

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 FISCAL YEARS 2012-13 THROUGH 2015-16

THIS AGREEMENT is made and entered into this 10th day of January, 2012, (the "Approval Date") by and between the City of Beverly Hills, a municipal corporation, hereinafter referred to as the "City," and the Beverly Hills Unified School District, a regularly organized and existing school district under the laws of the State of California, hereinafter referred to as the "District."

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 are authorized to enter into an agreement providing for educational, recreational, and community facilities and programs.

b. The District is able and willing to provide the City with the use of valuable educational and recreational facilities for the use by the City in carrying out its programs for the benefit of its residents, including but not limited to athletic fields, playgrounds, gymnasias, tennis courts, auditoriums, classrooms, cafeterias, swimming facilities, cable television facilities, and library facilities.

c. The foregoing facilities and programs will allow the City to provide its residents with a level and breadth of services that it would not otherwise be able to provide.

d. The provision of said facilities and programs will result in a greater utilization of the District's facilities and the generation of revenue for the maintenance of the District's educational programs.

e. It is in the public interest that the City and the District enter into this Agreement in order to maximize the use of the District's facilities and programs for the promotion of the general public welfare.

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:

## DEFINITIONS

The following terms shall be defined as set forth below:

“City” shall mean the City of Beverly Hills;

“City Recreation Program” shall be defined as provided in Section 2.A.1;

“Director” shall be defined as provided in Section 2.A.1;

“District” shall mean the Beverly Hills Unified School District;

“District Activities” shall be defined as provided in Section 2.A.1;

“District Facilities” shall be defined as provided in Section 2.A.1;

“Outdoor Facilities” shall be defined as provided in Section 2.E.1;

“Force Majeure” shall be defined as provided in Section 9.E;

“State or Federal Holiday” shall be defined as provided in Section 2.E.1;

## AGREEMENT

Section 1.     Term. The term of this Agreement shall be from July 1, 2012 to and including June 30, 2016, unless otherwise terminated for any reason by either party upon thirty (30) days written notice to the other party.

Section 2.     District Obligations.

A.     Recreational and Classroom Facilities.

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 and the Salter Theatre, the Science and Technology Center, 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. The City's use of District 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.

2. During the District's summer recess, the District shall make available for City Recreation Programs all District Facilities, including, without limitation, indoor facilities, that are not being used by the District for its District Activities and shall provide one school site for exclusive City use for summer camps and other permissible City uses for a period of not less than eight weeks. This minimum eight week period may be shortened to seven weeks during any year that the District shortens its summer recess to eight weeks and cannot practicably accommodate City uses during an eight week period. Additionally, in any year that the District has a summer recess of more than ten weeks, the eight week minimum period shall be increased to a ten week minimum period.

3. During the District's summer recess, the District shall make available the swimming pool of the swim-gym located at Beverly Hills High School for exclusive City use between the hours of 10:00 a.m. and 10:00 p.m.

4. The District shall provide personnel, supplies and all related overhead and administrative expenses necessary to maintain the District's Facilities. The District shall ensure that neat, clean and conveniently located restroom facilities are open and available for use by participants in City Recreation Programs.

5. The District shall provide adequate personnel to ensure that access to the District Facilities is provided at least thirty (30) minutes prior to the scheduled start time and that gates and/or entry doors (whichever is applicable) to the school grounds are open and freely accessible for ingress and egress of participants and City staff.

B. KBEV: Educational Television Channel.

1. The District shall provide programming, or make available to the City air time for City programming, for a minimum of 520 hours per year on KBEV, the District's television station, for programs of public interest, including educational and community related programs. The District and the City together shall, by mutual agreement, decide on the type and variety of programs, and select the programs to be aired pursuant to this subsection. The District, at its sole discretion, shall determine the ratio of District-sponsored programming to City-sponsored programming.

C. Library Facilities.

1. During the school year, as adopted by the District Board of Education, the District shall make available to all school age children residing in the City of Beverly Hills, the District's library facilities at the five school sites (El Rodeo School, Hawthorne School, Horace Mann School, Beverly Vista School and Beverly Hills High School). In order to comply with the requirements of this paragraph C.1, each of the five school libraries shall be made available for not less than three (3) hours per week, after the hours of instruction have ended for the school day, , on such days and hours as agreed upon by the District Superintendent and the City Manager in writing prior to the beginning of each school year. The District shall not be obligated to keep any of its libraries open during weekends, school vacations, holidays or other days that students do not attend school.

