

DRAFT FOR DISCUSSION PURPOSES ONLY

AMENDED AND RESTATED MASTER AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND MANHATTAN BEACH UNIFIED SCHOOL DISTRICT FOR THE PROVISION, USE AND MAINTENANCE OF EDUCATIONAL, RECREATIONAL AND COMMUNITY FACILITIES AND PROGRAMS FOR THE FISCAL YEARS 2013-2014 THROUGH 2018-19

THIS AMENDED AND RESTATED MASTER AGREEMENT for the provision, use and maintenance of educational, recreational and community facilities (“Agreement”) is entered into as of the ____ day of _____ by and between the CITY OF MANHATTAN BEACH, a municipal corporation (“City”), and the MANHATTAN BEACH UNIFIED SCHOOL DISTRICT, a public school district duly organized under the laws of the State of California (“District”). City and District may be referred to as “parties” herein.

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, play yards and play equipment, tennis courts, basketball courts, racket courts, swimming facilities, auditoriums, classrooms, cafeterias, labs, multipurpose rooms, meeting rooms and open space.

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 purpose of this Agreement is to establish a framework setting forth the basic terms applicable to the City’s use of the District’s properties and facilities.

E. It is the desire of the District and the City, upon the express terms and conditions set forth in this Agreement, to utilize site specific agreements for specific properties and facilities for the mutual benefit and use of each party, pursuant to the terms set forth herein.

F. The District and the City acknowledge that this Agreement is being entered into by each party, as a courtesy between public agencies and for the mutual benefit of each.

G. 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 receipt and sufficiency of which is hereby acknowledged, the City and the District hereby agree as follows:

Section 1. Definitions. Unless otherwise provided in this Agreement, including its exhibits, the following terms shall be defined as set forth below:

“Educational Activities”: (1) directly related to the normal and usual student activities at each school in the District; (2) and the activities of each Parent Teacher Association and booster club in the District and of the Manhattan Beach Education Foundation.

“City Manager”: City Manager for the City.

“City Sanctioned”: Uses approved by the City Manager.

“Director”: Manhattan Beach Director of Parks and Recreation or his/her designee.

“District Facilities”: means and includes the following facilities, fields, recreational courts and related parking facilities:

- (1) Begg Field,
- (2) Manhattan Beach Middle School Fields,
- (3) Pacific School Athletic Fields,
- (4) Center Athletic Field located at Pacific Schools,
- (5) Grand View School Athletic Fields,
- (6) Robinson School Athletic Fields,
- (7) Meadows School Athletic Fields,
- (8) Pennekamp School Athletic Fields,
- (9) Mira Costa High School Athletic Fields, excluding Waller Stadium
- (10) Mira Costa Tennis Courts,
- (11) Mira Costa Pool,
- (12) Begg Swimming Pool,
- (13) The property known as Polliwog Park and Premier Field, and

(14) Exterior courts at District sites (e.g. basketball, tennis, and racket courts).

“Non-School Hours”: weekdays beginning two (2) hours after classes regularly scheduled or school-sponsored after-school programs are dismissed (or earlier, with the prior written permission of the District regarding particular location and event), weekends, holidays observed by the District, and extended school breaks, including, but not limited to, winter recess, spring recess and summer recess (the “Usage Period”).

Section 2. Term of Agreement. This is an amended and restated agreement and its term shall run from the original date of March 24, 1999, through July 1, 2019, (“Term”) unless otherwise terminated pursuant to Section 12.

Section 3. District Facilities. Depictions of the District Facilities that are the subject of this Agreement are attached hereto as Exhibit A.

Section 4. Grant and Covenant. The District hereby grants to the City a license to use the District Facilities subject to the general terms set forth in this Agreement, and the specific terms which shall be set forth in subsequent, site-specific agreements.

Section 5. Use of District Facilities.

A. Restriction on Use. The City has no right to use and shall not permit the District Facilities to be used for a purpose or in a manner that:

1. Is not legal;
2. Causes or may cause injury to any portion of the District Facilities; or
3. May cause cancellation or adversely affect the District’s ability to obtain adequate insurance.

B. Permits for City Employees and Officials. The District shall set up a system of permits regarding non-District residents seeking to enroll students for instruction at District schools. City employees shall have priority as District policy may provide.

