

FULL RELEASE AND INDEMNITY AGREEMENT

THIS AGREEMENT made on the ____ day of _____ 2020, by and between the City of Merced, a California Charter Municipal Corporation, hereinafter called "City," and Kids Discovery Station, a California Non-Profit Corporation, whose address of record is 2190 Pebble Beach Court, Merced, California, 95340, hereinafter called "KDS".

RECITALS

WHEREAS, KDS endeavors to provide enhanced educational and entertainment opportunities to Merced's youth; and,

WHEREAS, KDS has requested the City donate a surplus 1990 Ottawa Fire Engine for display in their children's museum; and,

WHEREAS, the City does have a surplus 1990 Ottawa Fire Engine that would be suitable for the needs of KDS, and the City Council has determined that KDS provides substantial educational and entertainment opportunities benefiting the City of Merced's youth which clearly outweighs the value of the surplus Fire Engine;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, promises, and agreements herein recited, hereby agree as follows:

1. CITY RESPONSIBILITIES: City agrees to donate to KDS the 1990 Ottawa Fire Engine, VIN #11VVB0646LA000003, without warranty, and transfers all title and interest in the 1990 Ottawa Fire Engine to KDS.

2. KDS' RESPONSIBILITIES:

A. KDS accepts the 1990 Ottawa Fire Engine in "as is" condition, without warranty, from the City.

B. KDS hereby releases and forever discharges City, and shall protect, indemnify, defend, save, keep, and hold harmless, the City and all officers, employees, and agents thereof from all damages, costs, or expenses, in law or in equity, that may at any time arise or be set up because of personal injury (including the death of any person or persons) or damage to

property sustained by any person or persons resulting from the operation of the 1990 Ottawa Fire Engine.

C. KDS shall, within seven (7) days of possession of title to the 1990 Ottawa Fire Engine, notify the California Department of Motor Vehicles of the transfer of title and pay all required transfer and documentation fees, and secure automobile insurance protection, all at its own expense.

It is understood that the duty of the KDS to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. The provisions of the preceding sentence shall not impose any liability upon the City and are for the express benefit of the general public.

This obligation to indemnify, protect, defend, and hold harmless City, its officers, employees, and agents as set forth herein is binding on the successors, assigns, transferees, or heirs of the KDS.

4. GOVERNING LAW. The City and KDS understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement without regard to any applicable conflicts of law, including all matters of construction, validity, and performance.

5. JURISDICTION AND VENUE. The parties agree that jurisdiction and venue for any legal challenge to the provisions of this Agreement or the enforcement of the rights or obligations hereunder shall be brought in the Superior Court serving the County of Merced.

6. PRIOR REVIEW OF AGREEMENT. This Agreement has been carefully read by each of the parties and the contents hereto are known to and understood by each of the parties. It is signed freely by each party executing this Agreement.

7. NO AGENCY CREATED. Each party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any of the other parties in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of

partners, joint ventures, or any other association of any kind or nature between City and KDS, jointly or severally.

8. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

9. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

10. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

11. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Shuedra A. Nink 2-7-2020
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

KIDS DISCOVERY STATION, A
California Non-Profit Corporation

BY: _____
Signature

Print Name

Its: _____

ADDRESS: 2190 Pebble Beach Ct.
Merced, CA 95340

TELEPHONE: _____

FAX: _____

EMAIL: _____