

**AN AGREEMENT BY AND BETWEEN THE CITY OF
BEVERLY HILLS AND THE BEVERLY HILLS UNIFIED
SCHOOL DISTRICT CONCERNING ABANDONING AND
PLUGGING OIL WELLS ON SCHOOL DISTRICT
PROPERTY**

This Agreement (“Agreement”) is made and entered into on this ____ day of November 2017, by and between the City of Beverly Hills, a municipal corporation (“City”) and the Beverly Hills Unified School District, a public school district (“District”), and each duly organized and existing under the Constitution and laws of the State of California (collectively referred to as, “Parties”).

RECITALS

A. In 1959, the District, and the original lessee, Beverly Hills Oil Co., entered into a lease agreement for oil production on Beverly Hills High School property (“Drill Site”). In 1977 and 1978, the existing lease was amended to join the City as a third-party and provide that the lessee’s rights would automatically terminate on December 31, 2016, and within the ensuing 90 (ninety) days the lessee was to “completely abandon all oil and gas operations on the new Drill Site in accordance with all applicable laws, regulations and agreements” and “to restore the Drill Site to its original condition”; and

B. In 1995, Venoco, Inc. assumed operation of the Drill Site. On December 31, 2016, Venoco, Venoco Inc.’s successor in interest, ceased oil and gas extraction from the drill site. The Drill Site was not remediated. On April 20, 2017, Venoco filed for bankruptcy and informed the Parties of its intent to vacate the premises; and

C. Under the laws of the State of California and the regulatory authority of the Division of Oil, Gas and Geothermal Resources (“DOGGR”) abandoned oil wells must be properly decommissioned pursuant to standards set forth in the Public Resource Code and California Code of Regulations; and

D. The Parties asserted their rights in United States Bankruptcy Court for the District of Delaware. On May 31, 2017, United States Bankruptcy Judge Kevin Gross ordered that on July 1, 2017 Venoco shall have no further responsibility to monitor the site. Therefore, effective June 1, 2017, it is the responsibility of the District to monitor the Drill Site and plug and cap the oil wells.

E. The Leases are no longer in effect and the oil wells are no longer in operation. The City and District desire to monitor, abandon and plug the wells (the “Work”).

F. The District does not possess unencumbered reserves in excess of that required to fund its reasonable multi-year operating projections. In consideration thereof the City agrees to assume and pay up to \$8 million to monitor the Drill site and plug and cap the oil wells; subject to partial reimbursement by the District as set forth in Section 2.

G. The Parties' paramount concern is to maintain the safety, environmental integrity and the legality of the Drill Site for the students, faculty, and staff of Beverly Hills High School and for the Beverly Hills community.

NOW, THEREFORE, in consideration of the foregoing the City and District hereby mutually covenant and agree as follows:

Section 1. Obligations of the City. City shall pay up to eight million dollars (\$8,000,000) of the total costs incurred to perform the Work, including but not limited to, the cost of required bonds. The obligations set forth in this paragraph and shall include those costs set forth in Exhibit A, which predate this agreement, and continue until the completion of the Work or the expenditure by the City of eight million dollars (\$8,000,000), whichever occurs first. City shall advance the costs of the Work, with the District to reimburse the City pursuant to Section 2.

(a) Preparation of Plans and Specifications. City will retain a properly licensed firm to prepare the necessary plans, specifications, related documents and schedule (collectively "Plans") for the Work, which shall collectively be referred to as the "Project." The City will provide a copy of the preliminary Plans to the District for its review and approval. The District will have ten (10) business days to comment on the preliminary Plans ("Comment Period"). The Parties' representatives shall meet and confer concerning the proposed vendor(s), cost, plan and implementation thereof. The City will consider, but is not be obligated to accept, modifications to the Plans requested by the District.

(b) Retention of Contractor or Contractors. After expiration of the Comment Period for the District, the City will obtain a Contractor or Contractors to perform the Work and undertake any other portion of the Project. The City agrees that the District shall be entitled to all data, information, and mutual notifications arising from the Work and will be able to assume the Work in the event the City reaches its cap of eight million dollars (\$8,000,000)..

