

CONTRIBUTION AGREEMENT AMONG THE
MANHATTAN BEACH PROPERTY OWNERS
ASSOCIATION, FRIENDS OF SENIOR & SCOUT
COMMUNITY CENTER, AND THE CITY OF
MANHATTAN BEACH REGARDING THE SCOUT
HOUSE RECONSTRUCTION PROJECT

This Contribution Agreement ("Agreement") is entered into as of May 17, 2022 (the "Effective Date") by and between the City of Manhattan Beach, a California municipal corporation ("City"), the Manhattan Beach Property Owners Association, a nonprofit corporation ("MBPOA"), and Friends of Senior & Scout Community Center, a non-profit corporation ("Friends" and with the City and MBPOA, collectively the "Parties").

RECITALS

A. City currently owns and maintains the structure commonly known as the Scout House 1617 N. Valley Drive, Manhattan Beach, California.

B. MBPOA is a non-profit organization in Manhattan Beach which was formed in 1939.

C. Friends is a 501(c)(3) non-profit organization of supporters of Cub Scouts, Boy Scouts and Girl Scouts and older adult programming in Manhattan Beach. (Hereinafter, the Boy Scouts, Cub Scouts and Girl Scouts are referred to as "the Scouts" collectively.)

D. City and Friends have or are concurrently entering into a Memorandum of Understanding (the "New Facility MOU") regarding the replacement of the current Scout House with a new, two-story, approximately 7,000 square foot building ("New Facility") and use the area shown on Exhibit A, attached hereto and incorporated herein by this reference, ("Project"), which would be used primarily, but not exclusively, as a facility for scouting and City-sponsored older adult programming.

E. MBPOA desires to make a contribution to the cost of constructing the Project in the amount of \$700,000 ("MBPOA Project Contribution"), with an additional contribution in the amount of \$100,000, which shall be dedicated solely to use for the Older Adult Space, as defined in Section 2A below ("MBPOA Older Adult Space Contribution") (collectively, the MBPOA Contributions"), , and the purpose of this Agreement is to memorialize MBPOA's commitment, subject to the terms and conditions set forth below.

NOW THEREFORE, IN CONSIDERATION OF THE PARTIES' PERFORMANCE OF THE PROMISES, COVENANTS, AND CONDITIONS STATED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Account for New Facility Construction Costs. Per the terms of the New Facility MOU, City will establish a restricted account (the "Account") at Union Bank or other bank approved by City and Friends, and Friends will deposit funds into such Account for the payment of costs for the construction of the New Facility. Within fifteen (15) days after

receiving written notice of the establishment of the Account, MBPOA shall deposit the MBPOA Project Contribution and MBPOA Older Adult Space Contribution into the Account. The MBPOA Project Contribution shall be used exclusively for the payment of Future Project Costs (as defined in the New Facility MOU, unless otherwise agreed to by the Parties.) The MBPOA Older Adult Space Contribution shall be used exclusively for costs associated with the Older Adult Space, including, but not limited to, construction costs, furniture, fixtures and equipment. Use of funds from the MBPOA Older Adult Space Contribution is subject to MBPOA advance approval, which shall not be unreasonably withheld. The MBPOA Project Contribution deposited into the Account by the MBPOA pursuant to this MBPOA Contribution Agreement shall be disbursed *pari passu* with both the other funds deposited by the Friends into the Account to pay for Future Project Costs on a progress payment basis and with any City Contribution made towards the payment of Future Project Costs on a progress payment basis.

2. Older Adult Programming Area. In consideration of the MBPOA Contributions, City agrees that in addition to entering into the New Facility MOU with Friends:

A. The approximately 1,000 square foot area shown on Exhibit A – 1st Floor Plan shall be for the sole and exclusive use for the City's older adult programming (“Older Adult Program”), while any such programming remains in effect and thereafter, to the City’s older adult population at large (age 55 and older) (the “Older Adult Space”). The Older Adult Space will be built in such a way that it can be secured with a lock when not in use and will not be available for reservations, unless it is related to older adult activities and approved by the City’s Older Adult Program. In the event the New Facility is destroyed or damaged beyond repair for any reason, including but not limited to fire or earthquake, an equivalent amount of approximately 1,000 square feet will be included for purposes of an Older Adult Space in any facility meant to replace the New Facility.

B. Subject to Section 2C below, the Older Adult Program shall have use of the meeting rooms in the New Facility (in addition to the designated Older Adult Space) during the hours of 8:00 a.m. to 2:45 p.m. Monday through Friday, except on Wednesdays such hours will be 8:00 a.m. to 1:30 p.m. If such areas or portions thereof are not being used by the Older Adult Program during the previously named timeframes, entities other than the Older Adult Program may reserve rooms, with such reservation including use of common areas for ingress and egress and use of public restrooms, no more than 30 days prior to an event and no less than 10 days before an event.