C. Site Specific Agreements.

1. The parties have previously developed additional terms set forth in site-specific agreements for the City’s use of the District Facilities identified below:

- a) Athletic Fields and Facilities. The athletic fields, facilities and related parking facilities located at (1) Begg Field, (2) Manhattan Beach Middle School Fields, (3) Pacific School Athletic Field, (4) Center Athletic Field located at Pacific School, (5) Grand View School Athletic Field, (6) Robinson School Athletic Field, (7) Meadows School Athletic Field, (8) Pennekamp School Athletic Field, (9) Mira Costa High School Athletic Fields. The site-specific agreement as to the use of these District Facilities is attached hereto as Exhibit B.

b) Begg Swimming Pool. The site-specific agreement as to the use of Begg Swimming Pool is attached hereto as Exhibit C.

c) Mira Costa Tennis Courts. The site-specific agreement as to the use of the Mira Costa Tennis Courts is attached hereto as Exhibit D.

d) Polliwog Park and Premiere Field. The site-specific agreement as to the use of Polliwog Park and Premier Field is attached hereto as Exhibit E.

2. Pursuant to this Agreement, the parties hereby agree that the City may use the following District Facilities, subject to the terms herein and subject to additional terms agreed upon by the parties in site-specific agreements:

a) Exterior Courts, Basketball, tennis, and racket courts are also included as a component of the District Facilities under the terms of this Agreement. The parties have revised the site-specific agreement attached hereto as Exhibit D to incorporate terms and conditions as to this component of the District Facilities.

b) Mira Costa Pool. The parties will draft a site-specific agreement attached hereto as Exhibit F to incorporate terms and conditions as to this component of the District Facilities. The parties agree that the District will employ a pool custodian/technician on site.

c) District's Maintenance & Operations Facility. The City's Facility Strategic Plan dated April 2008 identifies the portion of Polliwog Park known as the District's Maintenance & Operations Facility as a key site for recreational facilities and open space. The parties will negotiate in good faith with the goal of executing a comprehensive agreement with regard to the use and development of the Maintenance & Operations Facility.

3. To the extent that any provision in any of the Exhibits or site specific agreements conflicts with any provision in this Agreement, this Agreement shall prevail unless the mutually agreed upon terms of such other agreement expressly states that the agreement shall prevail notwithstanding this Section 5(c)(3). The parties may revise the existing site specific agreements or enter into additional site specific agreements and any such agreements shall be subject to all provisions in this Agreement as if expressly stated in that specific agreement.

D. General Use of District Facilities. From time to time, the City may need the use of District's facilities, or portions thereof, other than those specified herein. In such instances, the City shall submit its request for such use in writing to the District. The District shall consider such request and may deny the request if the District determines, in its sole discretion, that the requested use would interfere with District activities or Civic Center Act uses, 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. The parties agree that the City Manager or his/her representative and the District Superintendent or his/her representative must mutually agree as to the use of any District facility under the terms of this provision.

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

1. At least twice each year, on a Saturday or Sunday as mutually agreed upon by the parties, the City shall have exclusive use of the parking facilities, driveways and other similar large open asphalt areas as well as other District Facilities as requested by the City 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 declared local, state, or federal emergency, the parties may coordinate for the use District Facilities for the sheltering of persons and any other use related to the emergency.

3. The District and the City shall coordinate with regard to locating 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.

F. **Tour of District Facilities.** During the month of July or August of each year during the Term on a date and time mutually agreeable to the parties, the District shall provide to the City Manager and other staff designated by the City a tour of the District Facilities.

Section 6. City Obligation. 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 \$250,000. Each annual payment shall be divided into four quarterly payments made on July 1, October 1, January 1, and April 1 of each year during the Term. The District shall submit a written invoice requesting payment at least thirty (30) 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. Maintenance of the District Facilities. The City shall maintain the athletic field components of the District Facilities in accordance with the maintenance standards applied at other City athletic fields (the "Maintenance Standards"). Maintenance shall include, mowing, watering, fertilizing, weed control, irrigation systems and other necessary maintenance necessary for the safe usage of the fields, with the exception of the artificial turf fields located at Mira Costa High School.

C. Maintenance of Hardscape, including parking lots. The City will incorporate the hardscape identified on Exhibit A and associated parking lots in its annual resurfacing and slurry seal program, at no cost to the District.

