



AGENDA REPORT

Meeting Date: July 29, 2014
Item Number: D-10
To: Honorable Mayor & City Council
From: Cheryl Friedling, Deputy City Manager for Public Affairs
Megan Roach, Marketing & Economic Sustainability Manager *ml*
Subject: APPROVAL OF AN INTERIM FUNDING AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND THE BEVERLY HILLS CHAMBER OF COMMERCE AND CIVIC ASSOCIATION FOR THE NEW YORK BUSINESS ATTRACTION AND RETENTION MISSION FOR FISCAL YEAR 2014-2015; AND APPROVAL OF A PURCHASE ORDER IN A NOT-TO-EXCEED AMOUNT OF \$105,000 TO THE BEVERLY HILLS CHAMBER OF COMMERCE AND CIVIC ASSOCIATION FOR THESE SERVICES

Attachments:

1. Agreement
2. Overview of the New York Business Mission

RECOMMENDATION

It is recommended that the City Council approve the interim funding agreement between the City of Beverly Hills and the Beverly Hills Chamber of Commerce and Civic Association for the New York Business Attraction and Retention Mission for Fiscal Year 2014-2015 and approve a purchase order in a not-to-exceed amount of \$105,000 for these services.

INTRODUCTION

The City contracts with the Beverly Hills Chamber of Commerce to provide a range of outsourced programs. The goals of these programs are to retain existing businesses and to attract new businesses to the City. Additionally, the Chamber is contracted to assist with research and outreach initiatives and to promote strategic policies developed by the City to the business community.

DISCUSSION

On April 30, 2014, the Chamber of Commerce Liaison Committee (Mayor Bosse and Councilmember Brien) met with Chamber of Commerce representatives to review the Chamber's submission of a work plan for business attraction and retention services for

Fiscal Year 2014-2015. The work plan includes the annual New York Business Attraction and Retention Mission, sponsorship of the annual *Beverly Hills Tomorrow* symposium, as well as support for the continuation of several successful initiatives that were recommended by the Small Business Task Force (chaired by Vice Mayor Gold) and were spearheaded by the Chamber this year.

At the April 30th meeting, the Liaison Committee requested more information on several proposed initiatives and a subsequent Liaison meeting was scheduled for June 26th. However, due to an emergency evacuation at City Hall that day, the meeting was cancelled. The meeting has been rescheduled for August 7th. In the interim, the Chamber has requested funding for this part of their work plan so they may begin planning the New York Mission.

FISCAL IMPACT

The agreement with the Chamber of Commerce for the New York Business Attraction and Retention Mission is in the amount of \$105,000 to cover planning, advance costs and deposits. A portfolio of proposed services for the Chamber's remaining work program and funding will be brought back to the Liaison Committee and then to the City Council for review and approval.

Funding for the Chamber of Commerce has been budgeted in the General Fund Business Development Program account 0101313 for Fiscal Year 2014-2015.

Don Rhoads 
Finance Approval

Cheryl Friedling 
Approved By

Attachment 1

**INTERIM FUNDING AGREEMENT BETWEEN THE
CITY OF BEVERLY HILLS AND THE BEVERLY
HILLS CHAMBER OF COMMERCE AND CIVIC
ASSOCIATION FOR THE NEW YORK BUSINESS
ATTRACTION AND RETENTION MISSION FOR
FISCAL YEAR 2014-2015**

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 Chamber of Commerce and Civic Association ("Chamber"), a non-profit corporation.

R E C I T A L S

A. Chamber is located in the City of Beverly Hills and has special knowledge and experience to conduct or participate in business attraction and retention programs for the benefit of City.

B. City desires to engage the services of Chamber to conduct or participate in such activities for an interim period while the City and Chamber conclude its negotiations for services for fiscal year 2014-2015.

C. 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 29, 2014 through September 1, 2014 ("Interim Period"), City shall provide the Chamber from the marketing allocation of the City's General Fund for expenditures not to exceed \$105,000 in support of the Chamber's New York Business Attraction and Retention Mission as detailed in Exhibit A, attached hereto and incorporated herein. If there are any funds remaining from this allocation to the Chamber, such funds shall be reallocated to the Chamber for the remainder of fiscal year 2014-2015 at the discretion of City. In any event, the funding provided herein shall be made part of any future agreement for support of the Chamber's programs and activities during fiscal year 2014-2015.