C. The Parties acknowledge that other governmental agencies and non-profit entities may desire to make contributions toward the New Facility Cost and that such entities shall desire rights to use the New Facility for classes and programs. Friends and the City shall have the right to enter into other contribution agreements and to grant such entities use of the meeting rooms in the New Facility, provided that the Older Adult Program shall retain substantial use of such meeting rooms during the time periods set forth in Section 2B. MBPOA acknowledges that the City and the Beach Cities Heath District (“BCHD”) have entered into a Contribution and Use Agreement dated April 20, 2020, (“BCHD Contribution Agreement”), where by BCHD is granted use of the community room and kitchen (including use of common areas for ingress and egress and use of public restrooms) in the New Facility for approximately 96 hours per year to conduct programs such as senior nutrition classes, meetings, speaker series, and support group series,

and such use may continue pursuant to the BCHD Contribution Agreement or any subsequent amendment or superseding agreement with BCHD.

D. The Parties acknowledge, approve and agree to the provisions in the New Facility MOU regarding damage and destruction.

3. Naming Rights. In consideration of the MBPOA Contributions, City agrees that MBPOA shall have the right for its contribution to be recognized by naming the Older Adult Space. Such recognition (plaque, marker, being included in the lobby donor wall, etc.) will be consistent with the recognition of other donors to the Project, such name and text to be subject to City approval.

4. Authorization of City Manager. In order to facilitate efficient administration of the Project, City hereby authorizes the City Manager to make all approvals and consents required under this Agreement, including without limitation any provisions in this Agreement referencing agreement of the Parties. The foregoing shall (a) not authorize the City Manager to amend this Agreement, (b) not authorize the City Manager to grant approvals or permits that by City ordinance are required to be made by other City departments, and (c) not preclude or limit MBPOA or Friends' right to request City Council approval of any matter under this Agreement, and the approval of any matter by the City Council shall supersede any disapproval by the City Manager.

5. Termination.

5.1 By MBPOA: In the event that City has not executed a construction contract and obtained all permits and consents required to commence construction by the third anniversary of the date of this Agreement, MBPOA shall have the right to terminate this Agreement by giving at least 30 days' written notice, unless City cures such failure within such 30-day period. If such termination is effective, MBPOA shall be entitled to the prompt return of all funds contributed by MBPOA that have not been expended as of the date of the notice of termination.

5.2 By City: In the event that MBPOA has not deposited the MBPOA Contributions within 30 days after the opening of the Account, City shall have the right to terminate this Agreement by giving at least 30 days' written notice, unless MBPOA cures such failure within 30 days thereafter. If such termination is effective, MBPOA shall be entitled to the prompt return of all funds contributed by such Party that have not been expended as of the date of the notice of termination.

6. Notices. Any notices, bills, invoices, etc., required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving Party's regular business hours or by facsimile before or during the receiving Party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to this section.

If to City: City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Attn: City Manager

If to Friends: Friends of Senior and Scout Community Center
PO Box 3628
Manhattan Beach, CA 90266
Attn: Beth Gessner

If to MBPOA: Manhattan Beach Property Owners Association
1001 6th Street, Suite 150
Manhattan Beach, CA 90266
Attn: Tim Lilligren, Board Member

7. Mediation of Disputes. If a dispute arises out of or relates to this Agreement or its breach, the Parties agree to first try in good faith to settle the dispute for a period of thirty (30) days by informal meetings and good faith discussions, and each Party agrees to meet and confer a reasonable number of times during such 30-day period. If the dispute is not resolved during such 30-day period, then either Party may initiate non-binding mediation. The Parties shall fully cooperate with one another to arrange and schedule the mediation so that it may be held and conducted as soon as possible. Mediation fees shall be divided and shared equally. If any Party (i) commences a court action or arbitration without first attempting to resolve the matter through mediation, or (ii) before commencement of a court action or arbitration, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorneys' fees, expert witness / consultants' fees, or costs, even if they would otherwise be available to that Party in such action or arbitration. In addition, any other Party shall have the right to file a petition in a court with jurisdiction to specifically enforce this mediation provision against the refusing Party(ies) and to obtain a court order compelling said refusing Party(ies) to participate in good faith in mediation; the petitioner(s) in any such proceeding shall be entitled to recover from the refusing Party(ies) reasonable attorneys' fees and costs incurred as a result of that Party's refusal, including those incurred in connection with the petition proceeding.

8. Entire Agreement. This Agreement (including any exhibits) represents the entire integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. Other than extensions granted by the City Manager, this Agreement may be amended only by a written instrument signed by all Parties.

9. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

10. No Third-Party Benefit. No Party other than the Parties shall have any rights under this Agreement.

11. Assignment. MBPOA shall not have the right to assign this Agreement without the approval of City and Friends, except that MBPOA may assign this Agreement to Friends without City consent or approval.

12. Corporate Authority. The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by their execution, the Parties are formally bound to the provisions of this Agreement.

EXECUTED as of the date first written above at Manhattan Beach, California.

CITY OF MANHATTAN BEACH

City Manager

By: _____

ATTEST: _____

Liza Tamura
City Clerk

APPROVED AS TO FORM:

City Attorney

FRIENDS OF SENIOR & SCOUT COMMUNITY CENTER

a non-profit corporation

BY: _____

NAME: _____

TITLE: _____

MANHATTAN BEACH PROPERTY OWNERS ASSOCIATION

a non-profit corporation

BY: _____

NAME: _____

TITLE: _____

EXHIBIT A