



Resolution No. 2006-006

A RESOLUTION APPROVING THE RENEWAL OF THE AGREEMENT BETWEEN THE CITY OF SHERWOOD ("CITY") AND SHERWOOD SENIOR CITIZENS, INC. ("SENIORS")

WHEREAS, the "Seniors" currently provide services, activities and programs for the benefit of senior citizens and other members of the community;

WHEREAS, the "Seniors" operate out of a City-owned facility as outlined in the operating agreement; and


WHEREAS, the agreement is scheduled for renewal.

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

Section 1. The City Manager is hereby authorized to sign and extend the operating agreement, attached as Exhibit "A," between the Sherwood Senior Center, Inc. and the City of Sherwood.


Section 2. The Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of February 2006.



Keith S. Mays, Mayor

ATTEST:



Donna M. Martin, Interim City Recorder

AGREEMENT FOR OPERATION OF THE SHERWOOD SENIOR/COMMUNITY CENTER

THIS AGREEMENT FOR OPERATION hereinafter called "Agreement", entered into this 7th day of February, 2006 between the CITY OF SHERWOOD, Oregon, a municipal corporation, hereinafter referred to as "City", and SHERWOOD SENIOR CITIZENS, INC., an Oregon nonprofit corporation, hereinafter referred to as "Seniors."

Section 1. GENERALLY

Based upon the terms and conditions contained in this Agreement, City grants Seniors a license to provide services, activities and programs for the benefit of Senior Citizens and other community members within and on the grounds of the Sherwood Senior/Community Center, 21907 SW Sherwood Boulevard, hereinafter referred to as "Center." Seniors acknowledge that it has not nor will not make any claim of ownership of any kind to the real property that constitutes the Center. Ownership of any personal property retained and used at the Center shall be as per Exhibit "A" and the terms of this Agreement.

Section 2. TERM:

This Agreement will be for a period of two (2) years from the date noted above. The Agreement shall be automatically renewed for like periods thereafter. In the event either party wishes to terminate this Agreement, they shall give the other party not less than six months written notice of their intent to do so prior to the end of the then-existing two year term.

Section 3. REPORTS AND INFORMATION:

A. The Center maintains reports and records of operations that available for review by the City upon request. Records available for reporting include:

1. The final Center budget for the preceding fiscal year and the adopted budget for the current fiscal year.
2. List of the Centers employees, position titles and descriptions.
3. Personnel rules and policies.
4. Names, addresses and telephone numbers of the Seniors Corporate officers and Board of Directors.
5. Seniors bylaws and Articles of Incorporation.
6. Current outside contracts and arrangements for services or funding at the Center and reports and audits for above.
7. Copies of all Senior active insurance policies.
8. Report of activities and services provided Seniors and other groups including records of attendance as available.

9. Maintenance Log containing all routine and preventive maintenance performed on all fixtures and appliances. (Refer to maintenance CHART II)

B. Financial Statement.

Seniors shall annually make available to City on or before July 1st a copy of its financial statement.

Section 4. OBLIGATIONS OF SENIORS:

A. Performance Obligations.

Seniors shall (except as specifically provided otherwise by Section 5) be required to do the following:

1. Routine interior cleaning, repair, operation, maintenance including range hood¹.
2. Routine cleaning, repair, operation and maintenance of any fixtures, appliances, or other property owned by City, but regularly used by Seniors.
3. Interior redecoration or remodeling of Center unless required by City.
4. Cleaning, repair, maintenance and replacement to Center, grounds, appurtenant structures, fixtures and utilities, necessitated by negligence or accidents caused by the Seniors, Seniors' agents, employees, invitee's, or other third-party users.
5. Cleaning, repair, maintenance, and replacement, of any facility, fixture, appliance, or property at the Center that owned by Seniors as per Exhibit A or the terms of this Agreement.

B. Payment Obligations.

Seniors shall (except as specifically otherwise provided by Section 5) be obligated to pay or obtain the following:

1. Charges for electric, natural gas, and all other services and utilities used by Seniors at Center, except as for Section 5.B.1.
2. Casualty and Liability Insurance as per Section 8 of this Agreement.

