

LEASE AGREEMENT FOR USE OF SCHOOL PROPERTY

BETWEEN

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT (MBUSD)

AND

MBX FOUNDATION, INC.

**GOVERNING THE OPERATION OF
SUMMER SCHOOL EDUCATIONAL PROGRAMS
AND THE RENTAL AND USE OF MBUSD FACILITIES**

THIS LEASE AGREEMENT ("Agreement") made and entered into on the 3rd day of June, 2015, by and between the MANHATTAN BEACH UNIFIED SCHOOL DISTRICT, hereinafter referred to as "District", and MBX FOUNDATION, INC., a California nonprofit corporation, hereinafter referred to as "MBX".

WITNESSETH

WHEREAS, District is the owner of certain properties consisting of real property and school facilities located in Manhattan Beach, California for the "Term" described in Section 8, below;

WHEREAS, pursuant to sections 38130, et seq. of the California Education Code and Board policy of the District, provisions are made for use of buildings and grounds of public school districts for educational and physical fitness purposes in the public interest;

WHEREAS, MBX desires to conduct such educational and physical fitness programs in the public interest on a non-profit basis;

WHEREAS, the District has determined that such programs will not result in additional costs to the District; and

WHEREAS, District and MBX (the "Parties") desire to enter into a mutually beneficial arrangement for MBX's use of the District "Facilities," as described in Section 1.1, below, to operate MBX's educational and physical fitness programs.

NOW, THEREFORE, the District and MBX agree as follows;

1. GRANT OF USE OF DISTRICT FACILITIES

1.1 The District does hereby agree to allow MBX the use of certain buildings, fields, stadium, parking, restrooms, offices and grounds of the District, more particularly described in Schedule A attached hereto (the "Facilities").

1.2 Such Facilities are to be used by MBX for the purpose of conducting educational and physical fitness programs, including high school summer educational classes and other related uses ("Program"). All uses of the Facilities by MBX shall be consistent with the use of the Facilities by the District for school purposes and comply with all federal, state, and local

regulations.

1.3 Understood in the above is that the District itself may conduct state-reimbursed programs on the Facilities. The District reserves the right to use said Facilities, or to allow the Facilities to be used by others at all times so long as such use by the District or others does not interfere with the use of the Facilities by the MBX for the Program. District may permit another person or entity to use the Facilities pursuant to the "Civic Center Act." (Education Code section 38130 et seq.) Access under the Civic Center Act will be coordinated with the MBX's use of the Facilities.

1.4 MBX recognizes that the all or a portion of the Facilities may need to be closed from time to time in the interest of public safety, construction, or for repairs or routine maintenance. District shall give MBX at least seven days prior written notice of the need to close Facilities except in case of emergency. MBX shall immediately notify District of any conditions necessitating a closure of the Facilities or any portion thereof. The District shall use its best efforts to coordinate the closing of the Facilities with MBX's use thereof.

1.5 During the Term of this Agreement, as specified in Section 8, below, MBX will have access to the Facilities Monday through Friday from 7:30 a.m. to 4:00 p.m. Modifications to this schedule of use may only be made with the prior written consent of the District.

2. TUITION AND FEES

MBX may collect tuition and other fees from all students who enroll in the Program offered by MBX, and the determination of such fees shall be in the sole discretion of MBX, to the end that such charges will be sufficient to cover all expenditures made by MBX in conducting the Program.

3. SCHEDULE OF CHARGES AND BILLING PROCEDURES

3.1 For and in consideration of the use of the Facilities, MBX agrees to pay the District fees in accordance with the schedule of charges attached hereto as Schedule B and hereby made a part of this Agreement ("Facility Fees").

3.2 The Facility Fees set forth in Schedule B represent sufficient fees to cover the costs to the District resulting from the use of the Facilities by MBX, including the use and maintenance of restrooms, utilities, textbooks, library facilities and support, normal custodial/maintenance services and supplies, technology support, and technology hardware and software. All custodians or maintenance employees, use of textbooks, technology support services, and library support services shall be provided to MBX by the District in exchange for the applicable Facility Fee indicated on Schedule B, if any. Any employees required for such District provided services shall be employed and supervised by the District.

3.3 MBX agrees to reimburse the District for any damage to or theft of any equipment or other personal property that occurs as a direct result of the use of the Facilities by MBX pursuant to this Agreement.

3.4 At the end of the Term, as defined in Section 8, below, or upon earlier termination of this Agreement by either party, the District shall send MBX an invoice, itemizing the total

charges for the use of the Facilities calculated according to the schedule of Facilities Fees set forth in Schedule B. MBX shall pay the invoice to the District within thirty (30) days of receipt. Facility Fees may, upon mutual agreement of the Parties, be retained by MBX to be utilized to pay for authorized facilities improvement projects to be funded by MBX and donated to the District. Upon such an election, MBX shall return the invoice to the District with notification that the funds due upon presentation of the invoice will be used for authorized District facilities improvement projects.