2. In making available its five school libraries, the District shall provide the physical premises including reading rooms, appropriate library furniture and utilities; maintenance and support services including janitorial services and security; the District's children's library collection, including books, periodicals and audio-visual materials; and personnel to operate the library. Each of the libraries while open under this Agreement shall be under the supervision of at least one employee of the District. Other personnel shall be assigned to staff the libraries as needed. The District shall have the responsibility and sole authority to make all decisions concerning the operations, including the staffing, of the libraries as appropriate to meet the requirements of this paragraph C.2. The District shall take appropriate steps to ensure that all personnel working in the libraries during the hours covered by this Agreement have received appropriate background checks and training to work with school age children.

3. The District shall provide books and reading material for onsite use; the District is not required by this Agreement to permit circulation of its books and other reading materials.

4. In making available its five school libraries, the District shall ensure that access to the school libraries is provided. This includes, but is not limited to, providing adequate personnel to ensure that the gates or entry doors (whichever is applicable) to the school grounds and library are open and freely accessible to school age residents during the days and hours agreed upon by the District and City.

D. Public Safety Training Exercises and Use of Facilities During Emergencies

1. At least twice each month, on a Saturday or Sunday as determined by the City, the City shall have exclusive use of the parking facilities, driveways and other similar large open asphalt areas as well as classroom facilities, multipurpose rooms, cafeterias, auditoriums, and such other District Facilities as requested by the City at one or more of the five school sites (El Rodeo School, Hawthorne School, Horace Mann School, Beverly Vista School and Beverly Hills High

School) for public safety training exercises. Provided, however, that such use shall be scheduled so that it does not interfere with District Activities.

2. In the case of a local, state or federal declared emergency, the City may use District Facilities for the sheltering of persons and any other use related to the emergency.

3. The District shall permit the City to locate emergency containers at each of the District school sites. The District shall provide a location on each campus that is acceptable to the City in size and location.

#### E. Weekend Outdoor Facilities

1. Except as necessary to avoid conflict with District Activities, the District shall make available year-round on Saturdays and Sundays its outdoor athletic fields and play yards at the five school sites (El Rodeo School, Hawthorne School, Horace Mann School, Beverly Vista School and Beverly Hills High School) ("Outdoor Facilities") for use by the community. In making available its Outdoor Facilities, the District shall ensure that access to the Outdoor Facilities is provided between the hours of 8:00 a.m. and 5:00 p.m. This includes providing adequate personnel to ensure that the gates or entry doors to the Outdoor Facilities are open and freely accessible during the days and times required by this Agreement. During the times the Outdoor Facilities are open, the District shall ensure that restroom facilities are also made available and are freely accessible for use. The District shall ensure that the restroom facilities are maintained in a neat and clean condition (i.e. clean facilities, stocked paper towels, toilet paper, etc.) Nothing in this paragraph shall require the District to provide Outdoor Facilities on a California State or federal holiday as identified by the California Department of Personnel Administration or the United States Office of Personnel Management, respectively, if District personnel are not required to work on such holiday (hereafter a "State or Federal Holiday"). Except for such holidays, the Outdoor Facilities shall be made available as provided in this paragraph E.1 even if school is not in session during the weeks preceding or following a Saturday or Sunday.

2. The use of the Outdoor Facilities pursuant to paragraph E.1 shall not be considered a City Recreation Program and the City shall have no obligation to provide supervision while the Outdoor Facilities are available for community use. The City shall have no control over the Outdoor Facilities during their use pursuant to paragraph E.1.

3. Within sixty (60) days after the Approval Date, the District may establish reasonable rules for community use of the Outdoor Facilities pursuant to this Agreement. The District shall consult with the City regarding any such rules prior to their promulgation and such rules shall be consistent with the requirements of this Agreement. After the expiration of this sixty (60) day period, additional rules or changes to the rules may only be made by the District with the written concurrence of the City Manager or the City Manager's designee.