C. Other Obligations.

In connection with the use of Center, Seniors shall:

1. Comply with all applicable local, state and federal laws and regulations affecting the Center and its use, correcting (at Seniors' sole expense and cost) any violation created through Seniors' use. However, it is understood that Seniors shall not be required to

¹ As used in this Section, "routine cleaning, repair, operation and maintenance" is defined as the cleaning, sweeping, and disinfecting of Center's facilities; Minor patching, touch-up painting, regular and annual preventive maintenance to all fixtures and appliances in the Center; replacement of "disposable" items such as light bulbs, toilet paper, etc. and any other activity not specifically made an obligation of the City under Section 5.

make any structural change(s) to Center to effect compliance with such laws or regulations.

2. Refrain from any activity which would make it impossible to obtain casualty/liability insurance for the Center or would unreasonably, in the City's determination, increase insurance rates.
3. Refrain from any use or activity which would be offensive to the City, third party users owners of adjoining premises or which would tend to create a common law nuisance or damage the reputation of the Center.
4. Provide for regular and full representation before and liaison with the Washington County Department of Aging, its standing and ad-hoc committees and any other agencies having an impact on Center policies, programs, and funding.

D. Center Alterations.

Seniors shall make no alterations to Center of any kind, except those defined as routine by Section 4.A above without the prior written approval of the City Manager. All alterations performed on the Center by either City or Seniors shall be the property of City when installed, except for fixtures, appliances, and personal property listed as property of the Seniors or third parties per Exhibit A.

E. Requests for repairs or Repair Obligation.

The obligation of City to make repairs or replacements shall not mature until a reasonable time after City has received written notice from Seniors describing the scope and extent perceived by Seniors to be necessary. City's obligation shall be further governed by Section 5.A of this Agreement. Except when repair or replacement of the Center, its component parts, or its appliances and fixtures is deemed, in the City's determination, to be an emergency circumstance, minor in scope or nature, or necessary as the Centers' structural integrity or routine operations are threatened, Seniors must submit all requests for repair or replacement in advance for consideration for inclusion in City's next annual budget. All such requests must be delivered in writing to City no later than February 1st of each calendar year.

F. Property Inventory.

Seniors shall maintain an ongoing inventory of all personal property acquired or deleted by Seniors. The City will not be responsible or liable for loss or damage to any personal property to a third party or Seniors listed in Exhibit A.

Section 5. OBLIGATIONS OF CITY:

A. Performance Obligations.

The City shall be required to do the following: Notwithstanding this Section and Section 4, City shall have no responsibility for the cleaning, repair, operation, maintenance or replacement of any facility, fixture, appliance, or other personal property owned by Seniors as per Exhibit A or the terms of this Agreement, unless covered by Section S.A.7 of this Agreement. (Refer to Reference Chart I)

Major maintenance, repair, and replacement² necessitated by structural disrepair, defect or obsolescence, fire or other peril covered by a standard fire insurance policy with an extended coverage endorsement, war, earthquake or other natural disaster, vandalism or malicious mischief or necessitated by compliance with applicable local, state or federal laws and regulations to the Center, its grounds, appurtenant structures, fixtures, and utilities, including:

1. exterior painting and roofing;
2. the Center's water, storm water, sanitary sewer, heating and ventilating systems natural gas, electrical, cable television and other utilities to the point of entry into the Center;
3. exterior grounds, parking lot and exterior lighting including landscaping;
4. interior walls, ceilings, doors, windows, floors and floor coverings;
5. built-in sound and public address systems
6. maintenance of fire exit lights & extinguishers

B. Payment of Obligations.

City shall be obligated to pay or obtain the following during term of this Agreement:

1. Water, sanitary sewer and storm water utility charges.
2. Casualty and liability insurance as per Section 8 of this Agreement.

C. Inspections.

Provided said activity does not interfere with the use of Center by Seniors, City shall have the right to enter upon, inspect and use the Center for City purposes. The City may also come upon the property, at all times it deems appropriate to inspect Senior's operation to assure itself that the use of the Center by Seniors is consistent with the terms of this Agreement.

D. Rule Modification Requests.

Upon review of Center's budget, audits and financial records; personnel rules and policies; articles of incorporation and bylaws; outside contracts or arrangements for services and funding; insurance coverage; and similar documents the City may require Seniors to modify or terminate same if City finds that:

1. Violations of local, State, Federal, and other laws or regulations exist.
2. The terms of this Agreement are not being met.

