

**DONATION AGREEMENT AND MEMORANDUM OF UNDERSTANDING
BETWEEN MANHATTAN BEACH UNIFIED SCHOOL DISTRICT
AND MBX FOUNDATION, INC.**

This Donation Agreement ("**Agreement**") is by and between the MANHATTAN BEACH UNIFIED SCHOOL DISTRICT, a public school district of the State of California, ("**District**") and MBX FOUNDATION, INC., a nonprofit public benefit corporation ("**MBX**"). District and MBX may be referred to collectively as "Parties" within this Agreement.

RECITALS

WHEREAS, Mira Costa High School located at 1401 Artesia Boulevard in Manhattan Beach, California ("**Mira Costa HS**") is a high school administered by the District;

WHEREAS, MBX is a nonprofit, public benefit corporation under Section 501(c)(3) of the Internal Revenue Code, dedicated to support the sports, performing arts and education programs at Mira Costa HS, including the Aquatics Boosters who will assist MBX in the execution of this agreement;

WHEREAS, Section 41032 of the Education Code authorizes the governing board of any school district to accept on behalf of, and in the name of, the district, gifts, or donations that are made to the district, or to or for the benefit of any school administered by the district, and such gifts or donations may be made subject to conditions or restrictions that the governing board may prescribe;

WHEREAS, MBX is prepared to contract and pay for the design, installation, and all materials and equipment for a screening and signage system ("**Project**") for the pool area at Mira Costa HS ("**Site**");

WHEREAS, MBX would like to donate the Project to the District as a gift; and

WHEREAS, the District and MBX desire to memorialize the terms and conditions of the MBX's donation to the District in this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements as set forth herein, the District and MBX agree as follows:

1. MBX's Responsibilities.

1.1. All Costs for the Project. MBX is solely responsible for all costs and expenses associated with the Work (as defined below) and the Project, including all overage and extra costs for corrections or adjustments to the Project's scope of work or price, even as a result of any unforeseen circumstances. MBX is also responsible for paying for a licensed contractor ("**Contractor**"), as well as the project inspector as certified by the Division of the State Architect, if required, and any other consultants who may be required in order to complete the Project. MBX may choose, at its discretion, to engage a qualified project manager ("**Project Manager**") and shall also be solely responsible for paying for these services.

1.1.1. Section 20111, subsection (b), of the Public Contract Code authorizes the governing board of a school district to enter into contracts, without competitive bidding, for small construction contracts involving expenditures of less than fifteen thousand dollars (\$15,000).

1.1.2. As of the date of this Agreement, the budget summary for the Project is Thirteen Thousand Five Hundred Twenty Five dollars (\$ 13,525.00) based upon the initial estimates from Coastal Construction Management, LLC, (Project Manager) and itemized as follows:

Design / Engineering	\$2,275
Project Management	\$2,400
Fabrication of Supports	\$6,000
Installation of Supports	Included
Inspection	\$1,000 approx.
Banner Production	\$1,500
Installation of Banner	\$350
<u>Estimated Budget:</u>	<u>\$13,525</u>

1.2. Contractor for the Project. MBX shall enter into a contract with a Contractor to acquire all labor, tools, materials, and equipment to carry out and complete the Project at the Site ("**Work**") by July 1, 2015.

1.2.1. MBX shall be solely responsible for paying Contractor for completion of the Work, including all overage costs, among others.

1.2.2. Contractor shall not commence the Work until the Contractor has submitted, and the District has approved, the certificate(s), affidavit(s), and the endorsement(s) of insurance as required in this Agreement.

1.2.3. Inspection, approval, and acceptance of the Work shall be performed by the District or its agent or representative. MBX, its Project Manager, and its Contractor shall provide the District and the project inspector with a detailed written schedule at least one (1) week before construction is scheduled to commence and shall provide written notice of updates and changes to the schedule to the District and the project inspector as soon as they are known. The project inspector shall determine the inspection schedule and shall be provided with full access to the Work and, if necessary, remote fabrication sites.

1.2.4. MBX agrees to incorporate into its contract with the Contractor the following terms and conditions:

1.2.4.1. Warranty / Quality. Contractor shall guarantee the Work, workmanship, product, and/or service performed at the Site against defective workmanship, defects, or failures or materials for a minimum period of one (1) year from the date of District's approval and acceptance of the Work. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards, if applicable.