(c) Contractor's Insurance. City shall require its Contractor or Contractors which perform the Work to carry and keep in full force and effect the following insurance in at least at following amounts:

(i) Comprehensive General Liability Insurance with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts;

(ii) Comprehensive Vehicle Liability insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Contractor in performing the services required by this Agreement;

(iii) Workers' compensation and employer's liability insurance as required by law.

(iv) Pollution Liability Insurance covering the Contractor's liability arising from Pollution or Environmental Damage or Liability caused during the work performed pursuant to this Agreement. The Pollution Liability policy shall provide coverage with minimum limits of Five Million Dollars (\$5,000,000) combined single limit and in the annual aggregate. Such policy/coverage shall be maintained for not less than one (1) year after the date of final acceptance and completion of the work performed pursuant to this Agreement;

(v) 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 A+;VII in the latest edition of Best's Insurance Guide;

(vi) At all times during the term of this Agreement, the City shall require Contractor to maintain on file with the City Clerk a certificate or certificates of insurance on the form required by the City, showing that the aforesaid policies are in effect in the required amounts. The policies of insurance required by this Agreement shall contain an endorsement naming the City and District as additional insureds. Prior to conducting any work required by this Agreement, Contractor shall furnish to the City properly executed Additional Insured Endorsements in favor of the City and District and their officials, officers, employees and agents for the insurance required by this Agreement. 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 the 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; and

(vii) The insurance provided by the Contractor shall be primary to any coverage available to the City or the District. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(d) Compliance with Laws. The City and its Contractor or Contractors will comply with all applicable statutes, laws, ordinances, and regulations of all government agencies having jurisdiction over the Project, including, but not limited to, the regulations of the DOGGR.

Section 2. Obligations of the District. The District shall reimburse the City up to fifty percent (50%) of the total costs incurred by the City for the Project.

(a) Reimbursement Sources. The District shall reimburse the City from the following sources: 1) fees designated for the District that are imposed by the City in any Development Agreement approved by the City pursuant to Government Code Section 65864, et seq. ("Development Agreement Payments"); or 2) disposition of real estate through sale, lease, or otherwise. Sources of payment will not include property tax revenue, lottery dollars, State or federal grants, developer fees, categorical funds and/or existing or future parcel tax or construction bond revenue.

(b) In the event that District is prohibited from using the funds referenced in Section 2(a) to reimburse the City for its total share of the Project costs, District shall become immediately liable to City for its share of Project costs and shall pay those costs within eighteen (18) months.

(b) Payment From Reimbursement Sources. During the Work, and until the District has fully reimbursed the City, the District shall notify the City immediately upon receiving Development Agreement Payments or upon the disposition of real estate. In the event the Work has not been completed as set forth in Section 4(b), the District shall commence reimbursement to the City from such revenue streams. Funds shall be paid within thirty (30) days of the District's receipt of money from above sources. To the extent that one of the above sources can pay for some, but not all, of the amount owed to the City, then such payment shall be made, and the amount of the payment shall be deducted from the total amount owed to the City. To the extent that one of above sources can pay for more than one-half the cost of the Work incurred, the City shall be reimbursed its costs to that point in time, and the remainder of the revenue from that source up to four million dollars (\$4,000,000) or one half of cost of the remaining Project, shall be placed in escrow account for the purpose of reimbursing the City pursuant to this Section.

(c) Maintenance of Project. District shall be responsible for maintaining the Project at its sole cost and expense after the Work is completed and accepted by DOGGR.

Section 3. General Operating Principles.

(a) Entry onto District Property. District hereby grants City and its Contractors permission to enter District property for purposes of performing the Work and carrying out the Project, in substantial conformity with the Plans. The City Manager, or designee shall meet with the District's Superintendent, or designee every thirty (30) days concerning the progress of the Work. The Parties will maintain and exchange minutes of the meetings for the purpose of communication and documentation.

(b) Monthly Invoicing. Beginning immediately, upon execution of the Agreement, and continuing throughout the Work the City shall present the District with itemized monthly invoices representing all costs incurred during the Work, with appropriate backup.

Upon execution of the Agreement, the District shall present the City with itemized invoices representing all of the costs incurred for which the District is seeking reimbursement pursuant to Exhibit A, with appropriate backup.