Section 6. CENTER USAGE.

City and Seniors understand and agree the three primary purposes of the Center are (in order of priority):

1. Senior Citizens. To provide facilities and services benefiting senior citizens and the disabled in the Sherwood area, including, but not limited to, daily in-Center and home delivered meal programs; social and recreational activities; educational and counseling activities; and medical, legal, transportation, and other assistance programs.

² As used in this Section, the phrase "major maintenance, repair, and replacement" is defined as any activity not reasonably covered by the definition of (routine) contained in section 4.A of this Agreement.

2. General Public. To provide facilities for public recreational, cultural, educational, and other assistance activities, events, and programs benefiting other residents of the Sherwood area.

3. City Business. To provide meeting space for official City business, including, but not limited to, meetings of the City Council, Planning Commission, Budget Committee, and other standing and ad hoc City sponsored groups.

Non-public usage, such as service group meetings, private parties and receptions, church services, and the like shall only be permitted after the foregoing priority uses have been fully accommodated.

Section 7. CLAIMS:

A. Liens.

Except with respect to activities for which City is responsible Seniors shall pay as due, all claims for work done on and for services rendered or material furnished to the Center and shall keep the Center free from any liens. If Seniors fail to pay any such claims or to discharge any lien, City may do so. Seniors shall be obligated to repay said sum, and the amount paid by City shall bear interest at the rate of 10 percent (10%) per annum from the date expended by City and shall be repayable on demand. Such action by City shall not constitute a waiver of any other right or remedy which City may have on account of Seniors' default.

B. Claim Payments.

Seniors may withhold payment of any claim in connection with a good faith dispute over the obligation to pay so long as City's property interests are not jeopardized. If a lien claim is filed as a result of nonpayment, Seniors shall, within thirty (30) days after knowledge of filing, secure the discharge of the lien or deposit with City cash, a corporate surety bond, or other security satisfactory to City in an amount sufficient to discharge the lien plus any costs, attorney fees and other charges that could accrue as a result of a foreclosure or sale under the lien.

C. Hold Harmless.

Seniors shall indemnify, hold harmless, and defend City from any claim, loss or liability arising out of or related to any activity of Seniors at the Center. Seniors' duty to indemnify shall not apply to or prevent any claim by Seniors against City for injury or damage to Seniors or Seniors' property for which City may be liable.

Section 8. INSURANCE:

A. City Obligations.

During the term of this Agreement, City shall procure and continue to carry the following insurance at City's cost:

1. Standard fire insurance with an endorsement for extended coverage insuring Center at its full insurable value against fire and other risks.

2. Liability and property damage insurance with limits of not less than \$300,000 per person and \$1,000,000 per occurrence for bodily injury and \$50,000 per occurrence for property damage.

B. Senior Obligations.

During the term of this agreement, Seniors shall procure and continue to carry the following insurance at Seniors' cost:

1. Separate casualty insurance for any Seniors owned personal property at the Center, as per Exhibit A.

2. Liability and property damage insurance with limits of not less than \$300,000 per person and \$1,000,000 per occurrence for bodily injury and \$50,000 per occurrence for property damage.

C. Waiver of Subrogation.

Seniors and City shall obtain from their respective insurance carriers waivers of subrogation against the other party, its agents, employees, third-party users, and invitee's. The party benefiting from a waiver of subrogation clause shall pay any additional premium required to obtain such a waiver of subrogation within ten (10) days after being notified of such additional cost unless said party can obtain such insurance satisfactory to the other party without the additional cost. Neither party shall be liable to the other for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement if such insurance was obtainable at the time of such loss or damage.

D. Third Party Insurance.

Seniors or City may require any third party utilizing the Center to provide casualty and/or liability insurance. In all cases where said use involves the sale or serving of alcoholic beverages, provision of liability insurance is mandatory in an amount of not less than \$300,000.00.

