



## AGENDA REPORT

**Meeting Date:** December 21, 2010  
**Item Number:** F-9  
**To:** Honorable Mayor & City Council  
**From:** Steven Zoet, Assistant Director of Community Services/Recreation and Parks  
**Subject:** AMENDMENT NO. 1 TO AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND THE BEVERLY HILLS UNIFIED SCHOOL DISTRICT FOR THE PROVISION, USE AND MAINTENANCE OF EDUCATIONAL, RECREATIONAL AND COMMUNITY FACILITIES AND PROGRAMS FOR THE YEARS 2008 THROUGH 2012

**Attachments:** 1. Proposed Agreement

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### **RECOMMENDATION**

Staff recommends that City Council approve "Amendment No. 1 to Agreement Between the City of Beverly Hills and the Beverly Hills Unified School District for the Provision, Use and Maintenance of Educational, Recreational and Community Facilities and Programs for the Years 2008-2012." The purpose of modifying the language is to effect a change in the requirements for the use and procedure associated with a portion of the funds provided the District through the financial obligations paid them as required by the JPA and set forth with this action. Staff and the City Council liaisons are confirming the requirement that the District utilize a portion of the City's funding obligation for the exclusive use and purpose of artificial field turf removal, disposal and replacement. The proposed language modifications stipulate those requirements and specify the process involved. After the City Council approves the amendment, the District's Board of Education will be required to approve the same document.

### **INTRODUCTION**

Pursuant to liaison meetings involving Vice Mayor Brucker, Councilmember Brien, School Board members Goldberg and Vice President Korbatov and City and District staff

the City stipulated its interest to strengthen the language of the existing JPA to assure District compliance with what the underlying intent of the original language was.

**DISCUSSION**

Representatives in attendance at recent liaison meetings have discussed multiple items of mutual interest to the City and District. Amongst those items of discussion has been the use of JPA funds provided the District by the City where certain conditions were implied.

Specific language within the JPA currently calls for the District to create a separate fund whereby they are required to set aside \$600,000 annually for the sole purpose "to fund the ongoing maintenance of turf at the District's four elementary schools and, if required, its removal, disposal and replacement." The purpose and intent of the requirement was for the replacement and disposal of the artificial turf at each of the elementary schools as needed over the course of the term of the agreement. However, as the current language allows for the funding of "ongoing maintenance" the District has interpreted and used funds in a different capacity than originally intended.

The attached language modifications further restricts the spending of the funds exclusively to the specific and identified uses of removal, disposal and replacement and requires the establishment of a separate escrow account whereby funds can only be released and used for these purposes upon the mutual and approved signatures of District and City representatives. The City's Chief Financial Officer, or his designee, are the approved signatory authorized to act on behalf of the City.

The District, upon receipt of quarterly payments from the City as called for through the current JPA, shall be obligated within the timeframe set forth in the attached language to transfer \$150,000 into the reserve account for each quarter in FY 2010/11 such that the sum of \$600,000 will be deposited by the end of FY 2010/11. Additionally, the same schedule and commitments shall apply for FY 2011/12, the final year of the current JPA, so that the sum of \$1.2 million has been deposited into the account by the end of the term of the agreement. Verification will be required to be remitted to the City showing completion of the specified transactions. Any unused funds remaining in the account at the conclusion of the term of the agreement, inclusive of accrued interest, will be allowed to carry forward into future years for use in the replacement of turf as necessary and identified in the District's intended replacement schedule as previously provided the City.

The School Board reviewed the conditions associated with the proposed change at their December 14 meeting and will sign the agreement modifications provided them by the City once Council action has been taken.

**FISCAL IMPACT**

Adoption of the language modifications does not change the financial requirements or obligations of the City to the District but does impose specific and stricter requirements on the District to conform to the originally intended uses of the identified funds. The City has the financial resources and wherewithal necessary to meet its financial obligations associated with the JPA and will continue to make its quarterly payments to the District upon receipt of invoice.

  
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Scott Miller  
Finance Approval

  
\_\_\_\_\_  
Steve Zoet  
Approved By

# **Attachment 1**

AMENDMENT NO. 1 TO AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND THE BEVERLY HILLS UNIFIED SCHOOL DISTRICT FOR THE PROVISION, USE AND MAINTENANCE OF EDUCATIONAL, RECREATIONAL AND COMMUNITY FACILITIES AND PROGRAMS FOR THE YEARS 2008 THROUGH 2012

THIS AMENDMENT NO.1 to that Agreement between the City of Beverly Hills "City" and the Beverly Hills Unified School District ("District"), dated July 8, 2008, identified as Contract No. 259-08, a copy of which is on file in the City Clerk's office ("Agreement"), is made and entered into this 21<sup>st</sup> day of December, 2010.