F. Permits for City Employees and Officials

The District has set up a system of permits to allow non-District residents to enroll students for instruction at District schools. To the extent permitted by State law, the District agrees to provide City employees priority in the granting of such permits. If an order of priority is established by the District, the City employees shall be given priority directly after priority provided to the children of District employees. For the purposes of this paragraph, City employees include independent contractors who fill the role of an officer or employee, but shall not include non-residents who may serve on City commissions.

G. General Use of District Facilities

From time to time, the City will require the use of the District's facilities for uses other than those specifically listed herein. In such instances, the City shall submit its request for such use in writing to the District. The District shall grant such request unless granting the request would interfere with District Activities or a previously scheduled Civic Center Act use, would result in the use of District Facilities on a State or Federal Holiday, or would damage District Facilities because the District Facilities were not designed to accommodate the proposed use.

H. Tour of District Facilities

During the month of July or August and on a date and time mutually agreeable to the parties, the District shall provide to the Director and other staff designated by the City a tour of the District Facilities. This tour shall include, but is not limited to, a tour of the athletic fields, play yards and play equipment, gymnasias, locker and shower rooms, swimming pool, tennis courts, classrooms, labs, multipurpose rooms, cafeterias, auditoriums, and such other District Facilities as may be requested by the Director. Upon request by the City, the District shall provide a written list of all District Facilities.

I. Provision of Property and Facilities to the City and Public.

The District Facilities provided pursuant to this Agreement or made available for community use shall be provided to the City in a good, clean and safe condition. The District shall provide for personnel, supplies and all related overhead and administrative expenses necessary to maintain the District's Facilities for City and public use as provided in this Agreement. The City shall have no responsibility or authority to maintain the District Facilities or any other property owned by the District.

Section 3. City Obligations.

In consideration for the City's use and the District's provision of the facilities and programs as described herein, the City shall provide to the District the following compensation:

A. Annual Payment. The City shall make an annual payment to the District of nine million seven hundred thousand dollars (\$9,700,000).

Each annual payment shall be divided into four quarterly payments made on July 1, October 1, January 1, and April 1. The District shall submit a written invoice requesting payment at least thirty days prior to each quarterly payment date. The City may elect, in its sole discretion, to prepay one or more of the required quarterly payments. Upon receiving written notice from the District that the District has determined that, due to current financial limitations, a prepayment of one or more of the quarterly payments would be beneficial to avoid an adverse effect on the quality or level of facilities and programs provided by the District hereunder, the City shall consider the District's request to make such prepayment. Such notice shall describe the current financial limitations affecting the District.

B. Crossing Guard Payments. The City shall make an annual payment to the District of up to one hundred twenty five thousand dollars (\$125,000) for the sole and exclusive purpose of funding crossing guard services at each of the four elementary schools.

The annual payment shall be made in installments upon presentation of invoices to the City demonstrating that the District has expended funds for the direct cost of crossing guard services. The City shall then reimburse the District for the amounts expended. For the purposes of this Agreement, "direct cost of crossing guard services" does not include overhead, administration or similar costs not paid to a third party provider of crossing guard services.

Section 4. Operation of Programs

A. Recreation Programs.

1. City Personnel and Equipment. The employment of personnel for City Recreation Programs shall be the responsibility of the City. The City shall be responsible for the compensation of such personnel. All equipment exclusively required for the City Recreation Programs and which is not otherwise a fixture on District property shall be provided by the City and remain in the title, care and custody of the City. The City shall maintain and repair such City-owned equipment. The District shall provide reasonable space, satisfactory to the City, for the storage of such City-owned

equipment. Such space shall be provided at the site on which the equipment is being used for a City Recreation Program.

