

FACILITY USE AGREEMENT

This Facility Use Agreement (“Agreement”) is made and entered into _____ (“Agreement Date”) between the ISLA VISTA COMMUNITY SERVICES DISTRICT, a California special district (“District”) and United Way of Northern Santa Barbara County (“Authorized User”), pursuant to the following recitals, which are a substantive part of this Agreement. District and Authorized User are sometimes individually referred to as a “Party” and jointly as “Parties”.

RECITALS

A. The District maintains and controls real property located at 970 Embarcadero Del Mar, within the unincorporated Santa Barbara County community of Isla Vista, and within the boundaries of the District. Authorized User wishes to have access to and use a portion of that property, as more particularly described and depicted in **Exhibit A** (“Premises”).

B. Authorized User wishes to use the Premises for purposes of providing coordinated entry services to individuals experiencing homelessness and operate the Isla Vista Beautiful program.

C. The District and Authorized User desire to enter into a use agreement granting Authorized User access to the Premises in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, District and Authorized User agree as follows:

AGREEMENT

1. Access. The District hereby grants to Authorized User access to the Premises beginning on September 1st, 2019 and expiring on August 31st, 2020 (“Term”).

2. Use of Premises AS IS. Authorized User acknowledges it has and shall accept the Premises from District in “AS IS” condition without representation or warranty. Authorized User acknowledges it has inspected the Premises and is aware of its condition. Pursuant to California Civil Code Section 1938, Authorized User is advised that the Premises have not undergone an inspection by a Certified Access Specialist, and, therefore, the District is not aware if the Premises comply with the applicable construction-related accessibility standards pursuant to Civil Code Section 55.53.

3. Access Fee. Authorized User, as consideration for the use and occupancy of the Premises, shall pay an access fee to the District in the amount of ONE DOLLAR AND ZERO CENTS (\$1.00) for the Term. Authorized User shall tender payment-in-full of this Access Fee by personally delivering or mailing it to the District at 970 Embarcadero Del Mar, Isla Vista, California, 93117. Authorized User shall tender payment of the access fee to the District prior to utilizing the Premises.

4. Use of Premises.

a. Purpose. Authorized User shall have access to use the Premises as established within **Exhibit B** (“Permitted Uses”). The Premises shall not be used for any other purpose other than the Permitted Uses without the prior written consent of the District, which may be granted or withheld in the District’s sole discretion.

b. District Use of Premises. Authorized User's use of the Premises shall be on an as-needed basis, which is often on short notice in crisis or emergency situations. As such, District agrees to make the Premises available to Authorized User pursuant to this Agreement immediately upon Authorized User's written, in-person, or telephonic request. Authorized User acknowledges and agrees that the District shall have the right to utilize the Premises at any time when not in use by Authorized User.

c. No Alterations or Improvements. No alterations or improvements shall be made to the Premises without the advance and express written consent of the District, and upon such terms and conditions as the District may require.

d. No Storage Permitted. Notwithstanding any other provision of this Agreement, Authorized User understands and agrees that it shall not store any items of any kind in the Premises. Upon termination

of this Agreement, Authorized User shall restore the Premises to substantially the same condition at the time Authorized User took possession of the Premises. Any items left on the Premises after termination of this Agreement shall, at the option of the District, become the sole property of the District; or, at the expense of Authorized User, the District may remove said items to restore the Premises to substantially the same condition in which it existed at the time Authorized User took possession of the Premises.

e. Compliance with Laws. Authorized User shall comply with all state and federal statutes, ordinances, regulations, and requirements of all governmental entities (including the District), relating to Authorized User's use and occupancy of the Premises, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. Authorized User shall comply with all applicable requirements of the Americans with Disabilities Act of 1990, California Disabled Persons Act and the California Building Code. Further, Authorized User, its successors, heirs, executors, administrators and assigns, and all persons claiming under or through the Authorized User, shall not discriminate against or segregate any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, sexual orientation, gender, or gender identity, in the use, occupancy, tenure or enjoyment of the Premises.

f. Permits. Authorized User shall procure and maintain all required permits governing its use of the Premises.

g. Waste and Nuisance. Authorized User shall not use the Premises, or allow the Premises to be used, in any manner that will constitute a waste, nuisance, or unreasonable annoyance to the neighborhood adjacent to the Premises. The Premises shall not be used for displaying signs and notices unless authorized by District in writing.

h. Maintenance. District shall deliver the Premises to Authorized User in good order and condition, and free from rubbish. During its use of the Premises. Authorized User, at its sole cost and expense, shall keep and maintain the Premises in good order and condition, and free from rubbish, to the satisfaction of the District. Upon notice from Authorized User, the District shall be responsible for the operational maintenance of the Premises, including but not limited to, plumbing, electrical, exterior painting and repairs, roofing, HVAC, interior, and alarm systems (if any). Additionally, the District shall maintain District property outside of the Premises, e.g., landscaping, parking lot.

