

**FACILITY DEVELOPMENT AND USE AGREEMENT
BETWEEN
HERMISTON SENIOR CENTER
BOARD OF DIRECTORS INC.
AND
THE CITY OF HERMISTON, OREGON**

This Facility Agreement is made by and between the Hermiston Senior Board of Directors Inc., a registered non-profit organization in the state of Oregon, hereinafter referred to as “Board”, and the City of Hermiston, Oregon hereinafter referred to as “City” to construct and operate a new Senior Center herein referred to as the “Facility.”

RECITALS

WHEREAS, the Board has operated a senior center an independent non-profit corporation and desires to continue this effort in a new Facility, and

WHEREAS, the City recognizes the value of an independent senior center to the citizens of Hermiston and supports the efforts of the Board to construct a new building whose primary use is for senior citizen programming; and

WHEREAS, the Board has requested that the City sponsor an application for a new Facility to replace the existing senior center which will be permanently closed, and

WHEREAS, the City is willing to be an applicant to the Community Development Block Grant (CDBG) program for a new facility under certain considerations; and

WHEREAS, the Board has sufficient operating and reserve funding to continue the availability of the senior programming independent of the City; and

WHEREAS, the Board and the City desire to enter into an agreement for the purpose of applying for CDBG funding, constructing a new facility, and operating the Facility for senior programs and the community at large within the restrictions of the CDBG grant; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree as follows:

PURPOSE

It is the purpose of this agreement to recognize and support the facility needs of the Board in their mission to provide programming and meals for senior citizens. The Board has requested that the City sponsor an application for Community Development Block Grant funding for a new Facility. **This agreement is contingent upon a CDBG award in full for a new facility, and the City is not obligated to provide funding for a Facility from its own funding sources.** It is not the City’s intent or interest to operate the senior program or participate financially in the operation of senior services.

The City and the Board will cooperate in the planning, development, and operation of the Facility as provided herein. During the first five years of operation after administrative closeout of the CDBG grant, the Board exclusive use of the Facility and thereafter, the Board shall have specific days and times reserved for its programs as a tenant without a rental fee. The Board shall participate in the ongoing maintenance and upkeep of the Facility and grounds in proportion to its use as prescribed in this agreement.

ARTICLE I.

TERM AND TERMINATION

1.01 Term. The term of this Agreement shall be perpetual provided that each party fulfills its obligations assigned within this agreement.

1.02 Termination. After the first 5 years of operation after administrative closeout of the CDBG grant Facility completion, either party may terminate this agreement for any reason with 12 months written notice as provided herein. After the first 5 years of operation after administrative closeout of the CDBG grant, the agreement can be terminated at any time in the event there is a failure by either party to fulfill any obligation of this agreement with 90 days written notice to the other party.

ARTICLE II.

CDBG FUNDING AND CONSTRUCTION

2.01 Application. The City shall be the applicant to the Community Development and Block Grant (CDBG) funding program, all applicable and eligible Facility costs that may include land purchase, construction, design, and administration. This agreement is contingent upon a CDBG award in full for a new facility, and the City is not obligated to provide funding for a Facility from its own funding sources.

2.02 Grant Administration. Upon receipt of a CDBG funding agreement, the City shall have sole responsibility for the administration of the grant.

2.03 Construction. The City shall be fully responsible for construction management for the Facility. The City has no obligation to construct a new facility or determine a replacement facility in the event that the no CDBG funding becomes available for the Facility project.

ARTICLE III.

DESIGN AND CONSTRUCTION

3.01 Design Approvals. The City shall procure for and be the owner of any architectural and engineering agreements and have final approval of the Facility design and location.

3.02 Construction Management. Upon receipt of a CDBG funding agreement, the City shall procure for and be the owner of any architectural and engineering agreements and have sole responsibility for the management of the construction in accordance with all applicable permits, rules, and laws pertaining to such public work construction.

3.03 Client Relationship. The Board shall be represented by the Board President or designee, as a client and a future tenant of the Facility. The Board shall be provided with ongoing consultation regarding the design and construction of the Facility.

ARTICLE IV.

FACILITY OPERATION AND MAINTENANCE

4.01 Shared Uses. The Board shall have exclusive use of the Facility for the first 5 years after administrative closeout of the CDBG grant of the Facility. During which time, the use of the Facility is restricted to senior citizen ages 60 years and older as required by CBDG funding. After which time, the City the Facility shall become available for community uses managed by the City. The Board shall have exclusive use of the Facility Monday through Friday from 8:00am through 3:00pm for senior programs. The City shall have use of the Facility all other hours of each week and weekends for community uses if it does not conflict with Senior Programs scheduled for such times. The Board and City may request additional uses of the Facility and shall be granted such uses on a space-available basis.

