



AGENDA REPORT

Meeting Date: September 10, 2015
Item Number: E-6
To: Honorable Mayor & City Council
From: Steven Zoet, Director of Community Services
Subject:

APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND DIEGO CEVALLOS D.B.A. BEVERLY HILLS AQUATICS FOR SWIM INSTRUCTION AND PROGRAMS THROUGH THE CITY'S COMMUNITY SERVICES DEPARTMENT; AND

APPROVAL TO ISSUE A BLANKET PURCHASE ORDER FOR A NOT-TO-EXCEED AMOUNT OF \$250,000 FOR THE SERVICES DESCRIBED ABOVE.

Attachments: 1) Agreement

RECOMMENDATION

Staff recommends that City Council approve a one year agreement with option for one additional one-year extension with City Manager's approval; and approval of a Blanket Purchase Order for vendor to provide youth and adult swim lessons, adult exercise classes, swim camps and youth swim team programs at the Beverly Hills High School in the amount not to exceed \$250,000 per year.

Budget Unit	Account #	Description of Fund Source / Account	One Year Amount
0106702	73122	Youth/Rec Acts Contract Svcs	\$235,000.00
0106703	73122	Adult/Rec Acts Contract Svcs	\$15,000.00

INTRODUCTION

For the past 13 years, Beverly Hills Aquatics has consistently attracted a high participation rate amongst the community's youth and adult population with the provision of youth and adult swim lessons, adult exercise classes, youth camps and youth team programs through the Community Services Department. Beverly Hills Aquatics staff is comprised of highly trained and qualified professionals from diverse aquatic backgrounds. The Beverly Hills Unified School District assures access and City usage of the Swim Gym will remain during the High School renovation.

DISCUSSION

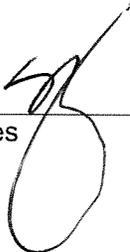
Beverly Hills Aquatics will provide youth and adult swim instruction, aquatic exercise, and swim team programs through the City's Community Services Department at the Beverly Hills High School Swim Gym. The agreement is for one year with an option to extend for one additional year with City Manager's approval at \$250,000 per year.

FISCAL IMPACT

Beverly Hills Aquatics offers of over 100 various aquatic classes and serves over 3,000 participants annually. The provision of the aquatics program is based upon a revenue split with BH Aquatics receiving 80% of the resident rate of the registration fees and the City retaining the remaining amount. Funds are currently available for this expenditure, which is offset by revenue.

Don Rhoads 

Chief Financial Officer/Director of
Administrative Services

Steven Zoet 

Director of Community Services

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND DIEGO CEVALLOS D.B.A. BEVERLY HILLS
AQUATICS FOR SWIM INSTRUCTION AND PROGRAMS
THROUGH THE CITY'S COMMUNITY SERVICES
DEPARTMENT

NAME OF CONTRACTOR: Diego Cevallos d.b.a Beverly Hills Aquatics

RESPONSIBLE PRINCIPAL
OF CONTRACTOR: Diego Cevallos

CONTRACTOR'S ADDRESS: 348 W. Spazier Avenue
Burbank, California 91506

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

COMMENCEMENT DATE: September 1, 2015

TERMINATION DATE: August 31, 2016 unless terminated sooner
pursuant to Section 11 of the Agreement

CONSIDERATION: Not to exceed \$250,000 per year, as more
fully set forth in Section 3 of the Agreement

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS
AND DIEGO CEVALLOS D.B.A. BEVERLY HILLS
AQUATICS FOR SWIM INSTRUCTION AND PROGRAMS
THROUGH THE CITY'S COMMUNITY SERVICES
DEPARTMENT

THIS AGREEMENT is made as of September 1, 2015, by and between the City of Beverly Hills, a municipal corporation (hereinafter called "CITY"), and Diego Cevallos, an individual (hereinafter called "CONTRACTOR").

RECITALS

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

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

NOW, THEREFORE, the parties agree as follows:

Section 1. CONTRACTOR's Services.

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

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

(c) CONTRACTOR shall supply at its sole cost and expense any instructional materials, supplies, handouts, books and photocopying CONTRACTOR may require for the conduct of the services required by this Agreement.

(d) CONTRACTOR is solely responsible for the hiring, training, supervision and compensation of substitutes or assistants required for the conduct of the services under this Agreement.

Section 2. Time of Performance. CONTRACTOR shall commence its services under this Agreement upon the Commencement Date or upon receipt of a written notice to proceed from CITY. CONTRACTOR shall perform the services on or by the Termination Date set forth above. The City Manager or his designee may extend the Time of Performance in writing for an additional one-year term pursuant to the same terms and conditions as this agreement.

Section 3. Compensation. CITY shall pay CONTRACTOR at the rate of eighty percent (80%) of an amount to be based on the CITY resident rate multiplied by the number of registrants of the camp and classes provided by CONTRACTOR for CITY under this Agreement. CITY shall make two payments to CONTRACTOR upon receipt of an itemized statement on a form acceptable to CITY for CONTRACTOR'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 CONTRACTOR the amount of such billing within thirty (30) days of receipt of same.

Section 4. Independent Contractor. CONTRACTOR 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 CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth. CONTRACTOR 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 shall not be assigned in whole or in part by either party, without the prior written consent of CITY. Any attempt by CONTRACTOR to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 6. Responsible Principal.