Section 9. ASSIGNMENT AND SUBLEASE:

A. Generally.

No part of the Center may be assigned, mortgaged or subleased, nor may a right of use of any portion of the Center be conferred on any third person by any other means by Seniors, except as mutually agreed to by City and Seniors. This provision shall apply to all transfers by operation of law and transfers to bond by trustees in bankruptcy, receivers, administrators, executors, and legatees. No consent in one instance shall prevent the provision from applying to a subsequent instance. City Manager shall consent to a transaction covered by this provision even when withholding such consent would be unreasonable in the circumstances.

B. Third-Party Usage.

City and Seniors may establish policies governing the use of the Center by third parties, including but not limited to, a schedule of fees and charges, attached as Exhibit B. Seniors shall have the right to accept reservations, collect fees, and schedule and make the Center available to third parties consistent with this Agreement. Fees collected by Seniors shall be

retained by Seniors and shall be used to offset the costs of operation and maintenance of the Center.

C. Outside Contracts.

City recognizes that Seniors may from time to time execute contracts with third parties to provide public funding and services at Center, and that Washington County's Department of Aging Services also provides public funding and services at Center, either through Seniors or third parties. In general, Seniors shall be obligated to cooperate with these service providers and to provide access to Center facilities without charge. Seniors are responsible for notifying City of any such County or third-party contracts, even when Seniors are not a direct party to such agreements, and providing city with copies of same. If Seniors are a party to such contracts or are otherwise required to provide consent to County or another third party for such public funding or services, Seniors shall obtain written permission from City before doing so.

Section 11. TERMINATION:

A. Termination With Cause.

1. This Agreement may be terminated by City if Seniors breach any of the terms of this Agreement. Such breach shall be specified by City to Seniors in writing. Seniors shall have forty-five days to cure said breach or such additional time as agreed to by City in writing. If the breach has not been remedied within the time specified then written notice of termination may be give by City at any time after the date upon which such breach was to be remedied. The notice of termination shall specify a date by which Seniors shall surrender the Center, which date shall not be sooner than ten (10) days from the date of notice of termination.

2. Seniors shall have the same right to terminate this Agreement upon a breach by city in the same manner and subject to the same conditions as are set forth in Section 10.A.1 of this Agreement.

Section 12. SURRENDER AT EXPIRATION OR TERMINATION:

A. Condition of Center.

Upon expiration or termination of this Agreement, Seniors' shall deliver to City all Center keys, property titles, equipment manuals and warranties, and the like, and surrender the Center to City in first-class condition and broom clean. Alterations constructed by Seniors with permission from City shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Center is used shall be excepted but repairs for which Seniors are responsible shall be completed to the latest practical date prior to such surrender.

B. Fixtures.

1. Unless otherwise specified by Exhibit A or by this section, all fixtures, appliances and furnishings placed in the Center during the term of this Agreement shall, at City's option, become the property of City upon termination of this Agreement.

2. Seniors shall remove all fixtures, appliances, and furnishings from Center, which remain the property of Seniors. If Seniors fail to do so, this shall be deemed as abandonment of

Seniors' property, and City may retain said property. All rights of Seniors with respect to such abandoned property shall cease within twenty (20) days after removal was required by written notice provided by the City, or the City may elect to hold Seniors to its obligation of removal.

3. The timing for removal of any fixtures, appliances and furnishings from Center shall be as on or before the date this Agreement expires, or terminates as per Section 10 of this Agreement.

4. Notwithstanding any provision herein above for removal of Seniors' fixtures, appliances, or furnishings on termination, City shall have first option to purchase said property from Seniors at its then fair cash market value, which option shall be exercised by City giving Seniors written notice of City's intent to purchase the fixtures and furniture. If the parties are unable to agree upon the market value, the City shall select an appraiser and Seniors shall select an appraiser. The two appraisers so selected shall select a third appraiser. The three appraisers selected shall determine fair market value of the furniture and fixtures and their determination shall be binding on the parties.

C. Holdover.

If Seniors do not vacate the Center at the time required by termination notice, City shall have the option to treat Seniors as a tenant from month to month, subject to all of the provisions of this Agreement.

Section 13. CENTER MANAGEMENT:

A. Board of Directors.

During the term of this Agreement, Seniors shall establish and maintain a board of directors to help ensure that Seniors are able to fulfill the terms of this Agreement by the most economical and efficient means, and to provide services to the community in the most beneficial and timely manner. City shall appoint one (1) member to serve on the Seniors' board of directors for the usual length of term served by other board members.