4. RESPONSIBILITIES

4.1 MBX will be solely responsible for determining and administering the Program offered by it pursuant to this Agreement. MBX shall be responsible for the collection of all tuition, fees, and other costs. Additionally, all academic, administrative, and secretarial personnel shall be selected and employed by MBX and such employees will be subject to MBX's sole direction and control. MBX also shall be responsible for hiring sufficient security personnel to provide adequate security for the Facilities and students during the hours MBX is using the Facilities. When appropriate, and to the extent feasible, MBX, in hiring employees for its Program, will give preference to qualified administrators, teachers, and security personnel currently employed by the District. MBX shall be responsible for all costs of such personnel imposed by law and/or contract.

4.2 MBX appoints Ian Drummond and Gary Wayland as the Program coordinators ("Program Coordinators") and further agrees that the Program Coordinators will meet with the District to collaborate on the use of the Facilities and to work out a systematic and effective record-keeping system for the distribution of textbooks to students attending MBX summer classes. All such distributions must be approved in writing by the site principal.

4.3 During the Term of this Agreement, MBX shall maintain the Facilities in a good condition consistent with the condition existing at the time of delivery. MBX acknowledges and accepts the Facilities in an "AS IS" condition. MBX shall not be required to reimburse District for the cost of repairs to the Facilities unless such repair is required because of the negligence or willful misconduct of MBX or its employees, agents, or invitees, in which event necessary repairs or replacements shall be charged to MBX.

4.4 MBX shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements for its employees as described in Education Code section 44237. MBX shall provide written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District prior to commencement of the Program.

4.5 MBX shall be responsible for supervision and control of the students enrolled in the Program at all times when the Facilities are used by MBX.

4.5.1 MBX shall have a full-time employee whose responsibilities shall include management of MBX's use, supervision responsibilities at the Facilities, and maintenance to the extent necessary, which person shall be deemed to be solely a MBX employee at all times and whose salary and other expenses shall be borne by MBX.

4.5.2 MBX shall provide additional qualified supervisors, attendants and/or other necessary personnel as needed during MBX's use of the Facilities. The salaries and other expenses of such personnel shall be borne by MBX.

4.5.3 MBX shall not install equipment on the Facilities without the prior written consent of District.

4.6 Prior to permitting any employee, consultant or contractor to have access to any student under the terms of this Agreement, MBX shall require each such individual to submit evidence of an examination within the past sixty (60) days to determine that he or she is free of active tuberculosis. MBX agrees to adhere to the tuberculosis test requirements of Education Code Section 49406 for each such individual.

4.7 MBX shall, at MBX's expense, comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Facilities and the Program, and shall faithfully observe in MBX's use of the Facilities and operation of the Program all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of the Facilities), all District policies, rules and regulations and all credentialing requirements for administrators and teachers.

5. CLASSES

5.1 MBX will conduct its Program beginning June 23, 2014, and ending July 31, 2014. MBX will conduct the Program using the Facilities. All courses offered by the Program will meet the state-mandated requirements to ensure that all courses offered are eligible for high school credit.

5.2 If, when Program enrollment closes, the average number of students enrolled in all classes is fewer than twenty-five (25) students per class, MBX reserves the right to cancel classes with fewer than twenty-five (25) students until the average enrollment for all classes is at least twenty-five (25) students. Such determination is at the sole discretion of MBX.

5.3 All Program curriculum offered for credits during the Term of this Agreement must meet the approval of the District in order to allow for District recognition of credits earned by District students.

6. INSURANCE AND INDEMNIFICATION

6.1 MBX shall, at its expense, obtain and keep in force during the Term of this Agreement coverage for its employees, consultants, contractors, and authorized agents, for activities conducted in connection with this Agreement by maintaining in full force and effect insurance and/or self-insurance as follows:

6.1.1 Professional Liability coverage with limits of Three Million Dollars (\$3,000,000) per occurrence and an aggregate of Ten Million Dollars (\$10,000,000).

6.1.2 General Liability coverage with a limit of One Million Dollars (\$1,000,000) per occurrence and an aggregate of Three Million Dollars (\$3,000,000).

6.1.3 Workers' Compensation coverage covering MBX full liability as required under State law.

6.1.4 Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of the Parties, against other insurable risks relating to this Agreement. It should be expressly understood, however, that the coverage required under this Section shall not in any way limit the liability of MBX.

6.1.5 MBX, upon the execution of this Agreement, shall furnish District with certificates evidencing compliance with these insurance requirements. Certificates shall further provide for thirty (30) days advance written notice to District of any cancellation of the above coverage.

6.2 MBX agrees to indemnify, defend, save, and hold harmless the District, its officers, employees, agents, and independent contractors, from and against all manner of claim, demand, debt, lien, loss, damage or liability, cost or expense (including, but not by way of limitation, attorneys' fees and costs actually incurred whether or not litigation has commenced), judgments or obligations, actions or causes of action whatsoever, for or in connection with, injury or damage (including, but not limited to, death) to any person or property arising out of, or in connection with MBX's, including MBX's officers', employees', contractors', agents', or licensees', performance of this Agreement and its use and occupancy of the Facilities during the Term, except such injury or damage arising out of the willful misconduct or negligent act or omissions of the District.