(c) Safety Notifications. In addition to the meeting set forth in Section 3(a) above, the City Manager, or designee shall notify the Superintendent, or designee, with five (5) business days, or as soon as is reasonably practicable, after discovery of significant, unusual or unanticipated events during the Work. The Parties shall maintain a special sensitivity to keep Beverly Hills High School in such a condition to ensure the safety and unimpeded educational activities of the student population.

(d) Dispute Resolution. In the event of a dispute under this Agreement the Parties shall "meet and confer" to informally resolve the dispute. If a dispute cannot be informally resolved by the Parties themselves, it is agreed that the Parties will engage in the services of a third party neutral and participate in good faith mediation prior to instituting any litigation. Each Party to bear fifty percent (50%) of the costs for the neutral mediator. Said mediation will be in the County of Los Angeles.

Section 4. Term/Termination/Completion

(a) Term. The Term of this Agreement shall commence on the execution date set forth below. The Agreement shall remain in full force and effect until the Parties fulfill their respective obligations set forth specifically in Sections 1 and 2 above.

(b) Completion. The Work shall be deemed completed upon receipt by both Parties of a formal written statement from DOGGR that the condition of the Drill Site meets all requirements of DOGGR relevant to the plugging and abandonment of drill sites.

(c) Termination. Either party can terminate this Agreement upon thirty days' notice to the other party. Provided however, if the District terminates the Agreement the District's share of the costs of the Project will become immediately due and shall be paid within six (6) months of the notice of termination, notwithstanding the limitations contained in Section 2. If the City terminates the Agreement then the provisions of Section 2 will survive the termination.

(d) Survival. If either party terminates this Agreement, or if the Agreement expires by its own terms, the provisions of section 2(c) and 5(a) shall survive the termination.

Section 5. Miscellaneous Provisions

(a) Indemnity. Neither District nor City nor any respective officer, employee, or agent thereof, shall be responsible for any damage or liability occurring by reason of any negligence or anything done or omitted to be done by the other Party, or its officers, employees or agents, under or in connection with any work, authority or jurisdiction, under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, each Party hereto shall fully defend, indemnify, and save harmless the other Party to this Agreement and all of their respective officers, employees, and agents from all claims, suits, or actions of every name, kind, and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of any negligence or anything done or omitted to be done by the indemnifying Party under or in connection with any work, authority, or jurisdiction, under this Agreement.

(b) Cooperation. In the event any claim or action is brought against either Party relating to performance or services rendered under this Agreement, the Parties shall render any reasonable assistance and cooperation which is reasonably necessary to defend such claim or action.

(c) Operator. The City is assisting the District in the plugging and abandonment of the oil wells, including advancing the money therefor and managing the Work. Nothing in this agreement shall make the City an "operator" for the purposes of the California Public Resources Code or the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(d) Notice. All notices pertaining to this Agreement shall be in writing and shall be addressed as follows:

To City:

City of Beverly Hills
445 North Rexford Drive
Beverly Hills, CA 90210
Attention: Nancy Hunt Coffey, Director of Community Services

To District:

Beverly Hills Unified School District
255 South Lasky Drive
Beverly Hills, CA 90212
Attention: Michael Bregy, Superintendant

(e) Extent of Agreement. This Agreement represents the entire and integrated Agreement between the Parties on the matters included herein and supersedes any and all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Parties.

(f) Severability. Invalidity of any provision contained herein, except Sections 1 and/or 2, shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof and the same shall remain in full force and effect. The invalidation of Sections 1 and/or 2 shall result in the invalidation of this agreement.

(g) Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

(h) Interpretation. This Agreement is made under the Constitution and laws of the State of California and is to be so construed.

[The Remainder of this Page is Blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the ____ day
of _____ 2017, at Beverly Hills, California.

CITY OF BEVERLY HILLS
a Municipal Corporation

LILI BOSSE
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE
City Clerk

BEVERLY HILLS UNIFIED SCHOOL DISTRICT:

MEL SPITZ
President, Board of Education

MICHAEL BREGY
Secretary, Board of Education

CITY OF BEVERLY HILLS:

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

LAURENCE S. WIENER
City Attorney

MAHDI ALUZRI
City Manager

NANCY HUNT-COFFEY
Director of Community Services

DON RHOADS
Director of Administrative Services/CFO