2. Scheduling.

a. By June 30th of each year during the term of this Agreement, the District shall provide the Director with the District calendar for the upcoming school year for each school site after consultation with the Director. The calendar shall include dates for the start and end of the school year, District Activities at each school (such as recitals, sports programs and similar District school events), vacation and holidays and shortened and pupil-free days for all the school sites pursuant to this Agreement. Revisions to the District calendar shall be transmitted to the City within five days of the adoption of the revision by the District. By July 31st of each year during the term of this Agreement the Director shall provide the District with a schedule of the City's intended uses of District property and facilities for the upcoming school year. In addition, on a quarterly basis (the calendar date to be decided by the City and District), the City and District shall meet to discuss the scheduling of the City's use of District Facilities and the City shall, at that time, provide notice to the District of the City's intent to schedule additional use of District's facilities.

b. The Director shall have the responsibility to schedule and supervise all activities related to the City Recreation Programs conducted at District Facilities at such times and locations as determined by the Director. The Director shall schedule City Recreation Programs in a manner that will not interfere with District Activities as scheduled on the District calendar described in paragraph A.2.a above.

c. All changes in scheduled hours of the City Recreation Programs shall be reported to the District at least 48 hours in advance of the change or 72 hours in advance of the change if the change involves the use of District Facilities on a Sunday.

d. The District shall take action to approve, reject, or reject a portion of: (i) the City's initial schedule for use of District property and facilities, and (ii) any change or addition to the schedule pursuant to this Section 4, within two weeks of delivery of the schedule, change or addition to the District. The District shall not reject any portion of the schedule, change or addition except to the extent that the schedule, change or addition, or portion thereof, conflicts with District Activities or a previously scheduled Civic Center Act use, occurs on a State or Federal Holiday, or proposes a use that would damage District Facilities because the District Facilities were not designed to accommodate the proposed use. If the District rejects all or a portion of the City's schedule, change or addition, then the District shall provide the Director written notice of the portion of the schedule, change or addition that has been rejected and the reason for the rejection, including identification of the District Activity or State or Federal Holiday that would conflict with the proposed City use.

e. The City and District acknowledge that unanticipated District Activities may interfere with a scheduled City use of District Facilities. The District may displace a scheduled City use of District Facilities to accommodate an unanticipated District Activity upon providing ninety (90) days notice to the City of the need to displace the City use. If the District cannot provide ninety (90) days notice because the District becomes aware of the need to displace a City use less than ninety (90) days before the District Activity is scheduled to occur, then the District shall notify the City within seventy two (72) hours of when the District becomes aware of the need to displace a City use. However, in no event may a City use be displaced with less than three business days notice to the City of the need for displacement. Additionally, to the extent feasible, the District shall provide the City with replacement facilities at the same school site for any City use that is displaced pursuant to this paragraph. If it is not feasible to accommodate the City use at the same school site, then the District shall accommodate the City use at a different school site, to the extent feasible. In the event of a Force Majeure event, outside the control of the District, which may create a risk to persons and/or property damage due to the City's use of the District Facilities, notice of cancellation of a City use shall be immediately provided to the City and the District need not provide three business days notice as required above.

f. The District shall not require the City to complete or execute the District's "Application and Agreement for the Use of Facilities" as a condition of the City's use of District Facilities. The District and City, however, may jointly agree upon a form for use by the City in order to schedule the City's use of District Facilities.

### 3. Civic Center Act.

The City acknowledges that under the provisions of the Civic Center Act, commencing with California Education Code 38130 and following, there exists at each and every school facility and grounds of the District a civic center. Nothing in this Agreement shall be interpreted in a manner that violates any provision of the Civic Center Act. Furthermore, notwithstanding any other provision of this Agreement, the City's use of District Facilities shall be subject to, and shall not unilaterally displace, previously scheduled uses under the District's Civic Center Act policies and procedures. To the extent permitted by law, the District's Civic Center Act policies and procedures shall provide priority to the City's uses pursuant to this Agreement over other proposed uses.

### 4. Posting of Notices.

All official notices relating to the City Recreation Programs shall be posted at each school, provided, however, the District shall approve the location of the posting.

### 5. Compliance with District Facilities Rules.

Any organization permitted by the City pursuant to paragraph 2.A.1 to use District Facilities during time scheduled for City use of the District Facilities shall comply with reasonable rules and regulations promulgated by the District concerning use of District Facilities. The District shall consult with the City regarding any such rules prior to their promulgation and such rules shall be consistent with the requirements of this Agreement.

