

AGREEMENT

THIS AGREEMENT is made and entered into on this 16th day of July, 2019 ("Effective Date"), by and between the City of Manhattan Beach, a municipal corporation ("City") and Manhattan Beach Unified School District (MBUSD). City and MBUSD 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 one 2002 Ford Ranger) from MBUSD.

B. The City wishes to encourage its relationship with the MBUSD and encourage the welfare of its students and employees by providing the surplus automobile to the School District.

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

1. City shall convey to MBUSD one 2002 Ford Ranger, which is further described in **Exhibit A** (hereinafter the "Equipment"). Transfer of ownership of the Equipment shall be deemed to have taken place upon execution of this Agreement and transfer of necessary ownership documents.

2. The Equipment shall be conveyed to MBUSD with no warranty, express or implied. City expressly disclaims any warranties of fitness for purpose and merchantability. City makes no representation that the Equipment can be operated or driven in any capacity. MBUSD shall accept the Equipment in "AS IN" condition. MBUSD releases City from any and all claims of defect of the Equipment. MBUSD 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"). MBUSD 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 provided as follows:

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

3. MBUSD shall defend, indemnify, and hold harmless the 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 MBUSD, 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 court decision or by the agreement of the Parties. MBUSD shall defend the City, at MBUSD'S own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against City. MBUSD shall reimburse City for any and all legal expenses and cost incurred by each of them in connection therewith or in enforcing the indemnity herein provided. MBUSD's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by MBUSD or City. All duties of MBUSD under this Section shall survive termination of this Agreement.

4. MBUSD shall make and pay for all necessary arrangements for the transportation of the Equipment 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 Equipment from City property and transfer to MBUSD.

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, MBUSD consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal 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 MBUSD.

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.

[Signature begin next page]

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

CITY OF MANHATTAN BEACH

MANHATTAN BEACH UNIFIED SCHOOL
DISTRICT

By: _____
Bruce Moe, City Manager

By: _____
Michael D. Matthews, Ed.D.
Superintendent of Schools

ATTEST:

By: _____
Liza Tamura, City Clerk

APPROVED AS TO FORM:

By: _____
Quinn M. Barrow, City Attorney

APPROVED AS TO CONTENT:

By: _____
Steve S. Charelian, Finance Director

EXHIBIT A
EQUIPMENT

Unit #248

Year/Make/Model: 2002 Ford Ranger

License: 1105570

VIN: 1FT4R10U10PA95017

Mileage: 54,084