and expenses shall be allocable to the portions of the Hotel Property other than the Residential Condominium Units and paid by the Hotel Property Owner; and

(c) Seven percent (7%) shall be allocable to the Residential Condominium Units and paid by the Hotel Property Owner (subject to any provisions of the Residential Condominium Documents that provide for reimbursement to the Hotel Property Owner of such costs by the owners of such Residential Condominium Units and/or the Residential Condominium Association).

The easement granted by this Section 2.16 shall be appurtenant to the Parking Authority Parcel.

2.18 Common Cooling Towers and Common Cooling Towers Pump Room and Equipment. Pursuant to the Project Agreement, the Project will include (i) common cooling tower banks and related lines, equipment, access hatches and stairways (collectively, the "Common Cooling Towers") to be located on the roof of the Gardens Building generally as shown on Exhibit 15-A attached hereto, and (ii) a common cooling towers pump room and related equipment (collectively, the "Common Cooling Towers Pump Room and Equipment") to be located on level P-1 of the Garage as shown on Exhibit 15-B attached hereto. The Common Cooling Towers and the Common Cooling Towers Pump Room and Equipment are located in the Parking Authority Parcel and will serve both the Gardens Building and the Hotel/Residential Building.

The Parking Authority, as the Owner of the Parking Authority Parcel, hereby grants to the Developer an easement for the use of, and chilled water from, the Common Cooling Towers and the Common Cooling Towers Pump Room and Equipment. Such easement shall be appurtenant to the Developer Parcel. The Parking Authority, as the Owner of the Parking Authority Parcel, hereby grants to the Hotel Property Owner an easement over and across the portions of the Parking Authority Parcel in which the Common Cooling Towers and the Common Cooling Towers Pump Room and Equipment are located to perform the repair, maintenance, upgrading and replacement activities to be performed by the Hotel Property Owner pursuant to this Section 2.18.

The easement granted in this Section 2.18 shall be perpetual; provided, however, that if (i) the Gardens Building is completely destroyed or removed by the Parking Authority, and (ii) the Parking Authority elects, in its sole discretion, not to rebuild or replace the Gardens Building, then the easement granted by this Section 2.18 shall terminate and the parties hereto shall (x) promptly after such destruction or removal determine and designate a reasonable alternative location in the Project for the location of cooling equipment reasonably suitable and sufficient to cool the Hotel/Residential Building, and (y) create an easement of record for such location reasonably sufficient to provide for the use, maintenance, repair and replacement of such cooling equipment if not located on the Developer Parcel.

Subject to the provisions of Section 3.2(b) below, the Hotel Property Owner shall be entitled and responsible to coordinate and/or conduct any and all repair, maintenance, upgrading and replacement of the Common Cooling Towers and the Common Cooling Towers Pump Room and Equipment in a reasonable manner so as to keep the Common Cooling Towers and the Common Cooling Towers Pump Room and Equipment (including the structural support thereof) in good condition, repair and operation. Such cost and expense shall be allocated among the Parcels served by the Common Cooling Towers and the Common Cooling Towers Pump Room and Equipment based on the ratio of (x) the square footage of the area cooled by the Common Cooling Towers in a given Parcel for which such cost and expense is being calculated, to (y) the aggregate square footage of all of the areas in the Project that are then cooled by the Common Cooling Towers. Nothing in this Section 2.18 is intended to preclude the Residential Condominium Documents from providing for reimbursement by the owners of the Residential Condominium Units to the Hotel Property Owner and/or the Master Association of a portion of such costs and expenses in the manner stated in the Condominium Documents.

7.1 Liability and Workers Compensation Insurance Requirements. The Hotel Property Owner and the Parking Authority shall cause the following liability insurance coverages to be obtained and maintained in full force and effect (in 2007 Dollars):

(a) Hotel Property Owner. The Hotel Property Owner shall cause the following liability coverages to be, to the extent available on commercially reasonable terms and conditions, obtained and maintained (in 2007 Dollars):

(i) Comprehensive general liability insurance coverage for liability for personal injury, bodily injury, death and property damage, written on an occurrence basis, with respect to the Hotel/Residential Building, the Garage and the New Alley and all operations and activities related thereto, whether conducted therein, thereon or elsewhere, and naming as insureds the Hotel Property Owner, the Parking Authority, the City and any Master Association (as well as any additional insureds required by the Residential Condominium Documents), with (x) a minimum limit of One Million Dollars (\$1,000,000) per occurrence; (y) a minimum aggregate limit of Two Million Dollars (\$2,000,000), applied separately per location; and (z) a maximum deductible or self-insured retention of Twenty-Five Thousand Dollars (\$25,000) per occurrence.

(ii) Comprehensive garage keeper's liability insurance coverage, written on an occurrence basis, with respect to the operations of the entire Garage and naming as insureds the Hotel Property Owner, the Parking Authority, the City and any Master Association (as well as any additional insureds required by the Residential Condominium Documents), with (x) a minimum limit of One Million Dollars (\$1,000,000) per occurrence; (y) a minimum aggregate limit of Two Million Dollars (\$2,000,000), applied separately per location; and (z) a maximum deductible or self-insured retention of Twenty-Five Thousand Dollars (\$25,000) per occurrence.

