

MEMORANDUM OF UNDERSTANDING BETWEEN FRIENDS OF
SENIOR & SCOUT COMMUNITY CENTER AND THE CITY OF
MANHATTAN BEACH REGARDING THE SCOUT HOUSE
RECONSTRUCTION PROJECT

This Memorandum of Understanding ("Agreement") is entered into as of May 17, 2022 ("Effective Date") by and between the City of Manhattan Beach, a California municipal corporation ("City"), and Friends of Senior & Scout Community Center, a non-profit corporation ("Friends") (individually a "Party" and collectively "Parties").

RECITALS

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

B. 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.)

C. City and Friends desire to work together to replace 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.

D. Friends has previously raised funds for the construction and completion of the Project. Approximately \$60,400.00 has been expended by Friends for Project purposes (such as architectural and other services), and certain funds have been set aside –by Friends to pay for costs related to the Project. Together with the funds to be provided by City as specified below, Friends has or will raise all additional funds necessary to pay the total cost of the Project ("Future Project Costs") with an anticipated New Facility lifespan of at least fifty (50) years, and in consideration of such fundraising, the City wishes to grant the Scouts priority use of the New Facility for the lifetime of the New Facility during specified hours.

E. City and Beach Cites Heath District ("BCHD") have entered into a Contribution and Use Agreement dated April 20, 2020, ("BCHD Contribution Agreement") regarding BCHD's commitment to contribute funds to the completion of the Project. Such BCHD Contribution Agreement provides for BCHD's use of the community room and kitchen of the New Facility for approximately 96 hours per year for the City's older adult programming, and such use may continue pursuant to the BCHD Contribution Agreement or any subsequent amendment or superseding agreement with BCHD.

F. Concurrently with the execution of this Agreement, City, Friends and the Manhattan Beach Property Owners' Association ("MBPOA") are entering into a Contribution Agreement ("MBPOA Contribution Agreement") regarding MBPOA's commitment to contribute funds to the completion of the Project. Such Contribution Agreement provides for an

approximately 1,000 square foot space to be used exclusively by older adults ("Older Adult Space"), as well as use of other portions of the New Facility at specified times.

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

1. Fundraising by Friends. Prior to Project Commencement (as defined below), Friends will contribute an amount of at least \$2,290,000.00 into a restricted account (the "Account") established by City at Union Bank (or other bank mutually approved by the Parties). Such funds shall be released or otherwise withdrawn by City periodically (no more often than monthly) to pay for Future Project Costs on a progress basis as reasonably requested by City, with prior written notice to Friends. Friends shall not be required to approve any such disbursement unless the costs increase over the Final Future Project Costs as described below. The Parties agree to execute and deliver all documentation reasonably required to cause the release of the funds held in the Account as needed to pay for the Final Future Project Costs.

2. City Contribution. City agrees to fund up to \$2,899,540.00 to pay for Future Project Costs ("City Contribution"). City Contribution may take the form of cash contributions, direct payments to consultants and/or payment of permit, inspection and other City fees that would otherwise be assessed on the Project. Such funds shall be disbursed *pari passu* with the funds deposited by Friends into the Account to pay for Future Project Costs on a progress payment basis. In addition, and not as part of the City Contribution, City shall be responsible for any infrastructure not part of the approved Plans as defined below.

3. Sources of Funds. Attached as Exhibit B, and incorporated herein by this reference, is a table showing the source of all funds now anticipated to be used to pay for Future Project Costs, including the amounts described in Section 1 and Section 2, which table may be updated upon mutual written agreement of the Parties without amending this Agreement.

4. Plan Review. Friends has retained the architectural firm of Tomaro Design Group ("Architect") to provide design and planning services for the Project. Architect has formulated plans and specifications for the Project (the "Preliminary Plans") that have been submitted to the City for review to determine compliance with all laws applicable to a facility to be owned by City. The City Engineering Division will review the Plans from a City ownership and capital construction standpoint; the City Planning Division will review for compliance with zoning requirements; the City Building and Safety Division will review for compliance with Building Code and accessibility requirements; and the Fire Department will review for compliance with Fire Code requirements. Thus, the City will review the Project both as the owner of the Project and as the regulatory agency overseeing the Project. The Parties anticipate that Architect will formulate and submit to City more detailed plans and specifications ("Plans") as follows:

4.1. 35% Completion (Schematic Design): The City will review the Plans and total estimated Project Costs, provide to Friends any corrections or changes, and provide a status report to the City Council as to the proposed Plans, and the estimated Future Project Costs. The City Council reserves the right to change the Plans.