D. Mowing Services by City. The District shall employ necessary groundkeepers to maintain the fields at Mira Costa High School. The District shall utilize necessary equipment and supplies for the maintenance of fields at Mira Costa High School. The cost of said employees shall not exceed the actual direct salary and reasonable benefits of the employees and not include

overtime unless approved by the City either in advance or within two weeks of incurring such overtime cost. On an annual basis, City shall pay to District \$75,000 for these services. By July 30 of each year, the Agreement is in force the District shall send a bill to the City. By August 31 of each year, the Agreement is in force the City agrees to pay to District.

E. Improvements to and Upkeep of District Facilities. The City Manager or his representative and the District Superintendent or his representative shall meet, when necessary, to discuss additional improvements to the District Facilities. Upon written agreement of the City and the District, the City may make additional agreed upon improvements to some or all of the District Facilities. Any improvements to be made to any of the District Facilities will be pursuant to plans and specifications reasonably approved by the District and the City.

The City Manager or his representative and the District Superintendent or his/her representative shall meet on an annual basis to determine the upkeep costs for the District Facilities as a result of the normal wear and tear that results from the use of the District Facilities by the City under the terms of this Agreement. The parties agree that City shall be solely responsible for such costs.

F. Maintenance and Use of Mira Costa Pool. The City shall pay District \$250,000 annually for costs of maintenance and all utilities (water, gas, electricity, and supplies) to compensate for City use of Mira Costa pool. City Manager and Superintendent will meet annually to review pool use schedule. City gets use of pool after 5:30 p.m. each day and weekends, unless previously arranged for Mira Costa athletic events.

Section 7. Annual Field Closures. District and City agree that in order to obtain maximum use from District Facilities, annual field closures must occur to allow for necessary field refurbishment. By July 1 of each year during the Term of this Agreement, City will submit to District an “Annual Field Maintenance Closure Schedule” (“Schedule”) showing the requested closure periods, indicated by closing and opening dates and by field name. District will review the schedule and submit requested revisions within 30 days of receipt of the Schedule. If no revisions are received by City within the 30-day period, the Schedule will be in force from September 1 to August 31 of the following year. If District disagrees with the Schedule, City and District will negotiate a revised Schedule. If a satisfactory agreement regarding field closures for maintenance cannot be made, the City will make reasonable efforts to maintain the fields pursuant to the terms of this Agreement as set forth in the Exhibits but cannot guarantee the covenant as set forth therein.

Section 8. Rules and Regulations. The City shall formulate and enforce such rules and regulations as may be reasonably necessary to maintain proper standards of conduct and safety for programs at the District Facilities during the Term. The City shall not permit any person or organization to use the District Facilities where such use is inconsistent with Education Code Sections 10900 through 10915 and Section 40044 and other applicable laws.

Section 9. Annual Report and Meeting.

A. Accountability and Audit.

1. 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.

2. 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.

B. Annual Meeting. City Manager and District Superintendent shall conduct an annual meeting no later than June 1 of each year during the Term to ensure compliance with this Agreement and to discuss issues such as whether certain facilities should be added to or deleted from this Agreement.

Section 10. Insurance.

A. During the Term of this Agreement, the City shall maintain, at its own expense, public liability insurance or self-insurance with respect to the District Facilities in the minimum amount of \$5,000,000. The City shall evidence the existence of proper insurance by sending an appropriate certificate of coverage to the District, which shall provide for thirty (30) days' advance notice to the District prior to cancellation or alteration of such coverage and name the District as an additional insured. The insurance afforded by this policy is primary and any other insurance carried by the District with respect to the matters covered by such policy shall be excess and non-contributing.

B. During the Term of this Agreement, the District shall maintain, at its own expense, public liability insurance or self-insurance with respect to the District Facilities in the minimum amount of \$___,000,000. The District shall evidence the existence of proper insurance by sending an appropriate certificate of coverage to the City, which shall provide for thirty (30) days' advance notice to the City prior to cancellation or alteration of such coverage and name the City as an additional insured. The insurance afforded by this policy is primary and any other insurance carried by the City with respect to the matters covered by such policy shall be excess and non-contributing.

C. If either party fails to purchase and maintain the insurance required under this Section, the other party may, but shall not be obligated to, upon five (5) days' written notice to the other, purchase such insurance and the party obtaining insurance for the other shall be entitled to be reimbursed promptly thereafter, together with interest thereon from the date such premiums are paid until reimbursed at the rate of ten (10) percent per annum.

