



AGENDA REPORT

Meeting Date: May 1, 2012
Item Number: E-1
To: Honorable Mayor and City Council members
From: Mahdi Aluzri, Assistant City Manager *MA*
Subject: **AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND UNITED TALENT AGENCY RELATING TO UNITED TALENT AGENCY'S DECISION TO RELOCATE WITHIN THE CITY OF BEVERLY HILLS**

Attachments: 1. Agreement

RECOMMENDATION

Staff recommends the City Council adopt the agreement with United Talent Agency (UTA) relating to its decision to relocate and expand its offices within the City.

INTRODUCTION

The attached agreement between the City and UTA has been negotiated between staff and representatives of UTA related to its decision to remain in the City and execute a long term lease with Tishman Speyer, the owner of the building at 9326 and 9346 Civic Center Drive. The terms include obligations on both the City and UTA and are consistent with the City's strategy of retaining entertainment businesses that are important and substantially contribute to the City's economy and tax revenues.

DISCUSSION

UTA is one of the largest and most prestigious talent and literary agencies in the City. Its headquarters are currently located at 9560 Wilshire Blvd. Over the last two to three years staff and UTA have been discussing UTA's desire to relocate to a bigger space in the City to accommodate its expanding business. After considering many options including lease space outside the City, UTA decided to enter into a long term lease for close to 100,000 square feet of space in the building located at 9326 & 9346 Civic Center Drive.

Representatives from UTA approached the City in order to discuss ways in which UTA and the City could both maximize the benefits of UTA relocating within the City, rather than moving to another jurisdiction. The resulting agreement provides benefits to both parties and is consistent with all of the City's codes and regulations. The following is a summary of the primary provisions of the Agreement:

1. The term of this Agreement commences on the date that this Agreement is approved by the City Council and will terminate on April 30, 2027 or when UTA reduces by fifty percent (50%) or more the amount of space it occupies at the property under the lease.
2. During the term of this Agreement, UTA will continue to maintain its primary California offices for talent and literary agency business in the City.
3. The City has a right to lease from UTA up to thirty (30) parking spaces on a daily or hourly basis to accommodate the City's needs during special events and UTA shall make such spaces available if UTA does not have a conflicting need for the spaces during the hours requested by the City. The spaces will be provided at prevailing market rate for use of the parking spaces.
4. After the issuance of a Certificate of Occupancy, and with written request by UTA, the City will place the words "United Talent Agency Drive" or "UTA Drive," or a similar designation at the locations outlined in the agreement along Civic Center Drive. The installation will be at the expense of UTA.
5. The Farmer's Market will be relocated westerly so that it does not prohibit vehicular access to the UTA's office building driveway on Civic Center Drive.
6. The City will grant UTA the right to use the Civic Center Plaza for special events without a rental fee charge up to five times per calendar year during the term of the Agreement. However the City is not obligated to absorb any hard costs associated with these events.
7. The City will grant UTA the right to rent on a monthly basis, up to thirty (30) parking spaces in the City owned garage adjacent to the library.
8. Unless the City determines that the public health and safety require its removal or alteration, the right turn arrow currently on the signal for traffic heading in an easterly direction on Santa Monica Boulevard and turning right onto Beverly Blvd., will be maintained.
9. If the City takes an action to rezone the former railroad right of way adjacent to the UTA building, the rezoning shall be consistent with either the commercial, residential or open space provisions of the General Plan.
10. In the event that the City grants economic incentives, financial benefits, or inducements to any entertainment, talent or literary agency within the City to encourage such agency to remain in the City and not relocate to another City, UTA will be given similar benefits provided to such other agency pro-rated over the remaining months left in the term of the Lease. This "most favored nations" provision does not apply to incentives provided to entertainment agencies that move into the City from another jurisdiction.

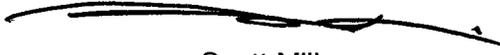
The Agreement is not transferable without consent of the City. The Agreement also includes the typical indemnification, default, and legal disclosure and obligation language.

