

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

cc: HER
Amend No. _____

Date Prepared: March 3, 2008

Meeting Date: March 18, 2008

TO: Terrence L. Ellis, City Manager
FROM: J.P. de la Montaigne, Community Services Director J.P.
PREPARED BY: Kirk Haines, Parks Manager K.H.
SUBJECT: Amendment to Easement Agreement for Park Fence

RECOMMENDATION:

That the Mayor and City Council approve an amendment to the 2000 easement agreement with Nobel Learning Communities and Meritas, LLC authorizing the installation of a four-foot high safety fence along the perimeter of a portion of Fletcher Heights Park North.

SUMMARY:

Staff prepared a report to Council on January 15, 2008 recommending approval of an Easement Agreement with Nobel Learning Communities and Meritas, LLC to allow a fence to be constructed on park property at the expense of the school. City Council raised several questions about the project, including concerns about ongoing maintenance of the fence even if the current school no longer exists at this site in the future. Council also raised concerns about the benefit of the project as a public good. There was also concern that the fence had already been constructed while Council had not yet approved the request.

City Council decided to defer their decision and requested Staff to conduct a public meeting and receive feedback from residents in the area about their concerns and issues about the fence. Council also requested the Park and Recreation Board to provide direction and a recommendation to Council before further action was to be taken.

Staff attended an open house sponsored by the Meritas School to discuss concerns and issues related to the fence around the park. One page flyers were distributed to the neighbors who are served by this neighborhood park as door hangers to inform people about the meeting to discuss their concerns about the fence. During the

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Action Date: _____

meeting several people were not supportive of the fence being constructed and were concerned about losing public access to the park. Others supported the fence as long as they still had access and openness to the park. Many reported their concern that they did not have a voice in the process to determine whether there ought to be a fence in this park, or not. No true consensus was identified during this meeting. Therefore, staff stated to those in attendance during this meeting to progress with the following actions:

1. The school, Meritas, was asked to conduct an Open House prior to their scheduled opening on Feb 19th for the residents to discuss neighborhood issues to enrollment, traffic, school schedules, bussing, staffing, PA announcements etc. Meritas agreed to do that without reservation. This meeting was conducted on Tuesday, February 12 at 6:00 p.m.
2. The City of Peoria's Community Services Department will mail approximately 700 letters to the homeowners in the park service area listing varying fencing options discussed at the initial public meeting on Tuesday, January 29. This will provide an opportunity for citizens to e-mail or mail back their preferences and thoughts about the potential fence options. This letter will also clarify the contract language between the school and the city regarding the park site and non-exclusive usage and maintenance requirements. The letters were mailed on Friday, February 15 and those receiving letters were asked to submit their responses no later than 5:00 p.m., Tuesday, February 26.
3. The next Parks and Recreation Board will schedule a meeting to be held at the school site for residents to attend to hear the various options and provide comments. That Board meeting was conducted on Thursday, February 28 at 7:00 p.m.
4. Following a recommendation of the Parks and Recreation Board, staff will bring this issue back to the City Council for a final decision on the fence options.

A letter was mailed to 745 addresses in the adjacent area (included). A fact sheet and brief history was also provided in the letter. Furthermore, the letter also informed residents of the Park and Recreation Board meeting on February 28 and asked for anyone to express their concerns to attend. The letter requested residents to show their preference by placing a call to one of our staff member's telephone numbers, or responses could also be e-mailed to the Community Services Department and only residents who own a home in this area of the park would be tallied and counted.

The results of the votes are as follows:

To remove the fence	77
To keep the fence as is	118

In addition to the responses, there were thirty-nine (39) persons in attendance at the February 28 Park and Recreation Board meeting. Nineteen persons provided the Board with additional comments and information either supporting or rejecting the fence project. Approximately half of the people who spoke supported the fence to remain,

and the other half asked for the fence to be removed. Essentially, those in attendance were also split in two whether to keep the fence for the safety of kids playing in the park or to remove the fence for various reasons. Based on the input from the citizens, the Park and Recreation Board unanimously agreed to recommend the fence along Hillcrest Drive to remain. Furthermore, the Board was concerned about some of the existing openings along Hillcrest Drive and recommended to have staff look at how to augment the fence to complete it.

City Council is now being asked to amend the existing easement with Noble Learning Communities that would allow the Meritas School to construct a fence on the city park. In the year 2000, the City of Peoria entered into a Purchase and Sale Agreement with Nobel Learning Communities, Inc. for the City to own a park parcel adjacent to the Fletcher Heights Charter School along Hillcrest Drive. This agreement essentially states that Nobel and its successors “. . . . will be entitled to use the Playground Area” [deemed as park area] “for school purposes (exclusively during hours when the school, related preschool and after-school care facilities on the School Site are in use), *provided that* such exclusive use shall not preclude use by the public of the Park Property as a City of Peoria Neighborhood Park.”

In exchange for the City's ownership of the park and continuous public use of the park property, the School is “responsible for the landscaping maintenance” [of the park] “in accordance with the adopted Maintenance Standards of the City.” Essentially, the School is responsible for ongoing maintenance and the associated costs for the park. Furthermore, the School has the right to use the park area for its general school purposes as long as it does not prohibit anyone else from also using the park.

In the summer of 2007, Meritas Schools entered into a lease agreement with Noble to lease the charter school at the Fletcher Heights Park North location. Meritas underwent immediate changes to prepare the school to be open in the fall of 2008. The Meritas schools representative, James Carruthers, made contact with the City to identify issues and concerns with park maintenance adjacent to the school. Several deficiencies were pointed out and Meritas took immediate action to improve park maintenance.

Meritas approached the City and asked whether they could install a fence along the perimeter of the park property. It was the schools intent to install the fence in order to provide added safety for children in the park area from Hillcrest Blvd; to provide a barrier that would stop recreational balls from rolling into the street; and finally a boundary for children in the school to stay within. City staff perceived the benefit as acceptable to provide additional safety for persons who use the park from travelers along Hillcrest Blvd. However, there was concern about closing off the park that could create a false impression of not public use of the park amenities. Therefore, staff recommended openings that would not be locked at any time. After identifying specific details and location, staff was directed to develop an easement agreement with Meritas that would allow for the fence to be constructed according to specific guidelines and location, pending City Council approval.

Meritas informed staff that they planned to escalate the school opening to early January and asked whether they could install the fence in advance of the approved agreement. The response from staff was such that if Meritas decided to erect the fence in advance

of the City Council approval, it was done at risk of potentially removing the fence if Council denied the request. Meritas decided to move forward with the fence installation at risk.

Based on extensive public input and the unanimous recommendation of the Parks and Recreation Board in support of a safety fence at Fletcher Heights Park North, Staff recommends that the Mayor and Council approve an amendment to the 2000 easement agreement with Nobel Learning Communities and Meritas, LLC .

SUPPORTING DOCUMENTATION
PERTAINING TO THIS
AGENDA ITEM IS ON FILE IN THE
OFFICE OF THE CITY CLERK