D. In the event the City subcontracts the maintenance of the District Facilities to a third party (the "Subcontractor"), the City shall require that the Subcontractor have the following forms of insurance coverage:

1. Liability Insurance. The Subcontractor shall procure a policy of liability insurance with a company listed in the current Best's Insurance Guide with a rating of A+ or better, which company is authorized to do business in the State of California, and which policy will protect the District against any and all liability for death, injury, loss, or damage to person or property arising out of or in any manner incident to the Subcontractor's operations under any contract with the City for the maintenance of the District Facilities. Such policy of insurance shall contain not less than \$1,000,000 combined single limit coverage per occurrence and \$3,000,000 aggregate against any injury, death, loss, or damage as a result of wrongful or negligent acts or omissions by the Subcontractor.

2. Workers' Compensation Insurance. The Subcontractor at all times shall keep and maintain fully insured at its own expense, all persons employed by it, in connection with the maintenance contract as required by California law and any other applicable laws, and shall hold the District harmless from all liability that may arise by reason of injuries while performing any work or labor necessary to carry out the provisions of this Agreement. The Subcontractor shall, during the life of its maintenance contract, keep on file with the District evidence that the Subcontractor is fully and properly insured as required by said Act and any other applicable laws which shall be approved by the District as to form and sufficiency.

3. The Subcontractor shall deliver a certificate of insurance coverage to the District evidencing the existence of such coverage before such Subcontractor commences activity at any District Facility and such policy shall name the City of Manhattan beach and the District as additional insureds on the policy of general liability. The general liability policy shall provide the following endorsement:

"This policy shall not be suspended, canceled, reduced in coverage or required limits of liability or amounts of insurance or non-renewed until notice has been mailed to the Manhattan Beach Unified District, at 325 South Peck Road, Manhattan Beach, California 90266. Date of suspension, cancellation, reduction in coverage or non-renewal shall not be less than 30 days after the date of mailing of such notice. The insurance afforded by this policy is primary and any other insurance carried by the City or Manhattan Beach Unified District with respect to the matters covered by such policy shall be excess and noncontributing."

4. The Subcontractor shall pay, at its own expense, all premiums upon the required policies of insurance and shall maintain the same in full force and effect during the life of the contract with the City. The procuring of such policies of insurance shall not be construed as a limitation of the Subcontractor's liability; the Subcontractor's liability being, notwithstanding said policy of insurance, for the full and total amount of any damage, injury, or loss caused by or incident to the Subcontractor's operations under the applicable contract.

E. The obligations created by this Section shall survive the termination of this Agreement for actions occurring while the Agreement was in effect.

Section 11. Indemnification.

A. 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 any artificial turf at District Facilities, and any and all injuries arising from its installation, removal and/or maintenance, or lack thereof.

B. 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 12. City and District Right to Terminate.

The District shall have the right, upon giving the City twelve (12) months advance written notice, to terminate this Agreement with respect to all or a portion of each of the District Facilities.

The City shall have the right, upon giving the District twelve (12) months advance written notice, to terminate this Agreement with respect to all or a portion of each of the District Facilities.

Section 13. Surrender.

The City shall, on or before the last day of the Term with respect to each of the District Facilities as to which the Term of the Agreement has expired, or on the earlier termination of this Agreement, peaceably and quietly leave, surrender and yield up unto the District the District Facilities, together with all alterations, additions and improvements which may have been made upon the District Facilities, subject to the provisions in Section 6E.

Section 14. Assignment.

A. Except as otherwise provided for herein, the City may permit only City Sanctioned events scheduled by the City under Section ____ hereof to take place at the District Facilities, and may not otherwise assign all or any portion of its rights hereunder or delegate any of its duties hereunder, without the prior written consent of the District, not to be unreasonably withheld. Any purported assignment or delegation in violation of this Section is void ab initio.

B. Notwithstanding Section 14A, the City may permit third parties to use facilities without further approval by the District provided that such use complies with the terms of this Agreement.

C. The City covenants and agrees that no assignment or transfer of its right to use the District Facilities as created herein shall relieve the City of any of its covenants or obligations

accruing after such assignment or transfer, but the City shall remain obligated under this Agreement for the duration of the Term hereof, unless the District provides the City with a written release of the City's obligations under this Agreement. In all events, the obligations of the City to indemnify, defend and hold harmless the District in accordance with Section 11 will survive the termination of this Agreement.