4.2. 65% Completion (Detailed Design): The City will review the Plans and total estimated Future Project Costs, provide to Friends any corrections or changes, and provide a status report to the City Manager as to the proposed Plans and the estimated Future Project Costs.

4.3. 95% Completion (Construction Documents): The City will review the Plans and total estimated Future Project Costs, provide to Friends any corrections or changes, and provide a status report to the City Manager and Friends as to the proposed Plans, and the estimated Future Project Costs.

4.4. 100% Completion: The City will review the Plans and total estimated Future Project Costs, provide to Friends any corrections or changes, and provide a staff report to the City Council as to the final Plans, the final estimated Future Project Costs, and the amount of funds in the Account. In the event there are sufficient funds in the Account, the City Council may approve the Plans and authorize next steps in the Project.

City shall use its best efforts to complete all reviews and approvals as expeditiously as possible.

5. California Environmental Quality Act Review and Local Coastal Plan Compliance. Friends shall submit a Project description to the City. Upon receipt of the Project description, final Plans and any other necessary information or documentation, City shall commence California Environmental Quality Act ("CEQA") and Local Coastal Plan (LCP") compliance review.

6. Bids and Final Project Cost. Upon approval of the final Plans and completion of all required reviews and approvals, City shall undertake a bidding process in compliance with applicable law to determine the lowest bid for the construction of the Project from a responsible and responsive construction company. Upon receipt of bids, staff shall provide a total final project cost ("Final Project Cost") to Friends. The Final Project Cost includes, but is not limited to, the lowest responsive and responsible bid, construction management, in-house inspection, plan check and permitting fees, costs associated with CEQA compliance (including analysis and mitigation measures) and a 15% construction contingency amount.

6.1. In the event the amount of funds in the Account is at least equal to the Final Project Cost, City staff shall place the Project on a City Council agenda for Council consideration to award a construction contract for the Project (the "Construction Contract").

6.2. In the event the lowest bid exceeds the amount of funds deposited in the Account, City will be under no obligation to award the Construction Contract for the Project, unless Friends agrees to deposit into the Account the additional amount necessary to match the Final Project Cost. If Friends does not deposit such amount within 180 days of notification that there are insufficient funds in the Account to match the Total Project Cost, the Parties will meet in good faith to consider whether to abandon the Project or other alternatives.

6.3. In the event that the contingency amount is not fully expended, the remaining

amount in the Account shall be returned to the City.

7. Estimated Project Schedule. An estimated timeline and schedule for the completion of the Project ("Estimated Project Schedule") is attached hereto and incorporated herein as Exhibit C. The Estimated Project Schedule may be updated upon mutual written agreement of the Parties without amending this Agreement.

8. Irrevocable License. City grants to Friends an irrevocable license upon the terms set forth in Exhibit D, attached hereto and incorporated herein by this reference (the "Irrevocable License"), which license shall go into effect ten (10) days after completion of the Project. Such right must vest, if at all, on or prior to the date ten (10) years from the date of this Agreement.

9. Naming Rights. In consideration of the performance of this Agreement by Friends, City agrees that Friends shall have the right to select the name of the new improvements, which may include multiple names for different components of such improvements, such as the building itself, courtyards, bricks, plaques, statues, other items, and particular rooms and installations. All names are subject to final City Council approval (provided that bricks and plaques may be named for natural individuals or families as donors without City Council approval); however, City Council may delegate approval of certain categories of naming rights or locations to the City Manager. Such names shall not include any names that are discriminatory against any legally protected group of natural persons or are otherwise derogatory. Notwithstanding the above, Friends acknowledges that the MBPOA, pursuant to the MBPOA Contribution Agreement, shall have the right to name the Older Adult Space described in Recital F above, and BCHD, pursuant to the BCHD Contribution Agreement or any subsequent amendment or superseding agreement with BCHD, shall have the right to name the kitchen and community room in the New Facility.

10. Future Contribution Agreements. City and Friends anticipate further Contribution Agreements among City, Friends and other persons or entities desiring to make contributions to the completion of the Project. Any such Contribution Agreement shall require approval of the City and Friends.

11. 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 and the Irrevocable License, 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 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.

12. Termination.

12.1. By Friends: In the event that City has not executed a Construction Contract and obtained all permits and consents required to commence construction by the second anniversary of the date of this Agreement, Friends 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, each of Friends and City 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.

