

MEETING DATE: February 24, 2014

AGENDA ITEM : Approval of a Memorandum of Understanding Between
the City of Culver City and the Culver City Senior Citizens Association

ATTACHMENTS

1. Proposed MOU

Pages
1-143

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE CITY OF CULVER CITY
AND
THE CULVER CITY SENIOR CITIZENS ASSOCIATION, INC.**

This Memorandum of Understanding (MOU) is made and entered into by and between the City of Culver City (CITY) and the Culver City Senior Citizens Association, Inc., a California not-for-profit Organization (CCSCA). CITY and CCSCA do hereby agree as follows:

SECTION 1 - RECITALS

- A. WHEREAS, CITY owns and operates the property located at 4095 Overland Avenue, commonly known as the Culver City Senior Center, located in the City of Culver City, County of Los Angeles, State of California.
- B. WHEREAS, CITY appropriates certain resources to be used for producing events and programming for the enjoyment and education of the senior citizen community of the City of Culver City and surrounding area.
- C. WHEREAS, CCSCA is a 501(c)(3) charitable nonprofit corporation organized and existing under the laws of the State of California for the purposes of providing educational, recreational and social services of senior citizens 50+ years in age in the Culver City community and surrounding area. These services also offer opportunities for access to information, support, and personal growth, which help to improve and sustain health, as well as nourish the overall quality of life of senior citizens.
- D. WHEREAS, CITY and CCSCA have and desire to continue to co-sponsor activities, services, and special events held at PRCS FACILITIES, including the SENIOR CENTER.
- E. WHEREAS, CITY and CCSCA have a long history of cooperatively providing services and programming of benefit and interest to senior citizens residing in Culver City and the surrounding area.
- F. WHEREAS, CITY and CCSCA desire to formalize that cooperative relationship by entering into this MOU, whereby the rights, responsibilities and duties of CITY and CCSCA shall be enumerated.

NOW, THEREFORE, CITY and CCSCA do agree as follows:

SECTION 2. DEFINITIONS

- A. **CCSCA:** The Culver City Senior Citizens Association, Inc., a California 501(c)(3) charitable nonprofit corporation. CCSCA is a separate legal entity apart from CITY.
- B. **CCSCA BOARD:** The Board of Directors of CCSCA as duly elected and acting pursuant to the GOVERNING DOCUMENTS.
- C. **CCSCA GOVERNING DOCUMENTS:** The Articles of Incorporation, Bylaws, and other legal documents creating and specifying the organization and operation of CCSCA.
- D. **CCSCA GRANT:** Any equipment, materials or other personal property purchased by CCSCA and donated to and accepted by CITY for use in CITY PROGRAMMING and/or CCSCA PROGRAMMING. Upon acceptance by CITY, such grants shall become the sole property of CITY.
- E. **CCSCA MEMBER:** A person who meets the requirements for membership in CCSCA and has presented an application and paid any required dues for such membership, and is recognized by CCSCA as a member of the CCSCA.
- F. **CCSCA PROGRAMMING:** Services and activities provided by CCSCA, at its sole cost and expense, for the benefit of CCSCA MEMBERS.
- G. **CITY:** The City of Culver City, a California municipal corporation and charter city.
- H. **CITY COUNCIL:** The CITY COUNCIL of the City of Culver City.
- I. **CITY MANAGER:** The duly appointed and acting City Manager of the City of Culver City, or his/her designee.
- J. **CITY PROGRAMMING:** Services and activities provided by CITY, at its cost or in partnership and cooperation with CCSCA, as the case may be, for the benefit of the general senior citizen community, including, but not limited to, CITY's volunteer program, disability and social services, and Senior Nutrition Program. Participation in CITY PROGRAMMING does not require CCSCA Membership.
- K. **DIRECTOR:** The duly acting Director of the Department of Parks,

Recreation and Community Services as appointed by the CITY MANAGER or his/her designee.