(b) Chamber shall use the funds from the City during the Interim Period as specified in Exhibit A.

(c) In connection with Chamber's programs and activities, Chamber 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. Chamber shall submit written requests for advanced payments for expenditures based on the Chamber's adopted budgets for the various projects as set forth in Exhibit A. City shall provide payment to the Chamber upon approval of the request by the City's Chief Financial Officer. City shall use its best efforts to make payment to Chamber 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 2014-2015 at the discretion of the City. If not carried over, any excess monies not expended shall be returned to the City.

Section 3. Reports.

(a) Prior to the conclusion of the Interim Period, the Chamber 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 Chamber'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 Chamber enter into an agreement for funding for the remainder of Fiscal Year 2014-2015, the Chamber shall be relieved of compliance with this paragraph (a) and is not required to provide the report set forth herein.

(b) With reasonable notice from City, Chamber shall provide to City copies of any and all work product, documents reports, property and books produced by chamber 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). Chamber's obligation to maintain such Documents shall continue for three years after the termination of this Agreement. If the City and Chamber enter into an agreement for funding for the remainder of Fiscal Year 2014-2015, the Chamber shall be relieved of compliance with this paragraph (c).

(c) Chamber 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.

(d) Chamber 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 4. 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 Chamber or any third party contracted by the Chamber, in the performance of this Agreement, if 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. Chamber shall not obtain or attempt to obtain copyright protection as to any of the Work Products.

(b) Chamber 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. Chamber shall take all acts requested by the City in order to enforce City’s rights under this Section.

(c) Chamber 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 Chamber 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 Chamber and that Chamber shall have no such rights.

(d) From time to time the Chamber will engage photographers to take photographs or will purchase images for use in Chamber’s marketing campaigns, collateral or other uses. As to those third party photographs or images whereby the Chamber negotiates to purchase not only the photograph or image but also the copyright or other intellectual property rights, the provisions of this Section 4 will apply. As to those third party photographs or images whereby the Chamber negotiates to purchase only the use of the photograph or image and the copyright is maintained with the photographer, the provisions of this Section 4 will not apply.

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

Section 5. Assignment. This Agreement shall not be assigned by Chamber without the written consent of City.

Section 6. Independent Contractor. At all times during the term of this Agreement Chamber shall be independent contractors and Chamber, their officers, employees and agents shall not be employees of City.

Section 7. Personnel. Chamber represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All personnel engaged in the work shall be qualified to perform such services. City shall approve all subcontractors used in the provision of services under this Agreement within five (5) business days of Chamber's submission and prior to their engagement by Chamber. Such approval shall not be unreasonably withheld by City. Chamber, however, shall be solely responsible for the work performed by those third party contractors, including timely performance and payment

Section 8. Term. This Agreement shall remain in full force and effect from July 29, 2014 until September 1, 2014, unless terminated earlier as provided in Section 9 of this Agreement.

Section 9. Termination of Agreement. City may terminate this Agreement at any time, with or without cause, upon fifteen days (15) written notice to Chamber. In the event of such termination, City shall pay Chamber for all costs and obligations reasonably incurred by Chamber 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 10. 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 Chamber of Commerce and Civic Association, 9400 Santa Monica Blvd., Beverly Hills, California 90210, 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 11. Insurance.

(a) Chamber 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 Chamber.

(b) Chamber 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 Chamber in performing the services required by this Agreement.

(c) Chamber 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) Chamber 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.

(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) If Chamber fails to keep the aforesaid insurance in full force and effect, City shall notify Chamber that it is in breach of the Agreement and Chamber has three (3) days to cure such breach. If such breach is not cured by Chamber 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 Chamber's expense, the premium thereon.

(g) At all times during the term of this Agreement, Chamber 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. Chamber 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.

(h) The insurance provided by Chamber 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 prior to commencing work under this Agreement.