Environmental Assessment

The agreement is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3) which provides that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

FISCAL IMPACT

There is minimal fiscal impact anticipated as result of the adoption of this Agreement. However, in the unlikely scenario of the City granting a tax reduction incentive or similar benefit to a potential entertainment business in order to encourage that business to remain in the City, UTA would be offered the same prorated tax reduction privilege as outlined in item 3(a) on page 2.



Scott Miller
Finance Approval



Jeff Kolin
Approved By

Attachment 1

**AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND UNITED TALENT
AGENCY RELATING TO UNITED TALENT AGENCY'S DECISION TO RELOCATE
WITHIN THE CITY OF BEVERLY HILLS**

THIS AGREEMENT (the "Agreement") is made by and between the CITY OF BEVERLY HILLS, a California municipal corporation (the "City") and UNITED TALENT AGENCY, a California Corporation ("UTA"). The City and UTA are individually referred to herein as a "Party" and collectively referred to as "Parties."

RECITALS

A. UTA is a talent and literary agency located at 9560 Wilshire Boulevard, Beverly Hills, California, 90212. UTA is one of the largest talent and literary agencies in the United States with more than one hundred agents representing actors, writers, directors, producers, recording artists, below the line talent, IP rights holders, emerging technology companies, and corporate brands in a variety of practice areas including film, television, music, digital media, intellectual property, computer and video games, commercials, voice overs, endorsements, branding and licensing, corporate consulting, and entertainment marketing.

B. UTA has determined that there is insufficient space at its current location at 9560 Wilshire Boulevard, Beverly Hills California, 90212, and has conducted a search for new corporate headquarters with the cities of Beverly Hills, West Hollywood, and Los Angeles.

C. Talent and literary agencies are important business entities of the City as they produce very substantial business taxes and heavily support other businesses in the City, including but not limited to hotels, restaurants, and retail stores.

D. The City has determined that as a result of UTA entering a fifteen year lease (the "Lease") for a portion of the buildings located at 9326 and 9346 Civic Center Drive, Beverly Hills, California 90212 (the "Property"), and retaining its corporate headquarters in the City, substantial benefits will accrue to the City and the public, including, without limitation: the upgrading of a Class "A" three story office building in a prominent location in the City; retaining UTA's headquarters in the City; maintaining and strengthening the economic base of the City by retaining UTA, which provides substantial economic benefit to the City and businesses within the City; providing for the enhancement of employment and commerce; developing entertainment office uses responsive to the City's needs and regional market forces; and augmenting the City's economic base by providing tax-generating revenues from increased business taxes from UTA and increased property taxes by increasing the assessed value of the Property.

E. UTA has determined that the City of Beverly Hills offers unique advantages as a corporate headquarters location due to its superior public services and international reputation.

F. The City has worked with UTA to encourage UTA to relocate within the City.

G. The City assured UTA that building permit fees associated with the UTA's initial occupancy of the building would total less than \$300,000. Building permits have been issued and building permit fees totaled less than \$300,000. UTA has paid all building permit fees and has complied with all requirements contained in the Beverly Hills Municipal Code to obtain the building permits.

H. The City has granted a landscaping easement to the Property owner over a portion of City property easterly of the Property for the purpose of allowing the Property owner to plant a visual screen between the Property and the City's public works facilities to make the Property more attractive to UTA.

I. Through this Agreement, the City and UTA seek to increase the benefits that they have realized from UTA's decision to enter into the Lease and relocate within Beverly Hills by maximizing UTA's opportunity for continued success.

AGREEMENT

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

1. Term of Agreement. The term of this Agreement shall commence on the date that this Agreement is approved by the City Council of the City of Beverly Hills and shall terminate on April 30, 2027 or upon UTA reducing by fifty percent (50%) or more the amount of space it occupies at the Property under the Lease.

2. UTA's Obligations.

(a) Maintenance of Beverly Hills as Primary Location. During the term of this Agreement, UTA shall continue to maintain in Beverly Hills its primary office in California for its talent and literary agency business.

(b) Parking. The City shall have the right to lease from UTA up to thirty (30) parking spaces on a daily or hourly basis to accommodate the City's needs during special events held in the Civic Center area. UTA shall make such spaces available if UTA does not otherwise have a demand for those spaces during the hours requested by the City. The City shall pay the prevailing market rate for use of the parking spaces.

