



AGENDA REPORT

Meeting Date: June 21, 2016
Item Number: E-30
To: Honorable Mayor & City Council
From: Teri Angel, Recreation Services Manager
Subject: AMENDMENT NO. 1 EXTENDING A 2012 AGREEMENT AND 2013 SUPPLEMENTAL 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

Attachments: 1) Agreement

RECOMMENDATION

Staff recommends that City Council approve an amendment to the current Joint Powers Agreement (JPA) between the City of Beverly Hills and the Beverly Hills Unified School District allowing a one year extension. The one year extension would make the current Agreement in effect until June 30, 2017. The current four year Agreement of the Joint Powers Agreement was to conclude on June 30, 2016.

INTRODUCTION

City and District staff, as well as Council, Commission, and School Board Liaisons have been in discussion for the past few months on the terms of the new Agreement. Factors such as current school construction, a possible District bond measure under consideration for the November ballot, and more detailed information and analysis on community use were factors in the decision to postpone the implementation of a new Agreement. Instead the Council Liaisons (Mayor Mirisch and Councilmember Gold) recommended the City extend the current JPA agreement on year subject the following:

- 1) A new negotiated JPA is completed by end of this year

- 2) No additional school facilities used for City programs beyond what is currently taken off line
- 3) The Horace Mann Multipurpose room and parking facilities be made available for use by the public and City programs as soon as they open

City staff signatures have been obtained and the School District signatures will be added after the School Board has approved the attached Amended Agreement at their June 28, 2016 Regular Board of Education Meeting.

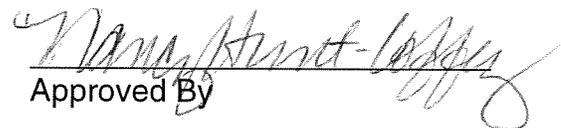
DISCUSSION

The terms of the Agreement would be the same with the following notations as summarized above, 1) that no other District construction projects can begin or current projects expanded which would make the facilities or fields unavailable to the City, 2) the Agreement would also include the use of the new underground parking structure and community room at the newly renovated Horace Mann School campus, 3) that a revised Agreement be completed in a timely fashion. While not part of the planned construction projects, the District has advised City staff that the Swim Gym floor needs to be replaced and will take approximately six weeks of closure. Based on the tentative closure dates provided by the District, the City would need to postpone the start of the Fall Aquatics session resulting in approximately \$12,000 in revenue loss.

The City and District staff will continue to meet with the intent by the end of the calendar year of presenting a new draft agreement for consideration.

FISCAL IMPACT

The annual financial provision of the current Joint Powers Agreement of \$9,700,000 plus up to \$125,000 for Crossing Guard Services would continue through June 30, 2017 if Council approves.


Approved By

Attachment 1

AMENDMENT NO. 1 EXTENDING A 2012 AGREEMENT AND 2013 SUPPLEMENTAL 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

THIS AMENDMENT NO. 1 to that Agreement between the City of Beverly Hills ("City") and the Beverly Hills Unified School District ("District"), dated January 10, 2012, identified as Contract No. 04-12, ("2012 Agreement") and supplemented by that Supplemental Agreement between City and District dated February 19, 2013, identified as Contract No. 43-13, (collectively, "Agreement"), is made and entered into this 21st day of June, 2016 ("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 to extend the term of the Agreement for one year, to and including June 30, 2017; to provide for additional District Facilities for City's use; and to confirm the availability of all District Facilities for City's use for the full term of the Agreement.

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

"Term. The term of this Agreement shall be from July 1, 2012 to and including June 30, 2017, unless otherwise terminated for any reason by either party upon thirty (30) days written notice to the other party."

Section 2. Paragraph A.1 of Section 2 of the Agreement is hereby amended to read as follows:

"1. The District shall make available to the City all recreational and classroom facilities at the District's Beverly Hills High School, El Rodeo School, Hawthorne School, Beverly Vista School, and Horace Mann School (the "District Facilities"), including but not limited to athletic fields, play yards and play equipment, gymnasias, locker and shower rooms, swimming pool, tennis courts, classrooms, computer labs, fitness rooms, multipurpose rooms, cafeterias, auditoriums, including the Peters Auditorium, the Salter Theatre, the Science and Technology Center, the Multi-purpose/community room at Horace Mann School, future facilities constructed on any school site, and such other District facilities requested by the Community Services Director of the City or his or her designee ("Director") for community recreation and other community or civic programs ("City Recreation Programs"). City Recreation Programs shall include, without limitation, programs administered by organizations other than the City, such as American Youth Soccer Organization, if the City grants permission to the organization to use District Facilities during time scheduled for City use pursuant to this Agreement. District shall make available to the City all parking facilities, including the subterranean parking facility scheduled for opening at Horace Mann School in August 2016. The City's use of District Facilities and parking facilities shall not interfere with District Activities. The term "District Activities" is defined to solely include classroom instruction provided by the District and extracurricular District programs, whether or not provided in a classroom setting, that are directly supervised by District employees and not conducted in whole or part by a contractor to the District or lessee of the District ("District Activities"). Additionally, District Activities shall include activities conducted by the Beverly Hills Education Foundation."

