

CONTRIBUTION AND USE AGREEMENT

This Contribution and Use Agreement (the “Agreement”) is entered into this _____, 2020 (the “Effective Date”) by and between the Beach Cities Health District, a California healthcare district organized pursuant to Health & Safety Code §§ 32000 *et seq.* (“BCHD”) and the City of Manhattan Beach, a California municipal corporation (“the City”).

RECITALS

A. WHEREAS, the City intends to undertake and complete construction of the exterior shell and core of a new Senior and Scout Community Center (the “Community Center”) consisting of approximately 7,000 square feet located at Live Oak Park in the City of Manhattan Beach;

B. WHEREAS, the City intends to enter into a Disposition and Development Agreement (“DDA) and Lease (hereinafter “Lease”) with the Friends of Senior and Scout Community Center, a California non-profit corporation (hereinafter “Friends”), pursuant to which Friends shall be responsible for contributing all but One Million Dollars of the cost of construction of the Community Center, completion of tenant improvements, including the interior build-out, courtyard, equipment, appliances and furnishings, and shall be the lessee of the Community Center for a period of at least 25 years;

C. WHEREAS, BCHD acknowledges that the proposed DDA and Lease remain to be negotiated between the City and Friends;

D. WHEREAS, it is intended that the Community Center will serve multiple purposes, including, but not limited to, replacing the existing Manhattan Beach Scout House and providing community meeting rooms and a space for the City’s Older Adults Program and other recreation and community programs;

E. WHEREAS, the Community Center will include, among other facilities, an intergenerational community room (“Community Room”) and a demonstration commercial kitchen (“Kitchen”), as depicted on **Exhibit A** hereto;

F. WHEREAS, BCHD is a public agency that provides a wide variety of wellness and prevention programs to the community and is in need of additional meeting room space and a demonstration kitchen to conduct its programs;

G. WHEREAS, BCHD desires to contribute the sum of One Hundred Fifty Thousand Dollars (\$150,000) to the City for the purpose of assisting in financing the construction of the Community Center, in exchange for which it desires to have access to space within the Community Center primarily consisting of the Community Room and the Kitchen, to conduct its programs for the community.

NOW, THEREFORE, for valuable consideration, the parties agree as follows:

1. Financial Contribution. Subject to the covenants and conditions contained herein, BCHD shall contribute the sum of \$150,000 (the "BCHD Contribution") to the City, which shall be used by City for purposes of constructing the Community Center. The parties acknowledge that the anticipated cost of construction of the Community Center is in excess of \$3.5 million, and that BCHD's obligation is limited to \$150,000. Except for payment of the BCHD Contribution, BCHD assumes no responsibility or obligation with respect to constructing, paying for or raising funds for construction of the Community Center. BCHD's obligation to make the BCHD Contribution shall be contingent upon the following:

(a) BCHD's prior consent to the construction plans and specifications for the Community Room and the Kitchen, which consent BCHD shall not unreasonably withhold or delay (and BCHD shall respond in writing to any construction plans and specifications within ten days after submission by the City or Friends, failure to timely respond being deemed approval);

(b) City posting the final construction plans and specifications for the Community Center, for receipt of construction bids;

(c) City authorizing commencement of construction (subject to BCHD delivering the full amount of its contribution to City);

(d) City providing reasonable assurance to BCHD that funds to complete the construction are readily available; and

(e) BCHD's consent to the conditions precedent set forth in the DDA to City's and Friend's obligations to enter into the Lease, and the satisfaction of such conditions whereby Friends shall be obligated to complete certain tenant improvements and lease the Community Center as lessee ("Lessee") for a period of at least 25 years.

2. BCHD Usage of the Community Room and Kitchen. Commencing upon issuance by the City Building Official of a Certificate of Occupancy for the Community Center and throughout the term of this Agreement, on the terms and conditions set forth herein, BCHD shall have the right to utilize the Community Room and the Kitchen at no cost for the purpose of conducting its community programs which may include, but not be limited to, the following:

(a) Four (4) senior nutrition class series per year (32 hours of use per year).

(b) Four (4) BCHD events per year (Coalition Meetings, Speaker Series, etc.) (12 hours of use per year).