RECITALS

A. Pursuant to the provisions of Title 1, Division 1, Part 7, Chapter 10 of the California Education Code (commencing with section 10900), Title 1, Division 7, Chapter 5, Article 1 of the California Government Code (commencing with section 6500), and section 37110.5 of the California Government Code, the City and the District entered into an Agreement for the City's use of educational and recreational facilities in carrying out its programs for the benefit of its residents.

B. The parties desire to amend the Agreement with regard to the District's obligations pertaining to a set-aside fund for the replacement of synthetic turf at the District's four elementary schools.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

Section 1. Paragraph D.3 of Section 3 of the Agreement is hereby amended to read as follows:

“3. For fiscal year 2010-2011, the City shall provide the District an annual payment of the FY 09-10 Base Payment plus the same cost of living increase the City provides to itself as set forth in the City’s Fiscal Year 2010-2011 budget (collectively “FY 10-11 Based Payment”). Of the FY 10-11 Base Payment, the District shall set-aside \$150,000 from each quarterly payment it receives and within thirty days after receipt of each quarterly payment, the District shall deposit that \$150,000 into an escrow or similar account as is further described in Subsection 3.E. of this Agreement (the “Artificial Turf Fund”). At the end of the 2010-2011 fiscal year, the District shall ensure that at least \$600,000 has been deposited into the Artificial Turf Fund during that fiscal year.”

Section 2. Paragraph D.4 of Section 3 of the Agreement is hereby amended to read as follows:

“4. For fiscal year 2011-2012, the City shall provide the District an annual payment of the FY 10-11 Base Payment plus the same cost of living increase the City provides to itself as set forth in the City’s Fiscal Year 2011-2012 budget (collectively “FY 11-12 Based Payment”). Of the FY 11-12 Base Payment, the District shall set-aside \$150,000 from each quarterly payment it receives and within thirty days after receipt of each quarterly payment, the District shall deposit that \$150,000 into the Artificial Turf Fund. At the end of the 2011-2012 fiscal year, the District shall ensure that at least \$600,000 has been deposited into the Artificial Turf Fund during that fiscal year.”

Section 3. A new paragraph “E” is hereby added to Section 3 of the Agreement to read as follows:

“E. Artificial Turf Fund.

1. The District and the City shall jointly open an escrow or similar account at a financial institution selected by the City and such account shall serve as the Artificial Turf Fund referenced in Subsections 3.D.3 and 3.D.4. The District shall deposit the quarterly \$150,000 payments described in Subsections 3.D.3 and 3.D.4 into the Artificial Turf Fund. The escrow instructions or other terms of the Artificial Turf Fund shall provide that: (i) the account shall be in the name of the District and the City; and (ii) any withdrawal of any amount from the Artificial Turf Fund must be approved by both the District and by the City’s Chief Financial Officer.
2. The District shall provide notice to the City’s Chief Financial Officer within 5 days of each deposit made to the Artificial Turf Fund. If a deposit is not made as required by Subsections 3.D.3 and 3.D.4, the City may, at its option, withhold \$150,000 from any subsequent quarterly payment to the District and that

\$150,000 shall be deposited into the Artificial Turf Fund. The City may also, at its option, deduct the \$150,000 quarterly payment to the Artificial Turf Fund from the District's April 1, 2012 quarterly payment and directly deposit that \$150,000 into the Artificial Turf Fund to ensure that \$1,200,000 has been deposited into the Artificial Turf Fund during fiscal years 2010-2011 and 2011-2012.