1.2.4.2. Fingerprinting and Criminal Records Check. Contractor shall warrant and represent that its members, employees, agents, volunteers, subcontractors, and their employees, agents, and volunteers shall not have any contact with students at Mira Costa HS during the performance of the Work. In the event of contact with students, the Contractor shall certify to the District that persons within the scope of

Education Code section 45125.2 having contact with students have been screened, or are directly supervised by persons who have been screened, by the Department of Justice.

1.2.4.3. Equipment and Labor. Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Work for the Project.

1.2.4.4. Compliance with Laws. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of the Work. If Contractor performs any work at the Site that is in violation of any laws, ordinances, rules, or regulations, Contractor shall bear all costs arising therefrom.

1.2.4.5. Permits and Licenses. Contractor and all of its employees, subcontractors, volunteers, and agents shall secure and maintain in force, at Contractor's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or Work for the Project. Contractor shall be a qualified licensed contractor responsible for coordinating, performing, and managing the Work. Contractor shall possess and maintain in good standing throughout the performance of the Work, a State of California Contractor License required to perform the Work.

1.2.4.6. Independent Contractor. Contractor shall acknowledge that under no circumstances shall the Contractor or any of its employees, subcontractors, volunteers, or agents, solely by virtue of entering into the contract for the Work, be considered an employee of the District within the meaning of any federal, state, or local law or regulation, including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers' compensation, industrial illness or accident coverage, taxes, or labor and employment in general. The Contractor, its employees, subcontractors, volunteers, or agents shall not be entitled to any benefits accorded to the District's employees, including, without limitation, workers' compensation, disability insurance, vacation, or sick pay.

1.2.4.7. Lead-Based Paint. If applicable, pursuant to the Lead-Safe Schools Protection Act (Education Code section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors, and workers shall undertake any action to abate existing risk factors for lead.

1.2.4.8. Contractor Supervision. Contractor shall provide competent supervision of personnel employed on the Site, use of equipment, and quality of workmanship. MBX, with its Project Manager, shall monitor and supervise Work to ensure that it is executed per established plans, specifications, schedules, and instructions, and shall be responsible for ensuring smooth communication and coordination with Contractor and all affected District departments and sites.

1.2.4.9. Access to Work. District and MBX and its Project Manager shall be permitted to monitor the Contractor's activities at the Site, and District representatives shall at all times have access to the Work whenever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

1.2.4.10. No Smoking or Alcohol Consumption. District has a "NO SMOKING" and "NO ALCOHOL CONSUMPTION" policy at Mira Costa HS. Contractor is

responsible to make sure that no one performing the Work smokes or consumes alcohol at the Site or on the Mira Costa HS campus.

1.2.4.11. Protection of Work and Property. Contractor shall erect and properly maintain at all times all necessary safeguards, signs, barriers, lights, and security persons for protection of volunteers and the public, and shall post danger signs warning against hazards created by the Work.

1.2.4.12. Indemnification / Hold Harmless Provision. To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, its elective and appointed boards, agents, representatives, officers, consultants, and employees ("indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions ("claims") of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from the performance of, in furtherance of, or in conjunction with the Work, whether such operations be by Contractor, its agents, subcontractors, or volunteers, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. District shall have the right to accept or reject any legal representation that Contractor proposes to defend the District.

1.2.4.13. Insurance Requirement. Contractor has in force, and during the performance of the Work shall maintain in force with, the minimum indicated limits, the following insurance:

1.2.4.13.1. Commercial General Liability Insurance: One million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage in the form of Commercial General Liability and Contractual Liability;

1.2.4.13.2. Product Liability Insurance: One million dollars (\$1,000,000) for product liability and completed operations;

1.2.4.13.3. Automobile Liability - Any Auto: One million dollars (\$1,000,000), Occurrence Form, that shall protect the Contractor, MBX, and the District from all claims of bodily injury, property damage, personal injury, death, and medical payments arising from the Contractor performing any portion of the Work;

1.2.4.13.4. Excess Liability Insurance: One million dollars (\$1,000,000) per occurrence to meet the policy limit requirements of the required policies. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Excess Liability Insurance policy;