- L. **MOU:** This Memorandum of Understanding by and between CITY and CCSCA.
- M. **PARTIES:** Collectively, CITY and CCSCA.
- N. **PRCS GUIDELINES:** The document entitled "Participant Guidelines and Information" prepared by CITY, as that document may be amended from time to time, related to the conduct of CCSCA MEMBERS and others while visiting the SENIOR CENTER and other PRCS FACILITIES and/or participating in CITY PROGRAMMING and/or CCSCA PROGRAMMING. As stated in the PRCS GUIDELINES, visitors of PRCS FACILITIES are expected to abide by certain general guidelines in order to ensure that all persons can enjoy a safe and positive experience when visiting PRCS FACILITIES and/or participating in CITY PROGRAMMING and/or CCSCA PROGRAMMING.
- O. **PRCS FACILITIES:** CITY-owned and operated facilities used for recreational purposes, including, but not limited to, the SENIOR CENTER, VETERANS' MEMORIAL BUILDING, Culver City Teen Center and City parks. This includes adjacent parking lots.
- P. **PRCS RESOURCES:** Resources that are owned by the CITY and/or under the control and/or supervision of the DIRECTOR. Such resources include, but are not limited to rooms at PRCS FACILITIES, CITY employee time, and CITY-owned computers, printers, furniture, exercise or other equipment and any other personal property.
- Q. **SENIOR CENTER** – The building located at 4095 Overland Avenue in the City of Culver City, owned by CITY, and used primarily as a venue for providing programs and services for the benefit of the senior citizen community of the City of Culver City and surrounding area.
- R. **VETERANS MEMORIAL BUILDING** – The building located at 4117 Overland Avenue in the City of Culver City, owned by CITY, and used primarily as a meeting and event facility and as a venue for recreational classes, for the benefit of the general public.

SECTION 3 - CITY'S RIGHTS, DUTIES, AND RESPONSIBILITIES.

- A. Notwithstanding any other provision of this MOU, the obligation of CITY to provide PRCS RESOURCES shall be subject to CITY'S annual appropriations/budget process. Only PRCS RESOURCES made

available by the CITY COUNCIL, in its sole discretion, are the subject of this MOU.

- B. In the sole discretion of the CITY MANAGER, if CITY determines that it is in the public interest, or protects the public health, safety and/or welfare, CITY reserves the right to temporarily modify or temporarily suspend: 1) CCSCA PROGRAMMING conducted in PRCS FACILITIES and/or utilizing PRCS RESOURCES; and/or 2) the use of PRCS FACILITIES and/or PRCS RESOURCES by CCSCA.
- C. To fulfill its obligation to provide for a safe working environment for its employees and to provide for the public health, safety, and welfare of the general public, CITY shall have the sole authority to establish and amend, as it deems appropriate, the PRCS GUIDELINES.
- D. CITY shall, subject to the approval of the DIRECTOR, provide CCSCA with PRCS FACILITIES and PRCS RESOURCES for purposes of providing CCSCA PROGRAMMING, in accordance with this MOU. Such PRCS FACILITIES and PRCS RESOURCES may include, but are not limited to the following:
 - 1. Office space with a stand-alone key, daily custodial services, phone and fax line access, and utilities at the SENIOR CENTER for use by CCSCA Board Members only. Unless authorized in writing by the DIRECTOR, CCSCA Board Members may access the office only during regular hours of operation. CCSCA shall provide all necessary furniture and equipment for such office space. Such office space provided by CITY is subject to change.
 - 2. Individual security access codes for the SENIOR CENTER. CCSCA agrees these access codes are confidential and shall be used only by CCSCA Board Members or designees as authorized by the DIRECTOR.
 - 3. Day Porter staff support for setup and breakdown of equipment in rooms designated for pre-authorized CCSCA PROGRAMMING.
 - 4. Building Maintenance services to maintain PRCS FACILITIES in proper operating order.
 - 5. Custodial staff support for the periodic cleaning of PRCS FACILITIES.
 - 6. Landscaping and tree trimming services for the periodic maintenance of PRCS FACILITIES.