Section 15. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restriction, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, or other occurrences beyond the reasonable control of the party obligated to perform any term, covenant or condition of this Agreement, shall excuse the performance by such party, for a period equal to any such prevention, delay or stoppage, provided that the obligated party could not have avoided such delay through the exercise of due diligence, and provided further that the obligated party notifies the other party within a reasonable time after the obligated party becomes aware that such occurrence will or is likely to result in such prevention, delay, or stoppage.

Section 16. Dispute Resolution.

A. In the event of any dispute or claim between the parties arising out of this Agreement, or the breach or interpretation thereof, the parties shall attempt to resolve such dispute or claim, in the following order:

1. Good faith negotiation
2. Mediation
3. Binding Arbitration.

B. Mediation. If good faith negotiation does not resolve the dispute or claim, the parties shall try in good faith to settle the dispute through mediation administered by the Judicial Arbitration and Mediation Service ("JAMS") located in Los Angeles County, California, prior to either party initiating against the other a demand for binding arbitration pursuant to the provisions and procedures set forth in Section C, below.

1. Request for Mediation and Selection of Mediator.

The party requesting mediation shall deliver a written request to mediate the dispute to the other party to this Agreement and to JAMS. The request shall include a brief statement of the party's claim, the amount thereof, and the name of the proposed retired judge from JAMS to mediate the dispute. Within ten (10) days after the request for mediation, the other party against whom the request is made shall deliver a written response to the demanding party and to JAMS. The response shall include a short and plain statement of the party's defenses to the claim and shall also state whether the party agrees to the mediator chosen by the requesting party. In the event the parties cannot agree upon a mediator, JAMS shall select and name a mediator to conduct the mediation.

2. Venue.

The place of the mediation shall be in Los Angeles County, California.

3. Time Limitations.

If the dispute is not resolved within sixty (60) days after the initiation of mediation, either party may demand binding arbitration in accordance with the procedures and provisions of Section C, below.

C. Binding Arbitration.

In the event a dispute under this Agreement is not resolved within sixty (60) days after the initiation of mediation, either party thereafter seeking binding arbitration shall deliver a written notice of demand of arbitration to the other party and to JAMS. The demand shall include a brief statement of the party's claim, the amount thereof, and the name of the proposed retired judge from JAMS to decide the dispute. The party demanding arbitration may request that the JAMS mediator serve as the arbitrator. Within ten (10) days after receipt of the demand, the other party against whom a demand is made shall deliver a written response to the demanding party and JAMS. The response shall include a short and plain statement of the party's defenses to the claim and shall also state whether the party agrees to the arbitrator chosen by the demanding party. In the event the parties cannot agree upon an arbitrator, JAMS shall select and name an arbitrator to conduct the hearings.

1. Venue.

The place of the arbitration shall be in Los Angeles County, California.

2. Discovery.

Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim on which the producing party may rely in support of or in opposition to any claim or defense. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator, whose determination shall be conclusive. All discovery shall be completed within forty five (45) days following the appointment of the arbitrator.

3. Powers of the Arbitrator.

The arbitrator's powers shall be limited as follows: The arbitrator shall follow the substantive laws of the State of California, including rules of evidence, and the terms of this Agreement. The arbitrator's decision shall be supported by substantial evidence. The arbitrator shall have no power, authority or jurisdiction to award any punitive or exemplary damages, but may award attorneys fees to the prevailing party.

4. Third Parties.

In the event any person or entity which is not a party to this Agreement is necessary for the complete and final resolution of any matter in controversy under this Agreement, such third party may be joined as a party. If such third party refuses to consent to be included in the arbitration between the parties to this agreement by consolidation, joinder or any other manner, then the parties to this Agreement shall not be compelled to arbitrate such dispute.

5. Timing of Award.

The award shall be made within six (6) months of the filing of the notice of intention to arbitrate (demand) and no later than thirty (30) days after the closing of the arbitration hearing. The arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be shortened or extended by agreement of the parties or by the arbitrator, if necessary.

6. Judgment upon Award.

Upon the request of either party, judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction.