6.3 The District agrees to indemnify, defend, save, and hold harmless MBX its officers, employees, agents, and independent contractors from and against all manner of claim, demand, debt, lien, loss, damage or liability, cost or expense (including, but not by way of limitation, attorneys' fees and costs actually incurred, whether or not litigation has commenced), judgments or obligations, actions or causes of action whatsoever, for or in connection with injury or damage (including, but not limited to, death) to any person or property arising out of, or in connection with the use of the Facilities by the District or District officers, employees, contractors, agents, or licensees, except where such claims or suits arise out of the willful misconduct or negligent act or omissions of MBX.

6.4 The District shall continue its regular insurance program that covers the Facilities and the District's ownership of the Facilities. Both parties shall provide the other with a waiver of subrogation, if available, from its respective insurance provider.

7. RIGHT OF TERMINATION

7.1 The District and/or MBX may terminate the Agreement due to a material breach of the terms and conditions herein upon fourteen (14) days prior written notice. This notice shall state, with reasonable specificity, the written basis of the termination and the actions reasonably necessary to affect a cure, and each party shall have the right to cure the breach. If substantial efforts were made towards curing the breach, one extension of an additional fourteen (14) days shall be granted for additional efforts to cure the breach.

7.2 Either party may terminate this Agreement by written notification thirty (30) days prior to the effective date of the termination. Neither party shall be required to provide just cause for termination in the written notification.

8. TERM OF AGREEMENT

This Agreement is effective beginning June 22, 2015, and ending July 31, 2015 ("Term").

9. MISCELLANEOUS

9.1 This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association. Nothing in this Agreement shall be deemed to create an agency, employment, or partnership relationship between the Parties. Neither party shall have the right to act for the other party or to bind or commit the other party in any way. Neither party shall have the right to supervise or direct functions of the other hereunder.

9.2 It is mutually agreed that the District has absolutely no authority of any kind concerning any matter, cause, or thing whatsoever in connection with the activities of MBX that has not been specified in the Agreement.

9.3 Changes to the Agreement may be made by mutual written agreement of official representatives of the District and MBX.

9.4 All issues relating to this Agreement and the interpretation of this Agreement shall be governed exclusively by the laws of the State of California.

9.5 The waiver by either party of any breach of any term, covenant, or condition herein contained 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 herein contained.

9.6 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

9.7 This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

9.8 The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or the intention of the Parties hereto.

9.9 Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

9.10 The Recitals and Schedules A and B, attached hereto, are hereby incorporated herein by reference.

9.11 Neither party shall assign its rights, duties, or privileges under this Agreement, nor shall either party attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the written consent of the other party. Subcontracts or subleases may be entered into by MBX only with the written authorization of the District. Members of the general public and invitees of MBX who enter or use the Facilities as participants or users of the Program are considered "MBX" for purposes of determining and applying the rights and obligations of the Parties as contained in this Agreement.

10. NOTICE

All notices, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

10.1 Personal delivery: When personally delivered to the recipient, notice is effective on delivery.

10.2 Certified mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

10.3 Overnight delivery: When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is continued by the delivery service.

10.4 Facsimile: When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

10.5 Addresses for purposes of giving notice are as follows:

DISTRICT: Manhattan Beach Unified School District
Dr. Michael D. Matthews, Superintendent
325 S. Peck Ave. Manhattan Beach, CA 90266
FAX: 310-303-3822

MBX: MBX Foundation, Inc.
Gary Wayland, President
1097 Aviation Blvd.
Hermosa Beach, CA 90254
FAX: 310-397-4523

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service. Either party may change its notice information by giving the other party notice of the change in any matter permitted by this Agreement.

11. CONFIDENTIALITY

MBX and all MBX's agents, consultants, contractors, personnel, and/or employees shall maintain the confidentiality of all confidential information received in the course of performing under the terms of this Agreement.

IN WITNESS THEREOF, the authorized representative of the Parties have made and executed this Agreement the day and year first written above.

MBX FOUNDATION, INC.

By: _____ DATE: _____

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

By: _____ DATE: _____

SCHEDULE "A"

DISTRICT FACILITIES TO BE USED BY MBX

The District Facilities are described generally as follows:

Pacific Elementary School

Robinson Elementary School

Manhattan Beach Middle School

Mira Costa High School (exclusive of the Auditorium and Multi-Purpose Room)

SCHEDULE "B"

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT Summer School 2015 Fee Schedule

MBX agrees to pay the District \$25 per enrolled student who physically attends the Program operated by MBX. There shall be no charge to MBX for students enrolled in the on-line courses operated by MBX.

MBX will reimburse the District for any additional costs and fees incurred through the use of District owned and provided software systems or license agreements.