(c) Four (4) support group series per year (Powerful Tools for Caregivers, Mindfulness and Aging, etc.) (48 hours of use per year).

The parties recognize that the particular type of programs, classes or events may vary during the term of this Agreement based on BCHD's assessment of the needs of the community. BCHD shall be solely responsible for determining the content and conduct of its program(s), classes and events, as well as the speakers and participants. All such programs, classes or events must be consistent with the stated mission of BCHD, and are subject to reasonable and non-

discriminatory rules and regulations established by Lessee or City from time to time and provided to BCHD.

3. Scheduling of Programs. Prior to scheduling a series of programs, classes or events, BCHD shall notify the City and, if the Community Center is leased, the lessee of the proposed dates and times for such programs, classes or events with a general description of the intended usage. Within fifteen (15) days of receiving such notification, the City or, if leased, the lessee, shall notify BCHD if the Community Room and/or the Kitchen, as the case may be, has already been scheduled or committed for an alternative use. If the Community Room and/or Kitchen has not been previously scheduled or committed, BCHD shall be entitled to the exclusive use of the Community Room and/or Kitchen on the dates and times requested in its notification. No such notice given more than 180 days prior to the proposed date of the program, class, or event shall entitle BCHD to exclusive use of the Community Room and/or Kitchen pursuant to this Section. In the event the City or, if leased, Lessee notifies BCHD that one or more of the rooms are not available at the requested time and date, the City or Lessee shall provide available alternative times and dates to BCHD. The City or, if leased, Lessee shall reasonably cooperate with BCHD in determining mutually agreeable times and dates for BCHD's usage. The parties recognize that while the Lease to Friends is in effect, as between Friends and BCHD, Friends shall have priority in scheduling Scout events between 3:00 p.m. and 8:00 p.m. on weekdays and at all times on weekends.

4. Required Terms of Lease. The City shall include in the Lease provisions requiring Friends, as Lessee of the Community Center, and any other lessee or sublessee of the Community Center, to grant BCHD the right to utilize the Community Room and the Kitchen at no cost as specified in Paragraphs 2 and 3 above. In addition, the provisions of Sections 2, 3, 5, and 6 shall be incorporated into the Lease and shall be binding obligations of Lessee in the same manner and to the same extent that they would be binding on the City. BCHD shall be deemed to be a third party beneficiary of all such provisions in the Lease with the right to enforce such covenants and provisions directly against Friends or any other lessee. In no event shall the City be liable for the breach of any of the foregoing Lease provisions if they have been incorporated into the Lease and are enforceable against the Lessee. Notwithstanding the foregoing, if the Lease expires or is terminated for any reason while this Agreement is still in effect, the City shall be responsible for performance of all obligations and covenants herein that had been previously the obligations of Lessee during the term of the Lease, until such time as this Agreement expires.

5. Grant of Licenses. On and subject to the terms and conditions, restrictions and reservations set forth herein, the City hereby grants to BCHD, and its Permittees, the following licenses and right to use the Community Center, the Community Room and the Kitchen:

(a) Community Room and Kitchen License. Exclusive license to occupy and utilize the Community Room and/or Kitchen on the dates and time periods determined pursuant to Paragraph 3 above.

(b) Access Right. A non-exclusive license through and within the Community Center to reasonably permit BCHD and its Permittees access to the Community Room and the Kitchen, ingress to and egress from the Community Center, and access to and

usage of the public restrooms on the dates and time periods determined pursuant to Paragraph 3 above.

As used herein, "Permittee" means all employees, agents, clients, visitors, invitees and licensees of BCHD, and members of the public who are permitted to attend any of the programs conducted by BCHD at the Community Center.

6. Signage and Display of Materials. BCHD shall be entitled to install or place in the Community Room and Kitchen donor recognition signage that is comparable in size, design and prominence to that allowed or provided for other donors who have made comparable monetary contributions, subject to the reasonable approval of the City and Lessee (if leased). BCHD shall also be entitled to display materials relating to its organization, programs and services on a permanent basis within the front lobby of the Community Center. Such materials should be of reasonable size and consistent with other materials displayed by the City.