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

(b) If services under this Agreement involve minors under the age of 18, CONTRACTOR and CONTRACTOR's personnel shall be fingerprinted by the CITY Police Department in order to conduct a State Department of Justice ("DOJ") background check prior to CONTRACTOR performing services under this Agreement. CITY shall waive the administrative cost of fingerprinting and shall pay the DOJ fees. If CONTRACTOR or any CONTRACTOR 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 CONTRACTOR. CONTRACTOR 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 CONTRACTOR.

Section 9. Insurance.

(a) CONTRACTOR 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 One Million Dollars (\$1,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONTRACTOR.

(b) CONTRACTOR 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 in accordance with State law, covering any vehicle utilized by Contractor in performing the services required by this Agreement.

(c) CONTRACTOR 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. If CONTRACTOR represents that it is not required by law to maintain workers' compensation insurance coverage, CONTRACTOR shall sign an affidavit to this effect, which shall be attached hereto and incorporated herein as Exhibit B.

(d) CONTRACTOR 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) CONTRACTOR 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 CONTRACTOR's expense, the premium thereon.

(g) At all times during the term of this Agreement, CONTRACTOR 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. CONTRACTOR shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The General Liability policy of insurance required by this Agreement shall contain an endorsement naming the CITY as an additional insured. If the class is located on Beverly Hills Unified School District property, the General Liability policy of insurance shall also name the Beverly Hills Unified School 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 CONTRACTOR 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, CONTRACTOR shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONTRACTOR shall procure a bond guaranteeing payment of losses and expenses.

Section 10. Indemnification. CONTRACTOR agrees to indemnify, hold harmless and defend CITY, DISTRICT, City Council and each member thereof, and every officer, employee and agent of CITY or 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 CONTRACTOR or any person employed by CONTRACTOR 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 CONTRACTOR. CONTRACTOR agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) CONTRACTOR may cancel this Agreement at any time upon five (5) days written notice to CITY. After such effective date, CONTRACTOR shall continue providing, to the conclusion of the session, any course and/or camp that began prior to the effective date of termination. Such performance shall be subject to the terms of this Agreement.

(c) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONTRACTOR, CONTRACTOR shall be paid full compensation for all services performed by CONTRACTOR, in an amount to be determined as follows: For work done in accordance with all of the terms and provisions of this Agreement, CONTRACTOR 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 CONTRACTOR for the full performance of the services required by this Agreement.

Section 12. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 13. Attorney's Fees. In the event that CITY or CONTRACTOR commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees.

Section 14. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONTRACTOR, 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 CONTRACTOR.

Section 15. 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 16. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 17. CITY Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONTRACTOR.

Section 18. 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 _____, 201____, at Beverly Hills, California.

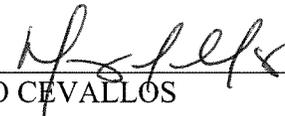
CITY OF BEVERLY HILLS
A Municipal Corporation

JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

CONTRACTOR: DIEGO CEVALLOS
d.b.a. BEVERLY HILLS AQUATICS



DIEGO CEVALLOS
Owner

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

MAHDI ALUZRI
Interim City Manager



STEVEN ZOET
Director of Community Services



KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF SERVICES

CONTRACTOR shall provide all aquatic programs and instruction for CITY's Community Services Department programs on DISTRICT property in accordance with a schedule approved by CITY in writing. Other than as necessary to meet the needs of students and program participants, CONTRACTOR shall set its own schedule, hours (including any time for preparation) and location of work. Any changes to the schedule, including cancellation of any and all classes/programs, are subject to the prior written approval of CITY.

CONTRACTOR has experience and training in providing the services and instruction outlined in this Scope of Services. CITY lacks this experience and training and is not qualified to determine the methods and means to be employed in providing such services. CITY is only interested in the results to be achieved. As a result, CONTRACTOR shall be solely responsible for determining the outline and content of instruction provided under this Agreement. CONTRACTOR shall be solely responsible for determining the instructional methods and means to be used for all instruction under this Agreement and in determining manner by which services will be provided.

CONTRACTOR retains the right to provide similar services, including recreation classes, for other cities, special districts or private entities or to provide its services directly to the general public.



EXHIBIT B

**CITY OF BEVERLY HILLS
WORKER'S COMPENSATION STATEMENT**

FY 2015-2016
July 1, 2015 TO JUNE 30, 2016

(For Vendor not Subject to California Worker's Compensation Laws)

I, Diego Cevallos, certify that in the performance of my agreement with the City of Beverly Hills, I shall not employ any person in any manner so as to become subject to the Worker's Compensation Laws of California.

I agree that should I become subject to the Worker's Compensation Laws of California during the term of the agreement, I will notify the City of Beverly Hills and I will comply with those laws immediately.

VENDOR USE ONLY:

Diego Cevallos
(NAME AS IT APPEARS ON CONTRACT)

VENDOR NUMBER

Diego Cevallos
(SIGNATORY'S PRINTED NAME)

310.529.9081
(TELEPHONE NUMBER)

[Signature]
(SIGNATURE)

(DATE SIGNED)

REVIEWED/APPROVED BY:

[Signature]
Risk Management Division

8/2/15
Date Signed



EXHIBIT C

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
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONTRACTOR'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> 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

AGENCY: _____

TITLE: _____
ADDRESS: _____