3. The Artificial Turf Fund shall be used solely for the removal, disposal and replacement (whether in whole or in part) of the artificial turf fields that currently exist at El Rodeo School, Horace Mann School, Beverly Vista School and Hawthorne School. Removal, disposal and replacement includes direct costs normally associated with the replacement of artificial turf and does not include any administrative costs incurred by the District, whether or not related to replacement or maintenance of the artificial turf fields and does not include any maintenance of the artificial turf fields, whether performed by the District or a third party. Maintenance as used herein means any activity to maintain the life of a synthetic turf field which includes but is not limited to raking, deep-tining, vacuuming, leaf-blowing, hand-picking, wetting, washing, sanitizing, treating for weeds and pests, treatment of turf with solvents or other similar solutions, seam repairs, rubber infill replacement or grade adjustments. Maintenance of the artificial turf fields is at the sole cost and expense of the District.
4. In order to withdraw monies from the Artificial Turf Fund for the purposes set forth herein, the District shall provide the City's Chief Financial Officer with a proposal, bid or other independent evidence that documents the need and the cost for removal, disposal and/or replacement of the artificial turf. The City, in its sole discretion, has authority to determine whether the request meets the requirements set forth herein for the use of the Artificial Turf Fund. If approved, the City will execute any documentation required by the financial institution that holds the Artificial Turf Fund in order to release such monies. If the monies in the Artificial Turf Fund are not sufficient for the work proposed, the City has no obligation to provide any additional funding.
5. If the City determines that the monies withdrawn from the Artificial Turf Fund are utilized for purposes not permitted by this Agreement, the City shall notify the District and the District shall within ten days of such notification, replace such monies by depositing the same into the Artificial Turf Fund. If such monies are not replaced, the City may deduct such amount from any subsequent payment owed to the District under this Agreement.
6. Any monies remaining in the Artificial Turf Fund at the expiration (June 30, 2012) or earlier termination of this Agreement, may be utilized by the District in the manner described herein and shall be utilized by the District solely for the removal, disposal, and/or replacement of the artificial turf at the four elementary schools identified above. Such monies shall only be withdrawn from the Artificial Turf Fund in accordance with the procedures set for in this Subsection E."

Section 4. A new Section 24 is hereby added to the Agreement to read as follows:

“Section 24. Survival of Provision. Subsection 3.E of this Agreement shall survive the expiration or earlier termination of this Agreement. The District agrees to comply with the provisions of Subsection 3.E. until the monies in the Artificial Turf Fund are exhausted.”

Section 5. Reimbursement of Funds. In the event a court of competent jurisdiction holds that any money paid to the District under this Amendment No. 1 to the Agreement has been expended by the City without proper authority and the court holds either that the money must be refunded to the City by the District and/or individual members of the City Council are personally liable to the City, for any such expenditures, the District shall reimburse the City and/or individual members of the City Council for any such payments up to the amount specified in the judgment, but not to exceed the total payments already made by the City under this Agreement. This section shall survive the expiration or earlier termination of this Agreement.

Section 6. Severability Clause. If any provisions of this Amendment No. 1 to the Agreement or the application thereof to any person or circumstances are held invalid, only those invalid provisions shall cease and become null and void. Should the exclusion of those provisions render this Amendment No. 1 contrary to the intent of the parties, the City and the District shall use their best efforts to restructure Amendment No. 1 consistent with the original intent of the parties. If the City and the District are unable to agree after utilizing their best efforts, this Amendment No. 1 shall become null and void upon notice, and at the election of, either party hereto.

Section 7. Compliance with Law. In performing its obligations under this Amendment No. 1 to the Agreement, each party shall undertake its respective activities in compliance with all applicable local, state and federal laws.

Section 8. Interpretation of Amendment. The terms of this Amendment No. 1 to the Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Amendment No. 1 or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only.

Section 9. City Not Liable to Third Parties. The City shall not be obligated or liable under this Amendment No. 1 to the Agreement to any party other than the District.

Section 10. Entire Agreement. This Amendment No. 1 to the Agreement, in combination with the Agreement, represents the entire integrated agreement between City and District, and supersedes all prior negotiations, representations or agreements, either written or oral. This Amendment No. 1 to the Agreement may be amended only by a written instrument signed by both City and District.

Section 11. Governing Law. The interpretation and implementation of this Amendment No. 1 to the Agreement shall be governed by the domestic law of the State of California.

Section 12. Attorney Fees. In the event that City or District commences any legal action or proceeding to enforce or interpret the provisions of this Amendment No. 1

to the Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorneys' fees.

Section 13. Except as specifically amended herein, the Agreement shall remain in full force and effect.

Section 14. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

Executed on the day and year first above written, at Beverly Hills, California.

CITY OF BEVERLY HILLS  
A Municipal Corporation

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JIMMY DELSHAD  
Mayor of the City of  
Beverly Hills, California

ATTEST:

\_\_\_\_\_(SEAL)  
BYRON POPE  
City Clerk

BEVERLY HILLS UNIFIED  
SCHOOL DISTRICT

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President, Board of Education

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Secretary, Board of Education

Approved as to form:



LAURENCE S. WIENER  
City Attorney

Approved as to content:

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JEFF KOLIN  
City Manager



NANCY HUNT-COFFEY  
Interim Director of Community  
Services



SCOTT G. MILLER  
Chief Financial Officer