7. Public Announcements. BCHD may include on its website, in press releases, publications and other public communications, information relating to programs, classes and events which it conducts at the Community Center, including dates, times and location of such programs, and may otherwise communicate to the public regarding its collaboration with the City and/or Friends with respect to the Community Center, including its financial support and usage of the Community Room and Kitchen. The parties acknowledge that, as public entities, this Agreement may be disclosed to the public and is not deemed confidential by the parties.

8. City's Ownership of Property and Reservation of Rights. The Parties acknowledge that, notwithstanding BCHD's financial support for construction of the Community Room and Kitchen, the City reserves for itself and its successors and assigns, the use and enjoyment of the Community Center for all lawful purposes, including the right to sell, convey, mortgage or lease any interest in the Community Center, provided any use by the City, and its successors, assigns, lessees and mortgagees is not inconsistent with the rights and privileges granted to BCHD and the Permittees herein.

9. Use of Community Center.

(a) BCHD agrees to comply with all laws, regulations and requirements of City and all other governmental and regulatory bodies and authorities and any reasonable and non-discriminatory rules and regulations formulated and distributed by the Lessee from time to time and shall observe all safety standards and guidelines applicable to the use and occupancy of the Community Center. BCHD's rights granted pursuant to this Agreement shall at all times be exercised in such manner as not to interfere with the City's or Lessee's use of the Community Center, other than the Community Room and Kitchen during dates and times when they are scheduled to be used by BCHD pursuant to Paragraph 3 above.

(b) BCHD shall be responsible for clean-up of the Community Room and/or Kitchen (as applicable) after each use of the Community Center by BCHD or any of its Permittees. Such clean-up shall include replacing in its original location any furniture that may have been moved, thorough cleaning of the Kitchen (if used), and placing all debris, recyclables and organic waste in the designated containers at the Community Center.

10. Maintenance and Repair.

(a) The City shall maintain and repair (subject to Paragraph 17(b)), the Community Center, including the Community Room and Kitchen, during the term of this Agreement.

(b) BCHD shall promptly reimburse the City for repair of any damage caused by BCHD or its agents or employees.

11. Indemnification.

(a) BCHD shall indemnify, protect, defend, and hold the City and Lessee harmless from and against any and all costs, expenses (including, without limitation, reasonable attorneys' fees), damages, claims, liabilities or causes of action, to the extent arising out of the negligence or willful misconduct of BCHD or its agents or employees. The City shall indemnify, protect, defend and hold BCHD harmless from and against any and all costs, expenses (including, without limitation, reasonable attorneys' fees), damages, claims, liabilities, or causes of action, to the extent arising from the negligence or willful misconduct of the City or its agents or employees. In instances where the indemnified party is shown to be negligent or to have engaged in willful misconduct, and where such negligence or willful misconduct accounts for only a percentage of the liability involved, the obligation of the indemnifying party will be for that entire portion or percentage of liability not attributable to the negligence or willful misconduct of the indemnified party, as determined by final court decision or by the agreement of the parties.

(b) The City shall include in the Lease a provision requiring that Lessee indemnify, protect, defend and hold BCHD harmless from and against any and all costs, expenses (including, without limitation, reasonable attorneys' fees), damages, claims, liabilities, or causes of action arising from the negligent, reckless or intentional acts of the Lessee or its agents or employees.

(c) The obligations of BCHD and the City arising from this Section shall survive termination or expiration of this Agreement.

12. City and Lessee Insurance.

(a) At all times during the term of this Agreement, the City shall obtain and maintain (i) commercial general liability insurance, including a contractual liability endorsement, and personal injury liability coverage, from an insurer licensed in California, which shall include coverage against claims for any injury, death or damage to persons or property occurring on, in or about the Community Center, with a combined single limit of not less than \$2,000,000. BCHD and its agents, contractors, and employees shall be named as additional insureds on such insurance policies. The City shall furnish to BCHD a certificate of insurance evidencing the foregoing coverages, and providing that such insurance policy may not be cancelled on less than thirty (30) days prior written notice to BCHD. The City shall include in the Lease a provision requiring Lessee to provide similar insurance, with BCHD and its agents, contractors, and employees named as additional insureds on such insurance policies.

(b) The insurance provided by the City shall be primary and non-contributory to any coverage available to BCHD.

(c) The City shall maintain Workers' Compensation insurance as required by the State of California. The policy of Workers' Compensation insurance shall include provisions for waiver of subrogation.