(iii) Workers compensation insurance covering the Hotel Property Owner's employees and in amounts required by and otherwise complying with applicable law, together with employers liability insurance covering the Hotel Property Owner with (x) a minimum limit of One Million Dollars (\$1,000,000) per accident; (y) a minimum policy limit of One Million Dollars (\$1,000,000); and (z) a minimum limit of One Million Dollars (\$1,000,000) per employee.

(iv) Comprehensive automobile liability coverage, written on an occurrence basis, with a minimum limit of One Million Dollars (\$1,000,000) per occurrence, and naming the Hotel Property Owner as insured.

(v) Umbrella liability coverage with respect to the Hotel/Residential Building, the Garage and the New Alley and naming as insureds the Hotel Property Owner, the Parking Authority, the City and any Master Association (as well as any additional insureds required by the Residential Condominium Documents), with a minimum limit of Twenty-five Million Dollars (\$25,000,000).

The Parking Authority shall reimburse the Hotel Property Owner for (x) fifteen percent (15%) of the costs incurred by the Hotel Property Owner in obtaining the minimum coverage described in the immediately preceding clauses (i) and (v) above; and (y) fifty-five percent (55%) of the costs incurred by the Hotel Property Owner in obtaining the minimum coverage described in the immediately preceding clause (ii) above. The Hotel Property Owner shall, no less frequently than annually, prepare and submit to the Parking Authority an invoice for the portion of such costs to be paid by the Parking Authority for

the period covered by such invoice, accompanied by documentation reasonably supporting the amount set forth in such invoice. The Parking Authority shall make payment for any undisputed amount pursuant to such invoice not later than thirty (30) days after the Parking Authority's receipt of the same.

The Parking Authority may, at its cost and expense, inspect the Hotel Property Owner's records relating to the costs incurred by the Parking Authority in obtaining and maintaining the insurance described in clauses (i), (ii) and (v) of this Section 7.1(a). Any such inspection with respect to a given invoice sent by the Hotel Property Owner pursuant to this Section 7.1(a) shall occur within twelve (12) months after the Parking Authority's receipt of such invoice. The inspection shall occur during the Hotel Property Owner's normal administrative office hours, at the place in Los Angeles County, California where such records are customarily kept by the Hotel Property Owner. Following any such inspection that discloses that the Hotel Property Owner has not spent at least the amount set forth on the related invoice in obtaining and maintaining the insurance described in clauses (i), (ii) and (v) of this Section 7.1(a) during the period covered by such invoice, the Hotel Property Owner shall promptly correct such invoice, and if the Parking Authority has made payment pursuant thereto, refund to the Parking Authority the amount by which the amount so paid by the Parking Authority exceeds the amount that should have been paid by the Parking Authority with respect to such invoice.

(b) Parking Authority. The Parking Authority shall cause the following liability coverages to be, to the extent available on commercially reasonable terms and conditions, obtained and maintained (in 2007 Dollars):

(i) Comprehensive general liability insurance coverage for liability for personal injury, bodily injury, death and property damage, written on an occurrence basis, with respect to the Gardens and the Gardens Building and all operations and activities related thereto, whether conducted therein, thereon or elsewhere, and naming as insureds the Parking Authority, the City and the Hotel Property Owner, with (x) a minimum limit of One Million Dollars (\$1,000,000) per occurrence; and (y) a minimum aggregate limit of Two Million Dollars (\$2,000,000), applied separately per location; and (z) a maximum deductible or self-insured retention of One Million Dollars (\$1,000,000) per occurrence; provided that the Parking Authority may self-insure for the first One Million Dollars (\$1,000,000) coverage per occurrence.

(ii) Workers compensation insurance or self-insurance covering the Parking Authority's employees and in amounts required by and otherwise complying with applicable law, together with employers liability insurance covering the Parking Authority with (x) a minimum limit of One Million Dollars (\$1,000,000) per accident; (y) a minimum policy limit of One Million Dollars (\$1,000,000); and (z) a minimum limit of One Million Dollars (\$1,000,000) per employee.

(iv) Comprehensive automobile liability coverage or self-insurance, written on an occurrence basis, with a minimum limit of One Million Dollars (\$1,000,000) per occurrence and naming the Parking Authority as insured.

(v) Umbrella liability coverage with respect to the Gardens and the Gardens Building and naming as insureds the Parking Authority, the City and the Hotel Property Owner, with a minimum limit of Twenty-five Million Dollars (\$25,000,000).