4.02 Scheduling. After the first 5 years after administrative closeout of the CDBG grant, the City shall maintain a schedule of planned uses for their assigned blocks of time, and may provide for other community uses, collect fees, and supervise such uses. The Board shall have the authority to rent the space to any public user that meets the CDBG funding restriction for use during the initial 5 years period after administrative closeout of the CDBG grant, and after that period be able to rent out facility without previous restrictions. The City and the Board need scheduling coordination, and will have 1 individual from both entities coordinate facility time available in a positive working manner.

4.03 Exclusive Areas. After the first 5 years after administrative closeout of the CDBG grant, the City and Board may reserve areas within the Facility for exclusive use. The areas may include the lot, open interior space, food storage, and other storage spaces. The offices, kitchen, and senior food storage areas are off limits due to liability.

4.04 Operating Costs. For the first 5 years of operations after administrative closeout of the CDBG grant, the Board shall be fully responsible for all operating cost of the facility including utilities, custodial, maintenance, and other costs. After which time, the City and Board will each pay for one half of the ongoing utilities and custodial costs.

4.05 Supervision. The Board shall provide sufficient supervision to regulate the conduct, safety and security of the participants and the Facility during the Board's uses.

4.06 Conduct. The City and the Board is responsible for the conduct of its officers, agents, employees, guests, invitees or visitors associated with the Board uses ensuring that Facility rules are adhered to at all times. General rules include:

1. GENERALLY RETURN THE FACITY TO CONDITION PRIOR TO EACH USE
2. NO ALCOHOLIC BEVERAGES OR DRUG USE
3. NO SMOKING, FIRES, OR FIREWORKS
4. VEHICLES IN DESIGNATED PARKING AREAS ONLY
5. NOISE ORDINANCE ENFORCED

4.07 Repair and Replacement for Damage. As a result of any uses by the Board, the Board shall be responsible for the direct costs of repair or replacement of any Facility assets damaged as a result of any uses of the Board, its officers, agents, employees, guests, invitees or visitors, excluding normal wear and tear.

4.08 User Improvements. The Board may be authorized, on a case by case basis to make physical improvements or adjustments to the Facility under the control and direction of the City. All improvements and adjustments must be pre-approved in writing by the City prior to any work activity. Such improvements or adjustments may include, but are not limited to painting, landscaping, building, lighting, amplification, field modification and any other activity that presents a visible or functional impact to the Facility. The Board shall submit an annual list of planned improvements for the preceding year to be considered by the City. The City shall inspect and accept each improvement to ensure that the improvements meet the City's public use facility standards. All improvements, once completed become the property of the City.

4.09 Improvements by City. The City reserves the right to make improvements or adjustments to the Facility for the benefit of the community at-large. The City will consult with the Board regarding planned improvements that may have an impact on the Board programs.

4.10 Right of Inspection and Access. City shall at all times have the right to inspect its Facilities being used by the Board. The Board is granted year-round use of the concession section for the uses for the term of this agreement, and the Board shall provide two keys to the concession building to the City.

4.11 Concession License. The Board is authorized to sell concessions during their scheduled hours of use. The Board is fully responsible for complying with all license and permits required for public vending. No consideration is due to the City from the sales of concessions that benefit the Board programs provided that all associated litter is routinely removed from the building and grounds. The City shall be responsible for its own permits related to food preparation and handling.

ARTICLE V.

OBLIGATIONS OF CITY

5.01 Operating Costs. For the first 5 years after administrative closeout of the CDBG grant, the Board shall pay all operating cost of the facility including utilities, custodial, maintenance, and other costs. After which time, the City will pay for one half of the ongoing utilities and custodial costs.

5.02 Budget Limitations. It is understood and agreed that City's obligations under this Agreement are subject to and may be affected by City's budget. If City is unable to fulfill its obligations under this Agreement as a consequence of City's budget, City will not be liable to the Board for any monetary damages unless it conflicts with the agreed terms of the contract.