12.2. By City: In the event that Friends has not deposited any additional funds necessary as provided in Section 6.2 by the second anniversary of the date of this Agreement, City shall have the right to terminate this Agreement by giving at least 30 days' written notice, unless Friends cures such failure within such 30-day period. If such termination is effective, each of Friends and City shall be entitled to the prompt return of all funds distributed by such Party that have not been expended as of the date of the notice of termination.

13. 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

14. 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.

15. 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.

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

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

18. 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: _____

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Exhibit A

Project

Exhibit B
Sources of Funds

Exhibit C
Estimated Project Schedule

Exhibit D

Irrevocable License

The City grants to the Friends and its designees an irrevocable license ("License") for non-exclusive use of the New Facility for a term of fifty (50) years ("Term") commencing on the date ten (10) days after completion of the Project (the "Commencement Date"), subject to the terms and conditions set forth below.

1. Fee. Friends shall pay to City One Dollar (\$1.00), in advance, on or before January 15 of each calendar year during the Term of this Agreement.

2. Repair and Maintenance. City shall keep the New Facility in good condition and repair, and Friends shall cooperate with City. City shall not be responsible for any personal property of Friends or any party using the New Facility by reason of the grant of the License pursuant to this Agreement.

3. Signage. During the Term, Friends shall have the non-exclusive right to display signage that conforms to City standards and has been approved by the City in writing in advance of installation. Signage shall be installed pursuant to City standards and practices.

4. Damage and Destruction. In the event the New Facility is damaged or destroyed by casualty of any type or kind, City shall repair such damage with reasonable diligence. Notwithstanding the foregoing:

(a) If such damage or destruction occurs more than 25 years after the Commencement Date, and Friends and Friends Users (as defined below) have not used the Facility on a weekly basis for the 12 month period preceding such damage, then if City determines that the needs of City do not require the use of the Facility, City shall not be obligated to repair such damage, and in such event City shall give Friends written notice of such election within ninety (90) days after the occurrence of the damage or destruction. Any repairs or reconstruction shall comply with all applicable laws, statutes and ordinances. If City elects not to repair or rebuild in accordance with the foregoing, City shall use reasonable efforts to accommodate Friends Users in other facilities owned or controlled by City.

(b) If City is otherwise required to repair the damage or reconstruct, but the City's requirements have materially changed, the City shall have the right to build a new facility, or reconfigure an existing facility, that accommodates Friends' needs and the City's new requirements. The parties shall meet and confer to discuss such replacement facility.

(c) The completion of any repair or reconstruction shall be subject to delays beyond the reasonable control of City, including without limitation fire or other casualty, pandemic, supply chain delays or civil unrest.

5. Assignment. In no event shall Friends assign any of its rights under this License or permit any other party to use any portion of the New Facility without

the prior approval of City, which approval may be withheld by City in its sole and absolute discretion. Friends may assign its rights hereunder to a successor non-profit corporation formed for the purpose of managing the rights granted hereunder upon advance notice to the City.

6. Scheduling. Friends and its designees ("Friends Users") shall have the right to use the New Facility (other than the approximately 1,000 square foot designated for the sole and exclusive use for the City's older adult programming ("Older Adult Space") from 3:00 p.m. each weekday, except Wednesdays which will be from 1:30 p.m., and 24 hours on Saturday and Sunday. If such areas are not being used by Friends Users, the New Facility or portions thereof may be used by entities other than Friends Users as may be scheduled by such other entities no more than 30 days prior to an event and no less than 10 days before an event, if space is available. Friends shall schedule any Friends Users pursuant to the use scheduling system used from time to time by the City. Use by Friends and Friends Users shall be subject to all applicable terms and conditions for use of City facilities and Friends and Friends Users shall be required to execute a Use Agreement in the same form as other users of City facilities. Such terms and conditions may be updated from time to time by the City and Friends and Friends Users shall comply with the then-applicable terms and conditions.

7. Materials Display Center in Lobby. City may maintain a materials display center in the lobby or other common area of the New Facility to display materials related to City and community programs, including those of any New Facility users.

8. Scout Volunteers. Friends will use its best efforts to encourage Boy and Girl Scout Troops that use the New Facility to participate in volunteer events, programs and activities of the Beach Cities Health District at least once per year. The Friends shall name a contact for such coordination and communicate that to BCHD.