



AGENDA REPORT

Meeting Date: April 21, 2011
Item Number: G-7
To: Honorable Mayor & City Council
From: Steven Zoet, Director of Community Services *SZ*
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. Amendment Number 1

RECOMMENDATION

Staff recommends that City Council approve the attached amendment to the current JPA between the City of Beverly Hills and the Beverly Hills Unified School District. The purpose of the amendment is to further define the requirements for the use of and procedures associated with a portion of the funds provided the District through the financial obligations paid them as required by the JPA. A portion of the City's funding obligation is to be used for the exclusive use and purpose of artificial field turf removal, disposal and replacement. The language modifications contained within the amendment stipulate those requirements and specify the process involved in their payment.

Staff from both entities, as well as City Council and School Board liaisons and the legal counsel of both respective agencies have reviewed and approved the attached amendment. Additionally, the School Board approved the amendment at its April 12, 2011 meeting. City Council approval is required to effect the amendment and establish an escrow account into which designated funds will be placed.

INTRODUCTION

Pursuant to past liaison meetings involving Mayor Brucker, Vice Mayor Brien, School Board members Goldberg and President Korbatov and City and District staff the City stipulated its interest to amend the language of the existing JPA to assure that funds intended for the purpose of field turf replacement were escrowed and available when needed in the future.

DISCUSSION

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 to assure that funds existed 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.

The attached amendment further defines the spending of the funds exclusively to the specific and identified uses of removal, disposal and replacement. It also 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 Manager, or his designee, is the approved signatory authorized to act on behalf of the City.

The City, upon receipt of quarterly invoices from the District, shall set aside \$150,000 from each quarterly payment from the effective date of this agreement forward until the date of its conclusion and shall deposit the same into the reserve account. For each fiscal year 2010-2011 quarterly payment that has been made before the effective date of this agreement, the District shall deposit \$150,000 into the artificial turf fund such that the sum of \$1.2 million has been deposited into the account by the end of the term of the current agreement. 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.

FISCAL IMPACT

Adoption of the amendment does not change the financial requirements or obligations of the City to the District. It does impose more specific and defined requirements to assure that funds have been established and set aside to meet future anticipated turf replacement requirements. 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, less the stipulated amount for the turf payments which shall be paid separately, upon receipt of invoice.



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 12th day of April, 2011 ("Effective Date").

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 City shall set-aside \$150,000 from each quarterly payment and 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”). For each fiscal year 2010-11 quarterly payment that has been made before the Effective Date of this Agreement, the District shall deposit \$150,000 into the Artificial Turf Fund no later than June 30, 2011.”

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 City shall set-aside \$150,000 from each quarterly payment and shall deposit that \$150,000 into the Artificial Turf Fund.”

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 City shall deposit the payments described in Subsection 3.D.4 into the Artificial Turf Fund. The District shall deposit the payments described in Subsection 3.D.3 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; (ii) any withdrawal of any amount from the Artificial Turf Fund must be approved by both the District Superintendant or his designee and by the City Manager or his designee; and (iii) neither the Superintendant nor the City Manager nor any designee shall approve any withdrawal unless that person is presented with a proposal, bid or other independent evidence that the amount of the withdrawal is necessary to fulfill the purposes described in subsection 3.E.3 below.

2. The District shall provide notice to the City's Chief Financial Officer within 5 days after its deposit is made to the Artificial Turf Fund pursuant to Section 3.D.3.
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. 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 monies are withdrawn from the Artificial Turf Fund and for any reason, whether or not such reason is within the control of the parties, the monies are not utilized for the purposes set forth in subsection 3.E.3 within thirty (30) days, then such monies shall be returned to the Artificial Turf Fund. If such monies have not been, or cannot be, returned and are used for educational or other District purposes, whether or not such use is within the control of the parties, then the City may deposit the equivalent amount into the Artificial Turf Fund and deduct such amount from any subsequent payment owed to the District.
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

BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

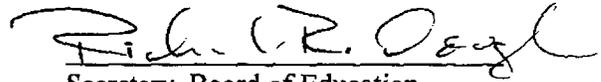
ATTEST:

(SEAL)
BYRON POPE
City Clerk

BEVERLY HILLS UNIFIED
SCHOOL DISTRICT

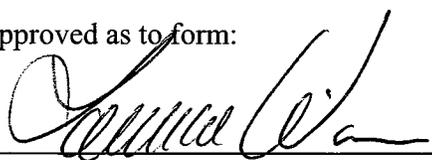


President, Board of Education



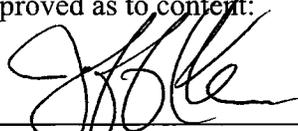
Secretary, Board of Education

Approved as to form:

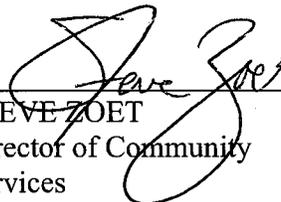


LAURENCE S. WIENER
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Approved as to content:



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