5.03 Property Ownership. The City shall retain ownership of the property and the Facility. The Board shall be a tenant under the terms provided within this agreement stated in the purpose section without rental fee. The Board will be responsible for any tenant improvements proposed by the Board. The City must preapprove in writing any proposed improvements or modification to the facility by the Board. The City and Board may jointly make facility improvements that benefit both parties at a shared cost.

5.04 Bus Insurance. The City shall provide the legally required automobile insurance for the transportation van owned by the Board.

ARTICLE VI.

OBLIGATIONS OF THE BOARD

6.01 Senior Programs. The Board is required to meet the programming requirements for CDBG. For the first 5 years of operation after administrative closeout of the CDBG grant, the Facility must be exclusively used for senior citizens. No programs shall be allowed that provide services to persons under the age of 60 years old.

6.02 Meal Program. The Board must provide at a minimum, of 5 meals per week to senior citizen over the age of 60 years old. The meals must be prepared at the Facility and may include meals on wheels to the senior population.

6.03 Operating Costs. For the first 5 years of operation after administrative closeout of the CDBG grant, the Board shall be fully responsible for all operating cost of the facility including utilities, custodial, maintenance, and other costs. After which time, the City will pay for one half of the ongoing utilities and custodial costs.

ARTICLE VII.

ASSIGNABILITY AND EXCLUSIVITY

7.01 Assignment. This Agreement is a privilege for the benefit of the Board only and may not be assigned in whole or in part by The Board to any other person or entity. Both Parties understand that the Board's use of the Facilities is **nonexclusive** as described herein after administrative closeout of the CDBG grant. The joint use is based upon time availability with the senior center having priority.

ARTICLE VIII.

INSURANCE

8.01 The Board covenants and agrees that during the Term of this Agreement, the Board will furnish to City, at the Board sole cost and expense, a certificate of insurance as proof that it has secured and paid for policies providing general liability insurance covering all risks related to the Board's activities on, and use and maintenance of the Property. The amounts of such insurance shall not be less than \$1,000,000.00 for personal injury or death, each occurrence.

8.02 City shall be named as an additional insured under the above-described policies, and each such policy shall contain endorsements waiving subrogation rights against City and providing that such policies may not be cancelled unless City is provided with written notice of such intent to cancel at least thirty (30) days prior to any such cancellation. Each such insurance policy shall be procured from a company authorized to do business in the State of Oregon and shall be satisfactory to City. The Board shall provide evidence satisfactory to City that such coverage has been procured and is being maintained at all times during the First Term and any Renewal Term.

ARTICLE IX.

INDEMNIFICATION

9.01 THE BOARD SHALL, AT ITS SOLE COST AND EXPENSE, INDEMNIFY AND HOLD HARMLESS CITY AND ANY OFFICER, AGENT, EMPLOYEE, OR OFFICIAL OF CITY (HEREINAFTER REFERRED TO AS “INDEMNITEES”), FROM AND AGAINST ANY AND ALL LIABILITY, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS), WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY ACT OR OMISSION OF THE BOARD, ITS PERSONNEL, EMPLOYEES, MEMBERS, PLAYERS, PARTICIPANTS, COACHES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, RESULTING IN PERSONAL INJURY, BODILY INJURY, SICKNESS, DISEASE OR DEATH TO ANY PERSON OR DAMAGE TO, LOSS OF OR DESTRUCTION OF TANGIBLE OR INTANGIBLE PROPERTY, LIBEL, SLANDER, INVASION OF PRIVACY AND UNAUTHORIZED USE OF ANY TRADEMARK, TRADE NAME, COPYRIGHT, PATENT, SERVICE MARK OR ANY OTHER RIGHT OF ANY PERSON, FIRM OR CORPORATION, WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THE BOARD’S ACTIVITIES ON, OR USE OR MAINTENANCE OF, THE PROPERTY OR THE BOARD’S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE OR REGULATION.

ARTICLE XI.

GENERAL PROVISIONS

10.01 Notices All notices required herein shall be sent to the respective Parties by certified mail, return receipt requested, at the following addresses:

To City: City of Hermiston
Attention: Director of Parks and Recreation
180 NE 2nd Street
Hermiston OR 97838
541-667-5009

To the Board: Hermiston Senior Board
Attention: Irene Miller
P.O. Box 854
Hermiston OR 97838
541-567-3582

EXECUTED this ____ day of _____, 2013.

CITY:

CITY OF HERMISTON, OREGON

By: _____ Ed Brookshier, City Manager

BOARD:

By: _____ Irene Miller, Board Chairman

Attest:

City Clerk