B. Non-programmed City Use of Outdoor Facilities.

With at least thirty (30) days notice to the District, the City may provide public access to the Outdoor Facilities from 8:00 a.m. to 5:00 p.m. on weekdays during the summer, spring, or winter recesses of the District. If the City chooses to provide such public access, then the City shall have the responsibility of providing personnel to open and close the Outdoor Facilities to the public and the District shall make available to the City any equipment and information, such as keys or lock combinations, that will be necessary for the City to open and close the Outdoor Facilities. The City shall not provide such equipment or information to any person other than a City employee. The City shall also have the right, but not the obligation, to supervise the Outdoor Facilities, if the City chooses to do so.

C. Contact Information.

The District shall provide the City with the cell phone number or pager number of the personnel who will be providing access to the District Facilities as required by this Agreement. The City shall provide the District with the cell phone number or pager number of the personnel responsible for administering the City Recreation Programs that utilize District Facilities.

Section 5. Priority of City's Use of Facilities.

A. The City's use of District Facilities for City Recreation Programs shall have priority over all other uses except for District Activities and previously scheduled uses under the District's Civic Center Act policies and procedures. To the extent permitted by law, the District's Civic Center Act policies and procedures shall provide priority to the City's uses pursuant to this Agreement over other proposed uses.

B. The District may make available District Facilities for use by non-profit organizations, other non-District organizations and/or for non-District uses only to the extent that such uses do not conflict with or otherwise limit the City's use of District Facilities pursuant to this Agreement.

Section 6. Maintenance of Facilities.

A. The District shall provide custodial services without cost to the City for all District Facilities used by the City pursuant to this Agreement. The District shall maintain all District Facilities and equipment used by the City pursuant to this Agreement in a good, clean, safe, and working condition. Any classrooms or other District Facilities provided to the City for its exclusive use during any period of time shall be maintained in the same manner as other classrooms or other District Facilities used exclusively by the District. Routine and/or scheduled maintenance shall be scheduled for times that do not conflict with City's scheduled use of the facilities, to the extent possible. If such maintenance will conflict with City's use, the District shall provide at least thirty (30) days notice to City.

B. District shall maintain any parkway landscaping adjacent to a school site in a manner that is aesthetically compatible with the surrounding area.

#### Section 7. Annual Compliance Review.

The District and City shall conduct quarterly meetings to ensure compliance with this Agreement. Prior to the beginning of each fiscal year, but in no event no later than July 1st, the Director shall provide a report to the City Manager and the District Superintendent on the each party's compliance with this Agreement for the prior year. The report shall focus on the availability of the District Facilities for the City's use, the City's access to District Facilities, the City's use of District Facilities, including the City's compliance with its obligations pursuant to this Agreement, the maintenance of the District Facilities, the District's cancellation, if any, of the City's scheduled uses and other pertinent information.

#### Section 8. Accountability and Audit.

A. It is in the best interest of the public if the benefits of this Agreement are well understood. The parties agree that the District shall include and clearly acknowledge in its annual budget the payments made to the District under this Agreement as a separate line item in that budget.

B. The District shall maintain records of accounts maintained by the District for the receipt and disbursement of any funds received in connection with this Agreement according to accepted government accounting principles, which records shall be available to the City for audit. The District shall allow a representative of the City to examine, audit and make transcripts or copies of such records during regular business hours upon notice to the District by the City. The District shall provide the City with its full cooperation in any audit or request for examination of records.

C. The District shall maintain complete and accurate records, including invoices, of any expenditures or disbursements for crossing guard services that

are funded by the \$125,000 payment set forth in Section 3. The District shall maintain such records for a period of two years after the termination of this Agreement. All such records and invoices shall be clearly identifiable. The District shall allow a representative of the City to examine, audit and make transcripts or copies of such records during regular business hours upon notice to the District by the City. The District shall provide the City with its full cooperation in any audit or request for examination of records.

D. If the City determines, after a review or audit of District records, that any portion of the \$125,000 annual payment provided in Section 3 for crossing guard services has not been expended for direct costs of crossing guard services, then the City shall provide notice of that determination to the District. Within ten days of such notice, the District shall provide a response indicating whether the District disputes the City's determination or whether the District intends to reimburse the City that portion of the annual \$125,000 payment paid to the District and not expended for crossing guard services. Reimbursement of any undisputed amount shall be made within thirty (30) days after the City has provided notice to the District pursuant to this paragraph D. If the District disputes the City's determination, the parties shall meet to attempt to resolve the dispute within thirty (30) days after the City has provided notice to the District pursuant to this paragraph D. If the dispute remains unresolved after the meeting, the parties shall have all remedies available at law or equity. For the purposes of this paragraph, "direct costs of crossing guard services" shall have the meaning set forth in Section 3.B.