13. BCHD Insurance.

(a) At all times during the term of this Agreement, BCHD shall obtain and maintain (i) commercial general liability insurance, including a contractual liability endorsement, and personal injury liability coverage, from an insurer licensed in California, which shall include coverage against claims for any injury, death or damage to persons or property occurring on, in or about the Community Center, with a combined single limit of not less than \$2,000,000. The City and its agents, contractors, and employees shall be named as additional insureds on such insurance policies. BCHD shall furnish to the City a certificate of insurance evidencing the foregoing coverages, and providing that such insurance policy may not be cancelled on less than thirty (30) days prior written notice to the City.

(b) The insurance provided by BCHD shall be primary and non-contributory to any coverage available to the City.

(c) BCHD shall maintain Workers' Compensation insurance as required by the State of California. The policy of Workers' Compensation insurance shall include provisions for waiver of subrogation.

14. Successors. Each and all of the covenants, conditions, and restrictions set forth in this Agreement shall apply to and bind the City and BCHD and their respective successors in interest, assigns and lessees.

15. Assignment. This Agreement shall not be assigned, in whole or in part, by BCHD without the prior written approval of City, which approval City may grant or withhold in its sole discretion. Any attempt by BCHD to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, BCHD shall not discriminate against any employee, subcontractor, applicant for employment, client, or invitee because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law.

17. Termination.

(a) This Agreement and the rights granted hereunder shall expire and have no further effect twenty-five (25) years following the issuance of a Certificate of Occupancy for the Community Center by the City Building Official.

(b) This Agreement and the rights granted hereunder shall expire and have no further effect upon the occurrence of such damage to the Community Center that the City Building Official revokes the Certificate of Occupancy for all or any portion of the facility. The parties agree that City shall have no obligation to repair or rebuild the Community Center in the event of such damage. Notwithstanding the foregoing, if the City voluntarily elects to repair or rebuild the Community Center, this Agreement shall be reinstated and shall be effective from the date of completion of such repairs or reconstruction until the original date of expiration.

(c) In the event of a natural disaster or other emergency, the rights granted BCHD hereunder to use the Community Center shall be suspended during any period that the Community Center is needed by the City for use as a shelter or for other disaster relief purpose.

18. Scout Volunteers. The Lease between the City and Lessee shall require Lessee to use its best efforts to encourage the Boy Scout and Girl Scout Troops that utilize the Community Center to participate in volunteer events, programs or activities of BCHD, at least once per year (one event for Boy Scouts and one event for Girl Scouts.) The Lease shall provide a mechanism for BCHD to communicate the time and location of its programs and opportunities for volunteers to participate.

19. Entire Agreement. This Agreement, including all recitals and exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous understandings, negotiations, representations, promises, and agreements, oral or written, by or between the Parties, with respect to the subject matter of this Agreement. No representations, inducements, promises, or agreements have been made in connection with this Agreement by any party, or anyone acting on behalf of any party, other than those expressly set forth herein.

20. Binding Effect. This Agreement, including, without limitation, the licenses granted and the covenants made herein, shall be binding on, and enure to the benefit of, BCHD and the City, and their respective lessees, transferees, devisees, successors, and assigns.

21. Attorneys Fees. If either party commences an 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.

22. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior court with geographic jurisdiction over the City of Manhattan Beach.

23. City Not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than BCHD.

24. Modification. This Agreement may not be changed, amended or terminated except by written agreement of the parties hereto.

25. Exhibits. All exhibits attached hereto are incorporated herein and made a part hereof.

26. Counterparts. This Agreement may be executed in any number of counterparts, but all of which, taken together, shall constitute one and the same instrument. For recording purposes, any signature page of this Agreement may be detached from and added to any counterpart of this Agreement identical in form hereto.

27. Authority. Both parties represent and warrant that they have the authority to execute this Agreement and each individual signing on behalf of a party to this Agreement states that he or she is the duly authorized representative of the signing party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by BCHD and the City as of the date first written.

CITY OF MANHATTAN BEACH

**BEACH CITIES HEALTH DISTRICT, a
California Healthcare District**

By: _____
Name: _____
Its: _____

By: 
Name: Tom Bakaly
Its: Chief Executive Office