7. Notice.

By executing this Agreement, you are agreeing to have any dispute arising out of this Agreement first submitted to a neutral party for mediation. You further agree that if the dispute is not resolved through mediation, the dispute will be decided through binding, neutral arbitration. You further acknowledge that by executing this Agreement, you are giving up any rights you might possess to have the dispute litigated in a court or by jury trial. By initialing in the space below, you acknowledge you are giving up your judicial rights of discovery and appeal, unless such rights are specifically included in these "Dispute Resolution" provisions. If you refuse to submit to arbitration after agreeing to this provision and attempting to resolve the dispute through mediation, you may be compelled to arbitrate under the authority of the California Code of Civil Procedure. We have read and understand the foregoing and agree to submit disputes arising out of the matters included in the "Dispute Resolution" provision to mediation and, if necessary, binding arbitration.

City

District

Section 17. 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 18. 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 19. 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 20. Loss of Funding. If this Agreement is terminated for any reason prior to the expiration of its Term, the payments specified herein 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 21. Miscellaneous.

A. Emergency Contacts (24 Hour Messaging).

District:

Paul Ruta (310) _____
Rick Bagley (310) _____

City:

Director of Public Works (310) 802-5170

B. Notice. Any notice which is required or permitted to be given by any provisions of this Agreement, may be given by hand delivery, by any overnight courier service providing dated evidence of delivery is received by the sender and the recipient, or by U.S. Certified mail return receipt requested. Each notice shall be addressed as follows:

If to the City: City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Attn: City Manager

with a copy to: Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071
Attn. Manhattan Beach City Attorney

If to the District: Manhattan Beach Unified School District

325 South Peck Avenue
Manhattan Beach, California 90266
Attn: Superintendent

With a copy to: Dannis Woliver Kelley
301 E. Ocean Blvd., Suite 1750
Long Beach, CA 90802
Attn: Samuel R. Santana

The City and the District may each designate different addresses for the receipt of notice by delivering notice of any such change of address to the other party. Notices shall be deemed given as of the date of delivery.

C. Counterparts. This Agreement may be executed in any number of counterparts, each which shall be deemed an original but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Agreement attached thereto.

D. Applicable Law. This Agreement shall be governed by the laws of the State of California and any questions arising hereunder shall be construed and determined according to such laws.

E. Headings. Headings at the beginning of each numbered section of this Agreement are solely for the convenience of the parties and are not a part of this Agreement.

F. Time. Time is of the essence in this Agreement.

G. Entire Agreement, Amendments, and Extensions.

1. This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all other agreements between the parties with respect to the matters contained in this Agreement, with the exception of the site specific agreements referenced in Section 5C. Any waiver, modification, consent or acquiescence with respect to any provisions of this Agreement shall be set forth in writing and duly executed on behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

2. 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.

3. The City and the District shall make reasonable efforts to commence discussions no later than January 1 of the final year of the Term regarding whether the Term shall be extended. The decision to extend the Term shall be mutually agreed upon by the parties. Nothing contained in this Agreement shall be construed to require either the City or the District to extend the Term or to enter into a new agreement.

H. No Other Inducement. There have been no representations, statements, warranties or agreements other than those expressly set forth herein that induced the making, execution and delivery of this Agreement by the parties.

I. Exhibits. All Exhibits attached hereto are incorporated herein by reference.

J. 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.

K. Successors. This Agreement shall be binding upon the assignees, transferees, and successors in interest of both the City and the District.

L. Conflicts of Laws. As between the City and the District, in the administration of this Agreement, in the event that there is a conflict in the laws that govern the City and the laws that govern the District, the more restrictive law regulating or affecting either party shall apply.

M. 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.

N. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

O. Attorney's Fees. In the event the parties undertake arbitration, the prevailing party shall be entitled to recover its costs, including all attorney's fees incurred in connection with such arbitration.

P. 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.

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

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the date first written above.

ATTEST:

CITY OF MANHATTAN BEACH,
a municipal corporation

City Clerk

By: _____
Printed Name: _____

APPROVED AS TO FORM:

City Attorney
City of Manhattan Beach

MANHATTAN BEACH UNIFIED SCHOOL
DISTRICT,
a public school district duly organized under the
laws of the State of California

By: _____
President of the Board of Trustees

APPROVED AS TO FORM:

District Counsel
Manhattan Beach Unified School District

DRAFT