5. Utilities. The District shall make all arrangements for and pay for any applicable utilities and services furnished to or used by Authorized User at the Premises.

6. Indemnification. Authorized User shall indemnify, protect, defend and hold harmless the District and its managers, officers, directors, members, employees, agents, contractors, partners and lenders, from and against any and all claims, and/or damages, costs, liens, judgments, penalties, permits, reasonable attorneys' and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with (1) the use or occupancy of the Premises by Authorized User; (2) any breach by Authorized User in the performance in a timely manner of any obligation required of Authorized User under this Agreement; and/or (3) any acts, omissions or negligence of Authorized User or any person or entity claiming through or under Authorized User, or Authorized User's agents, employees, contractors, invitees or visitors; and/or (4) any claim arising under the Americans With Disabilities Act of 1990, California Disabled Persons Act and/or similar laws specifically related to Authorized User's use of the Premises. The foregoing shall include, but not be limited to, all costs of the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against District) litigated and/or reduced to judgment. In case any action or proceeding is brought against District by reason of any of the foregoing matters, Authorized User upon notice from the District shall defend the same at Authorized User's expense by counsel reasonably satisfactory to the District and the District shall cooperate with Authorized User in such defense. The District need not have first paid any such claim in order to be so indemnified. In addition, the District may require Authorized User to pay the District's attorneys' fees and costs in defending against or participating in such claim, action or proceeding if the District shall decide, in its exercise of reasonable judgment, it is unsatisfied with the representation of its interest by Authorized User or its counsel. Prior to retaining its own representation in such a dispute, District shall provide Authorized

User with thirty (30) days' advance notice, and an opportunity to address any alleged deficiencies in representation.

The District shall not be liable for security of, nor injury or damage to, the person or personal property of any third party incurred as a result of any programmatic use by Authorized User of the Premises, nor as to Authorized User's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, earthquake, flood, terrorism, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other any other cause, including the commission of a crime, whether the said injury or damage results from conditions arising upon the Premises or from other source or places—except if such injury or damage is the result of the sole gross negligence or willful misconduct of the District or the District's employees, contractors, interns, volunteers, or agents.

The provisions of this Section 6 shall survive the expiration or termination of this Agreement for so long as may be required.

7. Insurance Requirements.

a. General Liability Insurance. Authorized User shall obtain, pay for and maintain in effect during the life of this Agreement, a policy of commercial general liability insurance issued by an insurance company rated not less than "A-VII" in Best Insurance Rating Guide and admitted to do business in California with combined single limits of liability of not less than \$1,000,000.00 per occurrence. The policy shall contain an endorsement naming the District as an additional insured insofar as this Agreement is concerned, and provide that written notice shall be given to the District at least 10 days prior to cancellation or material change in the form of the policy or reduction in coverage.

b. General Provisions. All of the policies of insurance required to be procured by Authorized User pursuant to this Section shall be primary insurance and shall name the District, its employees and agents as additional insureds. Any insurance or self-insurance maintained by District, its officers, officials, employees, agents, or volunteers shall be in excess of Authorized User's insurance and shall not contribute with it. All policies shall waive all rights of subrogation and provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to the District. Within ten (10) business days of execution of this Agreement by the last Party to sign, and at least thirty (30) days prior to the expiration of any insurance policy, Authorized User shall provide the District with certificates of insurance and full copies of the insurance policies evidencing the mandatory insurance coverages written by insurance companies acceptable to the District, licensed to do business in California and rated A:VII or better by Best's Insurance Guide.

8. Encumbrances. Authorized User shall not encumber by deed of trust, mortgage or other security instrument, all or a part of Authorized User's interest under this Agreement without the advance and express written consent of the District, and upon such terms and conditions as the District may require.

