

AGREEMENT

THIS AGREEMENT is made and entered into on this December 4, 2018, by and between the CITY OF MANHATTAN BEACH, a municipal corporation ("City") and MANHATTAN BEACH COMMUNITY EMERGENCY RESPONSE TEAM ASSOCIATION, INC., a California non-profit corporation ("MBCERTA"). City and MBCERTA are sometimes referred to herein as the "Parties", and individually as a "Party".

RECITALS

A. The City has received a request for surplus equipment (consisting of surplus utility vehicle 2005 Chevrolet Suburban) from MBCERTA.

B. The City wishes to encourage its relationship with MBCERTA and encourage the welfare of the residents by providing the surplus utility vehicle to MBCERTA.

NOW, THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the City and MBCERTA hereby covenant, represent and agree as follows:

1. City shall convey to MBCERTA one surplus utility vehicle, which is further described in **Exhibit A** (hereinafter the "Vehicle"). Transfer of ownership of the Vehicle shall be deemed to have taken place upon execution of this Agreement and transfer of necessary ownership documents.

2. The Vehicle shall be conveyed to MBCERTA with no warranty, express or implied. City expressly disclaims any warranties of fitness for purpose and merchantability. City makes no representation that the Vehicle can be operated or driven in any capacity. MBCERTA shall accept the Vehicle in "AS IS" condition. MBCERTA releases City from any and all claims of defect of the Vehicle. MBCERTA expressly waives any and all rights under Section 1542 of the Civil Code of the State of California, or any other federal or state statutory rights or rules, or principles of common law or equity, or those of any jurisdiction, government, or political subdivision, similar to Section 1542 ("Similar Provision"). MBCERTA may not invoke the benefits of Section 1542 or any Similar Provision in order to prosecute or assert in any manner any claims released. Section 1542 provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

3. MBCERTA shall defend, indemnify, and hold harmless City, its officials, and every officer, employee and agent of City (collectively "City") from any claim, liability or financial loss (including, without limitation, attorneys' fees and costs), injuries to property or

persons (including without limitation, attorneys fees' and costs) arising out of any acts or omissions of MBCERTA, its officials, officers, employees or agents in connection with this Agreement, except for such claim, liability or financial loss or damage arising from the sole negligence or willful misconduct of the City, as determined by final arbitration or court decision or by the agreement of the Parties. MBCERTA shall defend City, at MBCERTA's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against City. MBCERTA shall reimburse City for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. MBCERTA's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by MBCERTA or City. All duties of MBCERTA under this Section shall survive termination of this Agreement.

4. MBCERTA shall make and pay for all necessary arrangements for the transportation of the Vehicle to its facilities. The arrangements shall include the payment of all taxes, fees or charges and the procurement of all necessary insurance, licenses and permits required in connection with removal of the Vehicle from City property and transfer to MBCERTA.

5. This Agreement shall be interpreted in accordance with the laws of the United States of America, the State of California, and the City of Manhattan Beach, without regard to conflict of law principles. In any action arising out of this Agreement, MBCERTA consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state courts located in Los Angeles County, California.

6. If a Party commences any legal, administrative, or other action against the other Party arising out of or in connection with this Agreement, the prevailing Party in such action shall be entitled to have and recover from the losing Party all of its attorneys' fees and other costs incurred in connection therewith, in addition to such other relief as may be sought and awarded.

7. City shall not be obligated or liable under this Agreement to any party other than MBCERTA.

8. If any part, term or provision of this Agreement is held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining parts, terms or provisions of the Agreement shall not be affected thereby.

[Signatures begin next page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives on the date indicated above.

CITY OF MANHATTAN BEACH

COMMUNITY EMERGENCY
RESPONSE TEAM ASSOCIATION
(MBCERTA)

BRUCE MOE
City Manager



FRANK CHIELLA
President MBCERTA

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:



QUINN M. BARROW
City Attorney

APPROVED BY FINANCE DEPARTMENT:

By: 

Steve S. Charellan
Interim Finance Director

EXHIBIT A
VEHICLE

Unit #709
2005 Chevrolet Suburban
Lic plate: 1210009
VIN: 3GNGC26G35G284692
Milage: 36,987