3. City's Obligations.

(a) Equalization of Benefits. In the event that the City grants economic benefits, financial benefits, or inducements materially different than the City's obligations under this Agreement (collectively "Inducements") to any entertainment, talent or literary agency within the City to encourage such agency to remain in the City and not relocate to another City, UTA will be given Inducements similar in type, value, timing and duration as are provided to such other agency pro-rated over the remaining months left in the term of the Lease. Provided, however, the similar Inducements provided to UTA will be reduced by the value of any specific

consideration paid or given by the entertainment, talent or literary agency for the Inducements, unless UTA has given the City similar consideration under this Agreement. Inducements shall include, but not be limited to, a waiver or reduction in the City's business taxes, permit fees, inspection fees, review fees, other normally charged fees or impositions, and other direct or indirect economic concessions or grants. Inducements do not include: changes or modifications to zoning, the creation of overlay zones, the creation of planned developments, the creation of special use areas or zones, any other land use action of the City, or any tenant improvement allowance or other Inducement provided to a tenant of the City or the City's Parking Authority. As an example of how to prorate Inducements pursuant to this section, if for the purposes set forth in this Section, the City waived the business tax for an entertainment agency in the City for a period of four years (48 months) during the 85th month of the Lease (*i.e.*, the first month of the eighth year, leaving ninety six (96) months on the Lease), then the City as part of such action would waive the business tax for UTA for a period of twenty six (26) months ($48 \times 96/180 = 26$) or until the termination of the Lease, whichever occurs first. Further, in the event that UTA reduces by more than ten percent (10%) the square footage it occupies at the Property, the similar Inducements given to UTA by the City will be reduced in proportion to the square footage reduction at the Property that exceeds ten percent (10%).

(b) Use of name "United Talent Agency" or "UTA" on Street Signs. After the issuance of a temporary or final Certificate of Completion or Certificate of Occupancy, and upon written request by UTA, the City will place the words "United Talent Agency Drive" or "UTA Drive," or a similar designation mutually agreeable to the Parties, below the street name of "Civic Center Drive" on the east/west directional street name signs at: (i) the southwest corner of the intersection of Foothill Road and Civic Center Drive and (ii) the intersection of the east/west and north/south legs of Civic Center Drive. The legal name of the street "Civic Center Drive" will not be changed. Thereafter, upon termination of the Lease or termination of this Agreement the signage may be removed. In addition, UTA may direct the City, in writing, to remove the signage at any time. The City will install or remove the signage within ninety (90) days after such request has been made and UTA has paid to the City all costs associated with the production and installation, or removal, of such signage, as applicable.

(c) Access to Property. The City will relocate its Farmer's Market so that the Farmer's Market does not prohibit vehicular access to the Property from Civic Center Drive. However, nothing in this Agreement shall prohibit the Farmer's Market from being located on Civic Center Drive or elsewhere in the general vicinity of the Property in a manner that might inhibit the vehicular approach to the Property from one direction.

(d) Use of Civic Center Plaza. The City shall grant UTA the right to use the Civic Center Plaza for special events without a rental fee charge up to five times per calendar year during the term of this Agreement. However, the City shall be under no obligation to waive any other charges associated with a special event including, without limitation, street closure fees, other traffic control fees, and parking fees.

(e) Rental of Parking Spaces. During the term of this Agreement, the City will grant to UTA the right to rent on a monthly basis, at the City's normal monthly parking rates, up to thirty (30) parking spaces in the publicly owned garage located adjacent to the library.

(f) Maintenance of Right Turn Arrow. The City will maintain the right turn arrow on the traffic signal for traffic heading in an easterly direction on Santa Monica Boulevard and turning right onto Beverly Boulevard, unless the City determines that the public health or safety require its removal or alteration.

(g) Entitlement of the Railroad Right of Way. In order to insure proper and compatible development of the former railroad right of way directly north of the Property, if the City takes an action to rezone the former railroad right of way, the rezoning shall be consistent with either the commercial, residential or open space provisions of the General Plan.

