

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Jennifer Mellon, Administrative Services Manager 

DATE: January 17, 2013 (CC Meeting of 2/6/13)

SUBJECT: Consider Amendment No. 1 to the Agreement with the Moorpark Foundation for the Arts for Operation of the High Street Arts Center

BACKGROUND & DISCUSSION

On July 2, 2012, the City Council authorized the City Manager to sign an Agreement with the Moorpark Foundation for the Arts (Foundation) to operate the High Street Arts Center (HSAC). Section 9 of this Agreement outlined responsibilities with regards to Utilities. The current Agreement states the Foundation is responsible for all utilities except solid waste services and wireless internet at the HSAC.

The Amendment to the Agreement relates to telephone service charges for the seven (7) voice and data lines currently at the HSAC. The City has continued to pay telephone invoices for the HSAC within the bundled City voice and data service plan. The City receives discounted rates for voice and data line service. The Foundation has requested, and the City is agreeable to, amending the Agreement to have the City continue to pay for the HSAC voice and data line service with quarterly reimbursement from the Foundation for these payments. Upon inquiry it was determined that if the phone and data lines were to be transferred to the Foundation that they would see an increase in monthly costs for service of over 300%, which the Foundation believes to be an unnecessary hardship.

The Amendment addresses that the City shall continue to pay for voice and data line service and the Foundation shall reimburse the City on a quarterly basis upon receipt of an invoice. The City shall require one (1) payment in advance from the Foundation in the amount of \$450.00 and all future quarterly HSAC voice and data line service invoices shall not include a City Administrative Fee.

Section 9, Utilities, shall be amended as follows:

“City agrees to provide solid waste services and a wireless internet access point for public internet access for the HSAC at no cost to Foundation.”

City shall also provide monthly telephone service for the seven (7) telephone and data lines currently active at the HSAC and shall pay monthly invoices for said service. Foundation shall reimburse City for telephone service costs paid by City on a quarterly basis upon receipt of City invoices. The Foundation shall provide City with one (1) payment in advance for telephone service charges in the amount of four hundred fifty dollars (\$450.00) payable upon City Manager execution of this Amendment. Beginning on April 1, 2013, City shall invoice Foundation on a quarterly basis for ongoing telephone service costs. Telephone service reimbursement invoices shall not include a City Administrative Fee.

Foundation agrees to pay all monthly service charges for ~~electric current, and any other utilities not mentioned above~~ which may be furnished to or used at HSAC by Foundation during the Term of this Agreement, including but not limited to, electric current, any internet or telephone service costs, and alarm costs for the HSAC and the City's warehouse building located at 782 Moorpark Avenue (former Fire Station) currently used for storage of costumes, props, and equipment.

It is further agreed that in the event Foundation shall fail to pay the above mentioned charges when due, City shall have the right to pay the same on demand, together with any interest thereon and any other fees that may be owed. The City shall be reimbursed by the Foundation within five (5) days of notice from City for the amount of payment plus any interest or fees, with an additional fifteen percent (15%) administrative fee. Failure to pay monthly service charges for any above-mentioned utility in a timely fashion shall be cause for termination of this Agreement.”

FISCAL IMPACT

There is no fiscal impact associated to this Amendment No. 1 to the Agreement.

STAFF RECOMMENDATION

Authorize the City Manager to sign Amendment No. 1 as discussed in this report subject to City Manager final language approval.

Attachment: Amendment No. 1.

AMENDMENT NO. 1

AGREEMENT BETWEEN THE CITY OF MOORPARK AND THE MOORPARK
FOUNDATION FOR THE ARTS FOR OPERATION OF THE HIGH STREET ARTS
CENTER (HSAC)

THIS AMENDMENT TO AGREEMENT, made and entered into this ____ day of _____, 2013, by and between the City of Moorpark, a municipal corporation located in the County of Ventura, state of California, hereinafter referred to as "City" and The Moorpark Foundation for the Arts, a California non-profit under the IRS Code 501 (c) 3, hereinafter referred to as "Foundation".

WITNESSETH

Whereas, on July 2, 2012, the City and Foundation entered into an Operating Agreement for operation of the High Street Arts Center (HSAC) located at 45 East High Street as a performing arts venue; and

Whereas, the City and the Foundation wish to amend the aforesaid Agreement with regards to telephone utility service and payment language; and

Whereas, both City and Foundation agree to the adjustments to the Agreement and now wish to document said Agreement by jointly approving this Amendment No. 1 to the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and premises herein stated, the parties hereto agree to amend the aforesaid Agreement as follows:

I. SECTION 9 – UTILITIES

Section 9, Utilities, shall be replaced in its entirety to read as follows:

"City agrees to provide solid waste services and a wireless internet access point for public internet access for the HSAC at no cost to Foundation.

City shall also provide monthly telephone service for the seven (7) telephone and data lines currently active at the HSAC and shall pay monthly invoices for said service. Foundation shall reimburse City for telephone service costs paid by City on a quarterly basis upon receipt of City invoices. The Foundation shall provide City with one (1) payment in advance for telephone service charges in the amount of four hundred fifty dollars (\$450.00) payable upon City Manager execution of this Amendment. Beginning on April 1, 2013, City shall invoice Foundation on a quarterly basis for ongoing telephone service costs. Telephone service reimbursement invoices shall not include a City Administrative Fee.

Foundation agrees to pay all monthly service charges for any other utilities not mentioned above which may be furnished to or used at HSAC by Foundation during the Term of this Agreement, including but not limited to, electric current, internet service costs, and alarm costs for the HSAC and the City's warehouse building located at 782 Moorpark Avenue (former Fire Station) currently used for storage of costumes, props, and equipment.

It is further agreed that in the event Foundation shall fail to pay the above charges when due, City shall have the right to pay the same on demand, together with any interest thereon and any other fees that may be owed. The City shall be reimbursed by the Foundation within five (5) days of notice from City for the amount of payment plus any interest or fees, with an additional fifteen percent (15%) administrative fee. Failure to pay monthly service charges for any above-mentioned utility in a timely fashion shall be cause for termination of this Agreement."

II. REMAINING PROVISIONS

All other provisions of the aforesaid Agreement shall remain in full force and effect.

CITY OF MOORPARK:

MOORPARK FOUNDATION FOR THE
ARTS:

Steven Kueny, City Manager

Louie Valdez, President

ATTEST:

ATTEST:

Maureen Benson, City Clerk

Bernardo M. Perez, Secretary