1.2.4.13.5. Workers' Compensation: Statutory limits; and

1.2.4.13.6. Employers' Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.

Contractor shall provide to the District (or to MBX to deliver to District) certificate(s) of insurance and endorsements satisfactory to the District. The policy(ies) shall not be amended or modified and the coverage amounts shall not be reduced without thirty (30) days' written notice to the District prior to amendment, modification, reduction or cancellation. Except for workers' compensation insurance, the District, and its elective and

appointed boards, agents, representatives, officers, consultants, and employees are to be covered as "Additional Insureds" as respects to liability arising out of activities performed by or on behalf of the Contractor. With respect to Workers' Compensation, Contractor shall provide an endorsement that the insurer waives the right of subrogation against the District and elective and appointed boards, agents, representatives, officers, consultants, and employees.

The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. Any insurance carried by the District shall only be secondary and supplemental. Contractor shall not commence Work until the insurance required has been obtained. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

1.3. Coordination with District. MBX and its Project Manager shall coordinate with District to facilitate (i) the design and placement of the Project at the Site, (ii) the delivery of any materials necessary for the Project, and (iii) the scheduling for the Work to be conducted at the Site.

1.3.1. The Parties agree that the District shall have final approval regarding the design and placement of the Project at the Site. MBX and its Project Manager shall get the District's written approval regarding Project design, placement and signage prior to beginning construction and installation of the Project.

2. District's Responsibilities.

2.1. District shall coordinate with MBX (i) to review and approve the design and placement of the Project, and (ii) to schedule for the delivery of any materials necessary for the Project and for the Work to be conducted at the Site.

2.2. District shall approve the Work upon completion, and formally accept the Project donation from MBX as set forth below.

2.3. The Parties agree that the District shall have final approval regarding the content for signage that is part of the Project. The District shall ensure that signage is consistent with applicable Board Policies and existing District agreements.

3. Acceptance of Donation. Acceptance of the Project by the District shall be when the District's Board of Trustees accepts the Project on behalf of, and in the name of, the District. After the District's Board of Trustees takes action to formally accept the Project donated by MBX, the District shall take responsibility for any costs to maintain or repair the screening and signage system, including any replacement or repair of any portion of the Project in the unfortunate event of theft or vandalism.

4. Term of Agreement. The term of this Agreement shall commence upon the full mutual execution by both Parties of this Agreement, and terminate upon the District Board of Trustees' acceptance of the Project from MBX.

5. Indemnification. To the furthest extent permitted by California law, MBX shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers ("indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions ("claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants' and/or attorneys'

fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of this Agreement or from any work or thing done, permitted, or suffered by MBX in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the District. The District shall have the right to accept or reject any legal representation that MBX proposes to defend the indemnified parties.

- 6. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, email, or facsimile transmission, addressed as follows:

If to District:

Manhattan Beach Unified School District
1401 Artesia Boulevard
Manhattan Beach, CA 90266
ATTN: Dawnalyn Murakawa-Leopard
Fax: (310) 303-3823
Email: dmurakawa@mbusd.org

If to MBX:

MBX Foundation, Inc.
1097 Aviation Boulevard
Hermosa Beach, CA 90254
ATTN: Mustang Aquatics Boosters
Fax: (310) 379-4523
Email: gary@wvcpas.com

Any notice personally given or sent by email or facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the next business day following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 7. Integration / Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written.
- 8. Amendment.** This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 9. California Law.** This Agreement shall be governed by, and the rights, duties, and obligations of the Parties shall be determined and enforced in accordance with, the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Los Angeles County.
- 10. Waiver.** The waiver by either Party of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same, or any other term, covenant, or condition contained in this Agreement.
- 11. Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute one instrument.
- 12. Board Approval.** This Agreement is subject to the approval and/or ratification by the District's Board of Trustees.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

Dated: _____, 2015

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

By: _____

Print Name: _____

Print Title: _____

Dated: Apr 30, 2015

MBX FOUNDATION, INC.

By: 

Print Name: Gary W. Highland

Print Title: President

AQUATICS BOOSTERS

By: 

Print Name: Erik Stroman

Print Title: Boosters President