4. Transfer of Interest in Agreement. UTA's obligations and benefits set forth in this Agreement are personal and may not be transferred, except that UTA's obligations and benefits may be transferred to a transferee of the Lease with the consent of the City, which consent shall not be withheld if the City determines that the transferee is a successor entity to UTA that will continue to use the Property for the purpose of operating a talent and literary agency or if the City determines that the transferee is an entertainment and literary agency of similar prominence and stature as UTA.

5. Indemnification.

(a) UTA agrees to and shall indemnify, hold harmless, and defend the City and its respective officers, officials, members, agents, employees, and representatives from liability or claims for death or personal injury and claims for property damage which arise from the acts, errors, and/or omissions of UTA, its employees, or other persons over whom UTA has direct managerial control in relation to the Lease and/or in any manner arising from this Agreement. The foregoing indemnity applies to all deaths, injuries, damages, and claims therefor, suffered or alleged to have been suffered by reason of the acts, errors, and/or omissions, regardless of whether the City prepared, supplied, or approved plans or specifications, or both. In the event of litigation, the City agrees, at no cost to the City, to cooperate with UTA. This indemnification, hold harmless, and defense requirement shall survive the termination and expiration of this Agreement. The City reserves the right, in cases subject to this indemnity, to reasonably approve the attorney selected by UTA to defend the City in any such action.

(b) In the event of any court action or proceeding challenging the validity of this Agreement, UTA shall defend, at its own expense, the action or proceeding. In addition, UTA shall reimburse the City for the City's costs in defending any court action or proceeding challenging the validity of this Agreement. UTA shall also pay any award of costs, expenses, and fees that the court having jurisdiction over such challenge makes against the City. UTA shall cooperate with the City in any such defense as the City may reasonably request and may not resolve such challenge without the agreement of the City, except in the case of obtaining a dismissal of the action without providing consideration to any other litigant. In the event UTA fails or refuses to reimburse the City for its costs to defend any challenge to this Agreement, the City shall have the right to terminate this Agreement. Further, the City shall have the right to resolve any challenge in any manner, in its sole discretion. Provided, however, UTA's consent shall be required if the resolution of the challenge requires a payment by UTA or limits UTA's rights under this Agreement.

6. Default. Failure by City or UTA to perform any term or provision of this Agreement for a period of thirty (30) days from the receipt of written notice thereof from the other shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such thirty day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Subject to the foregoing, and except as provided below, after notice and expiration of the 30-day period without cure, the notifying party, at its option, shall have all rights and remedies provided by law and/or may terminate this Agreement. Upon any such termination, the respective rights, duties and obligations of the Parties hereto shall without further action cease as of the date of such termination (except as to duties and obligations that arose prior to the date of such termination).

Notwithstanding anything to the contrary in this Agreement, in no event shall monetary damages be available against the City for any alleged default or breach by the City, except as necessary to reimburse UTA for monies owed to UTA pursuant to the provisions of Section 3(a) above.

Notwithstanding anything to the contrary in this Agreement, in no event shall monetary damages be available against UTA for any alleged default or breach by UTA, except for any defense or indemnification costs incurred by City due to a breach of the obligations in Section 5. Furthermore, in the event of a breach of the obligation in Section 2(a) above, the City's only remedy shall be termination of this Agreement. Upon any such termination, the respective rights, duties and obligations of the Parties hereto shall without further action cease as of the date of such termination.

7. Relationship of the Parties. The Parties acknowledge and agree that UTA is not acting as an agent, joint venturer or partner of the City, but each Party is, in fact, an independent party.

8. No Third Party Beneficiaries. The only Parties to this Agreement are the City and UTA. There are no third party beneficiaries and this Agreement is not intended to and shall not be construed to benefit or be enforceable by any other person or entity whatsoever, except as specifically provided in Section 4.

9. Advice-Neutral Interpretation. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement has been drafted through a joint effort of the Parties and their counsel and, therefore, shall not be construed against either Party for that Party's role in drafting this Agreement.