B. Center Staff.

During the term of the Agreement, Seniors shall employ sufficient staff to properly maintain and operate Center, provided that the Seniors shall employ, at a minimum, one (1) half-time equivalent Center Director. City shall appoint one (1) member to any ad hoc interview board charged with selecting a Center Director, in addition to City's seat on Seniors' board of directors. The Center Director shall be an employee solely of the Seniors.

Section 14. AGREEMENT BETWEEN CITY AND WASHINGTON COUNTY:

The parties hereto agree that this Agreement is subject to each provision of that certain Agreement entered into between City and Washington County on July 1, 1980, a copy of which is on file in the Washington County Office of Community Development and which is by this reference expressly incorporated herein. City is not, in any manner, released from its obligations and responsibilities thereunder by virtue of the execution of this Agreement with Seniors.

Section 15. MISCELLANEOUS:

A. Nonwaiver.

Waiver by either party of strict performance of any provisions of this agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

B. Attorney Fees.

If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover in addition to costs, such sum as the court may adjudge reasonable as attorney fees both on trial and appeal, if any.

C. Succession.

Subject to the above-stated limitations on transfer of Seniors' interest, this Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this instrument in duplicate on the day and year first herein above written.

CITY OF SHERWOOD, Oregon a Municipal Corporation

By Ross Schultz
Ross Schultz, City Manager

SHERWOOD SENIOR CITIZENS, INC. an Oregon Corporation

By _____
Donald E. Balsiger, President

APPROVED AS TO FORM & CONTENT
Paul Elsner, City Attorney

EXHIBIT A.

SHERWOOD SENIOR/COMMUNITY CENTER PROPERTY INVENTORY

The following inventory list is current as of the effective date of this Agreement and shall be subject to amendment from time to time as per Section 4.F of this Agreement. Ownership of all property, except for third-party property as per Section C of this Exhibit, is subject to the surrender provisions contained in Section 11.B of this Agreement. The City and Seniors assumes no responsibility or liability for loss or damage for any reason to any third-party property regularly or temporarily stored or kept at the Center. This Exhibit may be modified by mutual written consent of Seniors and City Manager without full negotiation and approval of this entire Agreement.

A. SENIORS OWNERSHIP

1. The following fixtures, appliances and personal property are owned by Seniors:

- A) One (1) Zenith Color TV Model Z2512K (Serial #491-46100690) with wood storage stand.
- B) One (1) Magnavox VCR (VR9522ATOI Serial# 41297574).
- C) One (1) Sharp Copy Machine Model SF9800.
- D) One (1) Globe Commercial Meat Cutter Model A 3420.
- E) One (1) Sharp Microwave Oven Model R9330 (Serial No.149474).
- F) One (1) Amana Radar Range.
- G) One (1) computer Pentium with creative compact disc & IBM Speakers.
- H) One (1) Monitor NEC JC1531VMA Serial # 25775532.
- I) One Hewlett Packard Printer DeskJet 682C.
- J) One (1) Panasonic Fax Machine FX-FPIOL.
- K) One (1) Sony Boombox.
- L) One (1) Kimball The Pro Entertainer Electric Organ. n. One (1) Culbransen Theatrum Organ.
- M) One (1) FARRAND Upright Piano.
- N) One (1) pool table and accessories.
- O) One (1) Prime-West Electronic Reader Board.

In addition, Seniors own all property kept at Center that falls into the following generic classifications, unless otherwise indicated by this Exhibit:

- A) All furnishings such as tables and chairs; folding tables and chairs; sofas; movable bookcases and storage cabinets; movable filing cabinets, desks, and other office furniture; and carts and garbage receptacles.
- B) All kitchen wares such as cooking and eating utensils; pots and pans; coffeemakers; and plates, glasses and cups.
- C) All office, grounds maintenance and janitorial supplies such as paper and file folders; pens and pencils; brooms, vacuums, mops and towels; cleansers; and garden tools.
- D) All food and beverages.
- E) All artwork, clocks, certificates, plaques, wall hangings, throw rugs and the like, except as listed under Section B of this Exhibit.
- F) All books, magazines, video and audio cassettes, games, and the like.
- G) All indoor plants and containers, and other decorative items.