7.2 Property Insurance Requirements. The Hotel Property Owner and the Parking Authority shall cause the following property insurance coverages to be obtained and maintained in full force and effect (in 2007 Dollars):

(a) Hotel Property Owner. The Hotel Property Owner shall cause the following property coverages to be, to the extent available on commercially reasonable terms and conditions, obtained and maintained:

(i) Property insurance covering each of (x) the Garage, (y) the Hotel/Residential Building, and (z) the Common Cooling Towers and the Common Cooling Towers Pump Room and Equipment, under an "all risk" policy or its equivalent, with replacement cost valuation and an agreed value endorsement in an amount equal to not less than one hundred percent (100%) of the full replacement cost of each of the Garage, the Hotel/Residential Building and the Common Cooling Towers and the Common Cooling Towers Pump Room and Equipment (determined without regard to any depreciation of the same), and providing for a maximum deductible of Twenty-Five Thousand Dollars (\$25,000) for each of the Garage and the Hotel/Residential Building per occurrence. The coverages required by this clause shall include for each of the Garage, the Hotel/Residential Building and the Common Cooling Towers and the Common Cooling Towers Pump Room and Equipment, by endorsement, (i) replacement coverage; (ii) an agreed amount clause (waiving any co-insurance provision); and (iii) coverage for demolition costs and increased repair, restoration and/or rebuilding costs due to the requirements of Applicable Law.

(ii) Boiler and pressure vessel and miscellaneous equipment (including steam pipes, heating systems, air conditioning systems, electronic motors, air tanks, compressors and pumps) insurance covering such equipment to the extent located in or serving the Garage and/or the Hotel/Residential Building and/or the Common Cooling Towers and the Common Cooling Towers Pump Room and Equipment (or any portion or portions thereof).

(iii) Earthquake insurance covering the Garage and the Hotel/Residential Building providing aggregate coverage limit of at least Twenty-five Million Dollars (\$25,000,000).

(iv) Flood insurance covering the Garage and the Hotel/Residential Building providing an aggregate coverage limit of at least Five Million Dollars (\$5,000,000).

(v) Business interruption insurance coverage covering each of (x) the Garage (for the benefit of and the proceeds of which are to be paid to the Parking Authority), and (y) the Hotel (for the benefit of and the proceeds of which are to be paid to the Hotel Property Owner), in each case providing "all risk" coverage for the actual loss sustained or a specified amount equal to twelve (12) months effective

gross income from the Garage or the Hotel, as applicable. Income from the public, self-pay parking operations in the Garage shall be allocable to and covered by the business interruption coverage for the Garage; income from the valet parking operations in the Garage shall be allocable to and covered by the business interruption coverage for the Hotel. Each such coverage shall include, by endorsement, an extended period of indemnity insuring loss of income after a covered occurrence until such time as income received from operations from the restored Garage or Hotel, as applicable, returns to the level of income that existed before the covered occurrence.

The Parking Authority shall reimburse the Hotel Property Owner for (x) fifteen percent (15%) of the costs incurred by the Hotel Property Owner in obtaining the minimum coverage described in the immediately preceding clauses (i) and (ii), (iii) and (iv) above; and (y) a reasonable allocated share of the costs incurred by the Hotel Property Owner in obtaining the minimum coverage described in the immediately preceding clause (v) above. The Hotel Property Owner shall, no less frequently than annually, prepare and submit to the Parking Authority an invoice for the portion of such costs to be paid by the Parking Authority for the period covered by such invoice, accompanied by documentation reasonably supporting the amount set forth in such invoice. The Parking Authority shall make payment for any undisputed amount pursuant to such invoice not later than thirty (30) days after the Parking Authority's receipt of the same.

The Parking Authority may, at its cost and expense, inspect the Hotel Property Owner's records relating to the costs incurred by the Parking Authority in obtaining and maintaining the insurance described in this Section 7.2(a). Any such inspection with respect to a given invoice sent by the Hotel Property Owner pursuant to this Section 7.2(a) shall occur within twelve (12) months after the Parking Authority's receipt of such invoice. The inspection shall occur during the Hotel Property Owner's normal administrative office hours, at the place in Los Angeles County, California where such records are customarily kept by the Hotel Property Owner. Following any such inspection that discloses that the Hotel Property Owner has not spent at least the amount set forth on the related invoice in obtaining and maintaining the insurance described in this Section 7.2(a) during the period covered by such invoice, the Hotel Property Owner shall promptly correct such invoice, and if the Parking Authority has made payment pursuant thereto, refund to the Parking Authority the amount by which the amount so paid by the Parking Authority exceeds the amount that should have been paid by the Parking Authority with respect to such invoice.

(b) Parking Authority. The Parking Authority shall be solely responsible for determining, in its sole discretion what, if any, property insurance to obtain with respect to the Gardens Building, and to obtain any such insurance, all at the sole cost and expense of the Parking Authority.

(c) Party Responsible Performing or Contracting for Work. A Party Responsible performing structural work on any Parcel, or engaging any contractor or other agent to perform such work, the cost of which is estimated to exceed Fifty Thousand Dollars (\$50,000), shall, to the extent available on commercially reasonable terms and conditions, cause to be obtained and maintained builder's risk insurance coverage, on an

"all risk" and completed value (non-reporting) basis, in the amount not less than one hundred percent (100%) of the amount of such work.

Any Party Responsible engaging a contractor or other party to perform such work, the cost of which is estimated to exceed such amount, shall require such contractor or other party to obtain and maintain liability insurance coverages with respect to such work that provide at least the coverages (and the limits and insureds) described in Section 7.1(a)(i), Section 7.1(a)(iii) and Section 7.1(a)(v) above.