Section 3. Section 2 of the Agreement is hereby amended to add a new paragraph J as follows:

"J. Displacement of City's Use.

1. District shall make available to City all District Facilities and parking facilities throughout the term of this Agreement. Except as provided in Section 13 of the 2012 Agreement, District hereby covenants, represents, and warrants that it will not commence any maintenance, improvement, construction, demolition, or other activity resulting in the displacement of any City Recreation Programs from July 1, 2016 to and including June 30, 2017.

2. District shall notify City of any plans for maintenance, improvement, construction, demolition, or other activity potentially resulting in the displacement of any City Recreation Programs that will commence after July 1, 2016. District shall notify City within ten (10) days of the decision to proceed with such plans.”

Section 4. Amendments to Agreement. Any amendments, modifications or variations from the terms of this Amendment No. 1 shall be in writing and shall be effective only upon approval of such amendment, modification or variation by the Council of the City and the Board of Education of the District.

Section 5. Co-Administrators. The City Manager, or the City Manager's designee, and the District's Superintendent or the Superintendent's designee, are hereby designated as the co-administrators of this Amendment No. 1 subject to the rights and obligations set forth herein and subject to the direction of their respective governing agencies.

Section 6. Reimbursement of Funds. In the event a court of competent jurisdiction holds that any money paid to the District under this Amendment No. 1 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 Amendment No. 1. This section shall survive the expiration or earlier termination of this Amendment No. 1.

Section 7. Indemnification.

(a) It is understood and agreed that, pursuant to Government Code Section 895.4, the District agrees to indemnify, defend and hold harmless the City, City Council and each member thereof, and every officer, employee and agent of City, from all claims, suits or actions of every name, kind and description, including attorney fees and costs, brought for or on account of injury (as defined in Government Code Section 810.8) arising from the acts or omissions of District in connection with its obligations and performance under this Amendment No. 1, including any and all injuries arising from a third party's use, whether active or passive, of the artificial turf at the District's Beverly Hills High School, El Rodeo School, Hawthorne School, Beverly Vista School, and Horace

Mann School, and any and all injuries arising from its installation, removal and/or maintenance, or lack thereof.

(b) It is understood and agreed that, pursuant to Government Code Section 895.4, the City agrees to indemnify, defend and hold harmless the District, the Board and each member thereof, and every officer, employee and agent of Board, from all claims, suits or actions of every name, kind and description, including attorney fees and costs, brought for or on account of injury (as defined in Government Code Section 810.8) arising from the acts or omissions of City in connection with its obligations and performance under this Amendment No. 1.

(c) This Section 7 shall survive the expiration or earlier termination of this Amendment No. 1.

Section 8. Severability Clause. If any provision of this Amendment No. 1 or the application thereof to any person or circumstance is 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 this 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 thirty (30) days written notice, and at the election of, either party hereto.

Section 9. Compliance with Law. In performing its obligations under this Amendment No. 1, each party shall undertake its respective activities in compliance with all applicable local, state and federal laws.

Section 10. Interpretation of Agreement. The terms of this Amendment No. 1 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 11. 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.

Section 12. Governing Law. The interpretation and implementation of this Amendment No. 1 shall be governed by the domestic law of the State of California.

Section 13. 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, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorneys' fees.

Section 14. Except as specifically amended herein, the Agreement shall remain in full force and effect.

Section 15. 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 the ____ day of _____.

CITY OF BEVERLY HILLS
A Municipal Corporation

JOHN A. MIRISCH
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

BEVERLY HILLS UNIFIED
SCHOOL DISTRICT

HOWARD GOLDSTEIN
President, Board of Education

STEVE KESSLER
Superintendent, Board of
Education

Approved as to form:



LAURENCE S. WIENER
City Attorney

Approved as to content:

MAHDI ALUZRI
City Manager



NANCY HUNT-COFFEY
Director of Community
Services



DON RHOADS
Chief Financial Officer