9. Default.

a. Authorized User's Default. The occurrence of any of the following shall constitute a default by Authorized User: (1) failure to pay in full the access fee, insurance premiums or taxes, or any other sums due hereunder as a result of Authorized User's use of the Premises; (2) abandonment of the Premises without securing the Premises and return possession to the district; and (3) failure to perform any other provision of this Agreement.

b. Termination. The District may terminate this Agreement immediately upon notice to Authorized User if Authorized User defaults on any obligation under this Agreement. Upon termination of this Agreement, Authorized User shall immediately vacate the Premises, including removing any and all items or materials brought to the Premises by Authorized User and/or any individual attending the event. If Authorized User fails to immediately vacate the Premises after notice of termination, the District may regain possession of the Premises in the manner provided by the laws of the State of California. At the District's option, if Authorized User has breached this Agreement, the District may enforce all rights and remedies under this Agreement, including the right to recover the costs the District incurred to terminate

this Agreement. Further, the District shall be entitled to recover from Authorized User damages, attorney's fees and to exercise such other rights and remedies as provided to the District under the laws of the State of California.

12. Waiver. No delay or omission in the exercise of any right or remedy of the District on any default by Authorized User shall impair such right or remedy or be construed as a waiver. Any waiver by the District of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

13. Entry and Inspection of Premises. Upon reasonable advance notice to Authorized User, the District and its authorized representatives shall have the right to enter and inspect the Premises at any time to determine whether the Premises are in good condition and whether Authorized User is complying with its obligations under this Agreement.

14. Relationship of Parties. The District is not, nor shall it become or be deemed to be, a partner or a joint venturer with Authorized User by reason of the provisions of this Agreement nor shall this Agreement be construed to authorize either party to act as the agent for the other.

15. Effect of Termination of Agreement. Termination of this Agreement shall not release any party hereto from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to such termination or expiration, or thereafter in case by the terms of this Agreement it is provided that anything shall or may be done after termination or expiration hereof.

16. Amendments. This Agreement shall not be modified or amended in any way except in writing signed by the Parties.

17. Interpretation. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it.

18. Entire Agreement. This Agreement contains all the agreements of the parties concerning the subject matter of it and cannot be amended or modified except by a subsequent written agreement.

19. Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

20. Attorney's Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the party prevailing in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

21. Voluntary Agreement; Authority to Execute. Authorized User and the District each represent that they have read this Agreement in full and understand and voluntarily agree to all provisions herein. The parties further declare that prior to signing this Agreement they each had the opportunity to apprise themselves of relevant information, through sources of their own selection, including consultation with legal counsel of their choosing if desired, in deciding whether to execute this Agreement. The signatories to this Agreement represent that they have the proper authority to execute this Agreement on behalf of the respective party.

22. Binding Effect; Choice of Law. This Agreement shall be binding upon the Parties, their successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Agreement shall be initiated in the Superior Court of the State of California for the County of Santa Barbara.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the day and year first above written.

DISTRICT:

**ISLA VISTA COMMUNITY SERVICES
DISTRICT**

By: _____

Its: General Manager

Date: _____, 2019

AUTHORIZED USER:

United Way of Northern Santa Barbara County

By: _____

Its: Executive Director

Date: _____

EXHIBIT A

DESCRIPTION OF THE “PREMISES”

The premises is a 82sqft room on the south wall of the District Office located at 970 Embarcadero Del Mar, Goleta, CA 93117.

The Premises will include:

- Workstations and chairs
- Wifi

EXHIBIT B

PERMITTED USES

United Way of Northern Santa Barbara County will:

- Keep a list of who has access to the office.
- Post hours of planned use of the space for both the District and public.
- Provide an agreement for users to sign detailing acceptable behavior and use of the space.
 - o <https://docs.google.com/document/d/1FWUbsrNBqWe3c1VWd6YAaCoDRObP9vdyX3Dk8oNN2sw/edit?usp=sharing> (draft)

The Northern Santa Barbara County United Way (United Way) is the Lead Agency for the Home For Good Santa Barbara County Coordinated Entry System. Through Home For Good Santa Barbara County we support the Coordinated Entry System, a no-wrong door, countywide system that engages and connects individuals and families experiencing homelessness to the optimal resources for their needs. The Coordinated Entry System has to cover the entire geographic area and be accessible to individual and families. The Isla Vista Community Service District serves as the Isla Vista Entry Point on Wednesdays and Fridays from 12:20-2:30pm. The United Way is also administering the Isla Vista Beautiful Program with the Isla Vista Community Service District. An AmeriCorps VISTA and AmeriCorps Member will utilize the space to meet with Isla Vista Beautiful employees and work on the Isla Vista Beautiful program.