#### Section 9. Breach, Default and Remedies.

A. If, at any time, either party determines that the other has failed to perform a material term or provision of this Agreement, then that party shall provide written notice specifying in detail the nature of the alleged breach and the manner in which the breach may be satisfactorily cured.

B. Upon receipt of the notice of breach, the alleged breaching party shall promptly commence to cure, correct or remedy the identified breach at the earliest reasonable time after receipt of the notice of breach and shall complete the cure, correction or remedy of such breach promptly and within fifteen (15) days after receipt of the notice. However, if the breach is not reasonably susceptible of being cured within fifteen (15) days, then a default shall exist only if the cure of the breach is not commenced within the fifteen (15) day period or thereafter is not diligently prosecuted to completion. To facilitate a resolution of the alleged breach, if the breach has not been cured immediately upon notice, the City Manager and the Superintendent, or their representatives, shall meet within ten (10) days of any notice of breach to attempt to find an appropriate cure for the breach and to otherwise resolve the parties' disputes.

C. If a breach by the District is not cured promptly and within the cure period provided above, then the City may deduct seven hundred fifty dollars (\$ 750) from the next payment due to the District for each day that the breach remains uncured after notice of breach is provided by the City.

D. Whether or not a breach is cured promptly and within the cure period, if a breach occurs for any reason other than mechanical failure or Force Majeure, and the breach results in the cancellation of a scheduled City use or the inability of the public to access the Outdoor Facilities on a day when the Outdoor Facilities are to be made available pursuant to this Agreement, then the City may deduct one hundred seventy five dollars (\$ 175) from the next payment due to the District for each day that that the City use was displaced or the Outdoor Facilities were unavailable to the public.

E. Neither party hereunder shall be deemed to be in default where delays or failures to perform are due to Force Majeure. For purposes of this Agreement, the term "Force Majeure" shall mean the following: strikes, lockouts or labor disputes, acts of God, acts of enemies or hostile governmental action, civil commotion, insurrection, revolution, sabotage, fire or other casualty, or a taking of a whole or a portion of the District facilities by condemnation or eminent domain. Any Party intending to rely upon Force Majeure to forgive performance shall give notice of the Force Majeure and the full particulars of such Force Majeure in writing to the other Party within a reasonable time after occurrence of the event or cause relied on.

F. If, after providing the District with notice and an opportunity to cure as provided in paragraph B above, the District fails to maintain its facilities or equipment as required by this Agreement, and, as a result of the District's failure to maintain its facilities and equipment, the City is required to purchase equipment or supplies in order to properly conduct a scheduled City use, then City may deduct the costs of such equipment or supplies from the next payment due to the District.

G. Upon compliance with the provisions of paragraphs A and B above, the parties shall have all of the remedies available at law or equity. The remedies set forth in paragraphs C through F are in addition to, and not in lieu of, any remedy available at law or equity.

Section 10. 9900 Wilshire Project Payment. On April 9, 2008, the Beverly Hills City Council approved a mixed-use project on the former Robinsons-May department store site located at 9900 Wilshire Boulevard in Beverly Hills ("9900 Wilshire Project"). Pursuant to the development agreement approved in conjunction with the 9900 Wilshire Project, the developer is obligated to make a one-time payment to the District upon issuance of a building permit for the Project (the "Restricted Funds"). The District shall use the Restricted Funds to make capital improvements to the swim gym at Beverly Hills High School or to make capital improvements, or to construct indoor recreation facilities, that will be available for use by the City pursuant to this Agreement.

Section 11. Source of Funds. Expenditures by the City under this Agreement shall be appropriated from monies in the City's General Fund, provided that no funds shall be expended which are derived from property taxes. Further, no funds expended

under this Agreement shall be derived from assessments based on the value of property within the City or from any monies appropriated by the State of California.