Section 12. Indemnification. Chamber 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 Chamber or their

officers, employees, agents or others employed by Chamber in the conduct of the projects funded by 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 Chamber.

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 _____ 2014, at Beverly Hills, California.

“CITY”
CITY OF BEVERLY HILLS,
A Municipal Corporation

LILI BOSSE
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE
City Clerk

“CHAMBER”
BEVERLY HILLS CHAMBER OF
COMMERCE AND CIVIC
ASSOCIATION

ALEXANDER STETTINSKI
Executive Director

Council will be advised if agreement is
not signed by Tuesday.

MARC WOLF
Chairman of the Board

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

JEFFREY C. KOLIN
City Manager

CHERYL FRIEDLING
Deputy City Manager for Public Affairs

KARL KIRKMAN
Risk Manager

Attachment 2

Exhibit A

City shall provide funding to the Chamber for the interim period of July 1, 2014 through September 1, 2014 for the 2014 New York Business Attraction and Retention Mission in the amount of \$105,000 for operational and programming costs.

The programming elements to be carried out by the Chamber pursuant to this Agreement during the Interim Period are as follows:

Develop, organize and implement the New York Business Attraction and Retention Mission;

The \$105,000 funding amount shall be utilized to provide the services and collateral related to the Mission above which includes but is not limited to, arranging logistics related to travel, lunches, and hotel reservations; business attraction and retention candidate research, selection and outreach; schedule and appointment coordination and preparation of Mission binders; Mission supervision and coordination; post-trip follow up and ongoing research for future Missions.

I. New York Mission

Now in its 12th year, the New York Business Attraction and Retention Mission has a twofold strategy: (a) attract businesses based in New York to expand to Beverly Hills and; (b) demonstrate the continued value of maintaining a presence in Beverly Hills to businesses operating in both locations.

After conversations with the City Manager's office and the CVB, the week of Oct. 27-30 was selected as the most suitable for this year's New York Mission. Mimicking the structure of last year's successful trip, the Chamber is proposing to arrange a three-day mission of dedicated one-on-one meetings with attraction and retention candidates (with Monday the 27th and Friday the 31st allocated as travel days).

The team will divide into 2-3 tracks as it has in prior years for a total of 24-27 meetings divided between attraction and retention candidates. More so than in the past two years, the New York trip could focus more on retention visits this year, as there is a paucity of available spaces to place attraction targets from prior years.

As with last year, a particularly high priority for meetings would go to arranging meetings with flagships on Rodeo Drive currently undergoing renovation, or who have recently re-opened renovated flagships (i.e., Barneys, Burberry, Tory Burch, Vera Wang, Louis Vuitton).

The Chamber will research key businesses to approach for attraction meetings in New York as well as assess which existing businesses in Beverly Hills would most benefit from a visit. As in prior years, the Chamber will arrange and coordinate all travel logistics.

The total cost for this item is \$105,000. A full itemized breakdown is available in Attachment A.

II. Local Marketing Initiatives

In conversations with members of the City Council and others, the Chamber was encouraged to create an ambitious agenda to expand its local marketing initiatives. Under the Chamber's current My Beverly Hills platform, we are proposing two initiatives for FY 2014-15 both aimed to encourage engagement between local businesses and residents and increase the number of dollars locals spend within Beverly Hills. My Beverly Hills is distinct from the CVB and the City's marketing efforts in that it is entirely focused on linking local businesses with residents.

The purpose of the My Beverly Hills program is to provide a platform connecting the business community with the locals (work force and residents) that serves as a bridge between these communities. My Beverly Hills is a fun interactive program intended to engage locals with local businesses and to educate the Beverly Hills community about the world-renowned shopping and restaurants available in their backyard. The program includes a website, a monthly newsletter, community events, and marketing and social media campaigns throughout the year.

Post - trip follow up	\$15,040
Ongoing Follow-up and research	\$15,000
Grand Total	\$105,520
Legend (Hourly rate of Chamber staff)	
Chamber Board President	\$0
Chamber Executive Director	\$210
Chamber Controller	\$175
EDD Director	\$150
EDD Program Assistant	\$25

Note: Chamber Board President contributes 40 hours at no charge to the City