10. Certificate of Compliance. At any time during the term of this Agreement, any lender or other party may request either Party to this Agreement to confirm that (i) this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications); (ii) to the best of such Party's knowledge, no defaults exist under this Agreement

or if defaults do exist, to describe the nature of such defaults; and (iii) any other information reasonably requested. Each Party hereby agrees to provide a certificate to such lender or other Party within ten (10) business days of receipt of the written request therefor. The failure of any Party to provide the requested certificate within such ten (10) business day period shall constitute a confirmation that this Agreement is in full force and effect without modification except as may be represented by the requesting Party and that to the best of the non-responding Party's knowledge, no defaults exist under this Agreement, except as may be represented by the requesting Party.

11. Consideration. The City and UTA acknowledge and agree that there is good, sufficient and valuable consideration being given to the City and UTA pursuant to this Agreement. The Parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable.

12. Compliance with Law. Notwithstanding any provision of this Agreement, the Parties agree to comply with all federal, state, and local laws and to act reasonably in good faith in carrying out the terms of this Agreement.

13. Headings. The section headings used in this Agreement are for convenience and reference only and shall not be used in construing this Agreement. The words "include," "including," or other words of like import are intended as words of illustration and not limitation and shall be construed to mean "including, without limitation."

14. Amendment. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the Parties hereto with the same formality as this Agreement.

15. Waiver. The failure of either Party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions, or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election, or option, and the same shall continue and remain in full force and effect. No waiver by any Party hereto of any covenant, agreement, term, provision, or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such Party.

16. Severability. If any article, section, subsection, term, or provision of this Agreement, or the application thereof to any Party or circumstance, is to any extent invalid or unenforceable, the remainder of the article, section, subsection, term, or provision of this Agreement, or the application of the same to any Party or circumstance other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining article, section, subsection, term, or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17. Force Majeure. Performance by any Party of its obligations hereunder (other than for payment of money) shall be excused during any period of "Permitted Delay." Permitted Delay shall mean and include delay beyond the reasonable control of the Party claiming the delay (despite the good faith efforts of such Party), including without limitation, all of the

following: acts of God; civil commotion; riots; strikes; picketing or other labor disputes; shortages of materials or supplies; damage to work in progress by reason of fire, floods, earthquake, or other casualties; failure, delay or inability of the other Party to act; and litigation brought by a third party attacking the validity of this Agreement.

18. Notices. All notices, disclosures, demands, acknowledgements, statements, requests, responses and other communications (each, a "Communication") to be given under this Agreement shall be in writing, signed by a Party (or an officer, agent or attorney of such Party) and shall be deemed effective: (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) upon delivery or the date of refusal if sent by the United States mail, postage prepaid, certified mail, return receipt requested, if delivered as follows:

To UTA: United Talent Agency
Attn: Andrew Thau
9560 Wilshire Blvd.
Beverly Hills, CA 90212

and

United Talent Agency
Attn: Andrew Thau
9336 Civic Center Drive
Beverly Hills, CA 90212

with copy to: Mark Egerman, Esq.
Egerman & Brown, LLP
9401 Wilshire Boulevard, Suite 500
Beverly Hills, CA 90212

To the City: City Manager
City of Beverly Hills
455 N. Rexford Dr.
Fourth Floor
Beverly Hills, California 90210

with copy to: City Attorney
City of Beverly Hills
455 N. Rexford Drive
Room 220
Beverly Hills, California 90210

Any party hereto may from time to time, by notice given to the other Party, change the address to which a Communication to such Party is to be sent or designate one or more additional persons or entities to which a Communication is to be sent.

19. Applicable Law. This Agreement shall be governed in all respects by the laws of the State of California.

20. Time is of the Essence. Time is of the essence of this Agreement and every term and performance hereunder.

21. Entire Agreement. This Agreement supersedes any prior understanding or written or oral agreements between the City and UTA respecting the subject matter contained in this Agreement and contains the entire understanding between the Parties.

22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the ____ day of _____, 2012.

CITY OF BEVERLY HILLS
A Municipal Corporation

WILLIAM W. BRIEN, MD
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

UNITED TALENT AGENCY, INC
A California Corporation

ANDREW THAU

APPROVED AS TO FORM

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

JEFFREY C. KOLIN
City Manager