Section 12. Notice. Any notice required by this Agreement shall be served upon the party personally or by overnight courier service during regular business hours and shall be deemed received on the day of delivery. Notices to the City shall be addressed to City Manager, City of Beverly Hills, 455 North Rexford Drive, Fourth Floor, Beverly Hills, California 90210. Notices to the District shall be addressed to Schools Superintendent, Beverly Hills Unified School District, 255 South Lasky Drive, Beverly Hills, California 90212;

Section 13. Loss of Use of District Facilities. If any of the District Facilities shall be so damaged by fire, casualty or other cause or happening as to be rendered unusable, or if any authority having jurisdiction shall order the demolition or removal of any District Facilities, then as to those facilities, this Agreement shall cease and become null and void. The District shall have no obligation to restore said facilities or put them in proper condition for use and occupancy. The City and District, however, agree that if said facilities are not restored or placed in proper condition for use and occupancy, that the annual payment provided herein may be reduced by a sum that quantifies the loss of such use as reasonably determined by the City after consultation with the District.

Section 14. Amendments to Agreement. Any amendments, modifications or variations from the terms of this Agreement 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 15. 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 Agreement subject to the rights and obligations set forth herein and subject to the direction of their respective governing agencies.

Section 16. Loss of Funding. If this Agreement is terminated for any reason prior to the expiration of its term, the payments specified in Section 3 hereinabove for that remaining portion of the Agreement, calculated to the nearest calendar month, shall also be cancelled. Any portion of said payments already paid by the City to the District, for any period during which this Agreement is no longer in effect, shall be calculated to the nearest calendar month and shall be reimbursed to the City by the District.

Section 17. Reimbursement of Funds. In the event a court of competent jurisdiction holds that any money paid to the District under this 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 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 18. 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 Agreement, 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 Agreement.

C. This section shall survive the expiration or earlier termination of this Agreement.

Section 19. Extension of Term of Agreement. The City and the District shall make reasonable efforts to commence discussions no later than January 1, 2016 regarding whether the term of this Agreement shall be extended. Such decision shall be in the sole discretion of the City. Nothing contained in this Agreement shall be construed to require either the City or the District to extend the term of this Agreement or to enter into a new agreement.

Section 20. Severability Clause. If any provision of this Agreement 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 the Agreement contrary to the intent of the parties, the City and the District shall use their best efforts to restructure the Agreement consistent with the original intent of the parties. If the City and the District are unable to agree after utilizing their best efforts, this Agreement shall become null and void upon thirty (30) days written notice, and at the election of, either party hereto.

Section 21. Compliance with Law. In performing its obligations under this Agreement, each party shall undertake its respective activities in compliance with all applicable local, state and federal laws.

Section 22. Interpretation of Agreement. The terms of this 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 Agreement or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only.

Section 23. Entire Agreement. This Agreement represents the entire integrated agreement between City and District, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and District.

Section 24. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 25. Attorney Fees. In the event that City or District commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees.

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

CITY OF BEVERLY HILLS  
A Municipal Corporation

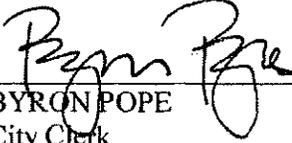


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BARRY BRUCKER  
Mayor of the City of  
Beverly Hills, California

[signatures continue]

ATTEST:

 (SEAL)  
BYRON POPE  
City Clerk

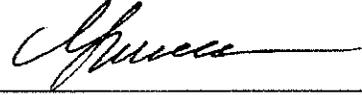
[signatures continue]

BEVERLY HILLS UNIFIED  
SCHOOL DISTRICT



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BRIAN GOLDBERG  
President, Board of Education

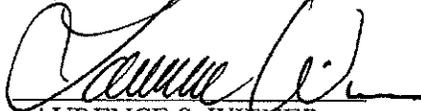


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GARY WOODS  
Secretary, Board of Education

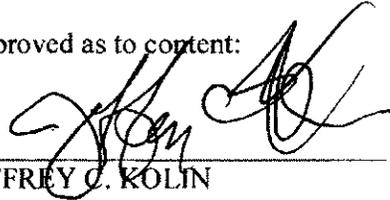
[signatures continue]

Approved as to form:



LAURENCE S. WIENER  
City Attorney

Approved as to content:



JEFFREY C. KOLIN  
City Manager



GARY WOODS  
Superintendent