7. Parking lot sweeping for weekly cleaning of City parking lots.
- E. Subject to the provisions of Section 3.A of this MOU, City shall pay for:
1. Utility costs incurred through the operation of PRCS FACILITIES utilized by CCSCA.
 2. Building and Landscaping maintenance costs for PRCS FACILITIES.
- F. In its sole discretion, but in consultation with CCSCA, CITY shall identify, develop, and implement CITY PROGRAMMING.
- G. CITY shall identify, reserve, and provide PRCS FACILITIES for CITY PROGRAMMING and CCSCA PROGRAMMING. The PRCS FACILITIES and PRCS RESOURCES provided are subject to change by CITY in its sole discretion, in consultation with CCSCA.
- H. CITY shall develop all marketing material related to CITY PROGRAMMING, including CITY's website. For CCSCA PROGRAMMING, CITY reserves the right to review and approve any marketing material produced by CCSCA related to such programming.
- I. CITY shall print CCSCA marketing and membership materials including, but not limited to Senior Center Monthly Newsletter, Activities Flyers, CCSCA Membership Cards and CCSCA Forms for CCSCA Registration.
- J. CITY shall assist CCSCA by providing referral information to the senior citizen community regarding CCSCA PROGRAMMING.
- K. With the approval of the DIRECTOR, CITY shall oversee and participate in the daily collection and processing of CCSCA fees for membership, parking, and CCSCA PROGRAMMING.
- L. When the DIRECTOR provides the approval required in Subsection K. above, CITY shall produce weekly cash register reports, including a tally of all monies collected and processed on behalf of CCSCA through the Culver City Senior Center business desk.
- M. CITY may, in its sole discretion:
1. Accept from or return to CCSCA any CCSCA GRANT for sale or disposal by the CCSCA. Any proceeds from such sales shall be used by CCSCA for CITY PROGRAMMING and/or CCSCA PROGRAMMING.

2. Approve any or all CCSCA independent contractor agreements for the provision of CCSCA PROGRAMMING.
 3. Close a portion or the entirety of PRCS FACILITIES used by CCSCA to allow for maintenance, repair, or use by CITY for a CITY event as deemed necessary. Other than in the event of an emergency, such closure shall be done after providing CCSCA with at least 48 hours notice.
 4. Set the hours of operation of all PRCS FACILITIES.
 5. Access any PRCS FACILITIES, including all rooms, offices, and storage areas used by CCSCA, at any time without notice to CCSCA.
- N. CITY is not responsible for, and does not necessarily endorse, the content of CCSCA's materials, agreements and/or CCSCA PROGRAMMING.

SECTION 4 – CCSCA'S RIGHTS, DUTIES, AND RESPONSIBILITIES.

CCSCA hereby agrees to the following:

- A. CCSCA and its directors, officers, members, agents and volunteers shall not have any possessory interest in any PRCS RESOURCES or PRCS FACILITIES.
- B. CCSCA shall not lease, assign or license the use of any PRCS RESOURCES or PRCS FACILITIES at any time without the express, written consent of the CITY.
- C. Throughout the term of this MOU, CCSCA shall maintain charitable not-for-profit status with the Internal Revenue Service of the United States and the Franchise Tax Board of the State of California.
- D. CCSCA BOARD OF DIRECTORS' meetings shall be held in accordance with applicable law and the GOVERNING DOCUMENTS.
- E. CCSCA, shall identify, develop, and implement CCSCA PROGRAMMING, with the written consent and approval of the DIRECTOR and subject to CCSCA approval and acceptance of costs associated with such CCSCA PROGRAMMING.
- F. CCSCA shall provide CCSCA PROGRAMMING in compliance with all federal, state, and local laws, rules and regulations, including the GOVERNING DOCUMENTS and PRCS GUIDELINES.

CCSCA may adopt supplementary rules or conditions for CCSCA Members' participation in CCSCA PROGRAMMING. Such rules or conditions shall be subject to the approval of the DIRECTOR and shall not be in conflict with the PRCS GUIDELINES.

- G. CCSCA shall maintain fiscal accountability and prepare records of financial transactions associated with the operation of CCSCA as legally obligated, including weekly, monthly and annual income and expenditure reports. These records shall be subject to inspection and review CITY upon the request of the DIRECTOR.
- H. CCSCA shall work in cooperation with CITY to track, account and administer fees and grants that are linked to CITY PROGRAMMING as identified by the DIRECTOR.
- I. CCSCA shall process in a timely manner requests from CITY for funding with regard to CITY PROGRAMMING, as such funding may be approved by the CCSCA BOARD.
- J. CCSCA shall work in cooperation with CITY to co-sponsor CITY PROGRAMMING held at PRCS FACILITIES.
- K. CCSCA shall provide all CCSCA MEMBERS with proof of membership. Such proof of membership shall be necessary to participate in CCSCA PROGRAMMING.
- L. CCSCA shall, at its sole cost and expense, provide the necessary equipment, materials, volunteers, and independent contractors to operate and maintain the computer lab, fitness room and billiards room at the SENIOR CENTER during the regular hours of operation as determined by DIRECTOR.
- M. CCSCA shall, at its sole cost and expense, provide the necessary equipment, materials, volunteers, and independent contractors to conduct CCSCA PROGRAMMING.
- N. CCSCA may establish independent contractor agreements with individuals, organizations, or companies that produce CCSCA PROGRAMMING. CCSCA shall be solely responsible for the administration, oversight and enforcement of such independent contractor agreements. The format of the CCSCA independent contractor agreements shall be pre-approved by CITY and shall include, but not be limited to, the following provisions:

1. Clearly identify the scope of services.

2. Length of service, service start & ends time, location.
 3. Liability Insurance including the CITY, its elected officials, officers, employees, agents, and volunteers as additional insureds. The amount of such insurance shall be subject to approval by CITY.
 4. Hold harmless and indemnification of CITY, its elected officials, officers, employees, agents, and volunteers.
 5. Current City Business Tax Certificate.
- O. CCSCA shall not alter the existing physical contours, features or improvements of PRCS FACILITIES (interior and exterior) and/or PRCS RESOURCES without first requesting in writing and receiving written approval from the DIRECTOR. If such request is approved in writing by the DIRECTOR, and the CCSCA GRANT of project funding is approved and accepted by CITY COUNCIL, then:
1. Work to complete the proposed project shall be done by CITY.
 2. CITY shall establish an independent account number to track interest and expenditures associated with the project, assign a project manager, and follow all federal, state, and local laws, rules and regulations regarding bids, award of contracts and construction.
- P. Check CCSCA membership cards prior to participating in any CCSCA PROGRAMMING.
- Q. To provide an appropriate CCSCA volunteer(s) or committee to oversee and coordinate CCSCA PROGRAMMING, including the activities produced by any CCSCA independent contractor, subject to the approval of the DIRECTOR.
- R. With the exception of the permitted uses described in this MOU, CCSCA shall not be authorized to use PRCS FACILITIES or PRCS RESOURCES for any other purpose whatsoever without the prior written consent of DIRECTOR.
- S. CCSCA shall remove all trash and debris after conducting any CCSCA PROGRAMMING and leave the PRCS FACILITIES in the same condition in which the PRCS FACILITIES were found upon commencement of such CCSCA PROGRAMMING.
- T. CCSCA is solely responsible for the content of CCSCA's materials, agreements and/or CCSCA PROGRAMMING.

SECTION 5 – COMPLAINT RESOLUTION

- A. CCSCA shall be solely responsible for resolution of complaints related to violations of its GOVERNING DOCUMENTS or any other CCSCA adopted rules and regulations related to participation in CCSCA PROGRAMMING and CCSCA meetings. Further, CCSCA BOARD may determine any appropriate action to be taken in response to such violation, including potential suspension from participation in CCSCA PROGRAMMING or attendance at the CCSCA meetings.
- B. CITY shall be solely responsible for resolution of complaints related to violations of the PRCS GUIDELINES and/or any applicable federal, state and local laws, regulations and/or policies. Further, CITY may determine any appropriate action to be taken in response to such violation, including potential suspension from participation in CCSCA PROGRAMMING, CITY PROGRAMMING, and/or use of PRCS FACILITIES.
- C. Notwithstanding Subsection A of this Section 5, in the case where a violation is within the jurisdiction of CITY as set forth in Subsection B, CITY shall be responsible for resolution of such complaint.
- D. Notwithstanding any provision of this Section 5, CITY and CCSCA may, upon mutual agreement, determine to work jointly to resolve complaints.
- E. In the case any CCSCA adopted rule or regulation is in conflict with the PRCS GUIDELINES or any applicable federal, state and/or local laws, regulations and/or policies, the PRCS GUIDELINES, and the applicable federal, state and local laws, regulations and/or policies shall control.

SECTION 6 – GENERAL PROVISIONS

- A. **Independent Contractor Status.** CCSCA, its respective directors, officers, agents, employees, members and volunteers, shall act in an independent capacity and not as officers, agents, representatives, or employees of CITY.
- B. **Applicable Laws, Codes and Regulations.** CCSCA shall comply with all applicable federal, state and local laws, codes and regulations.
- C. **Notices.** Any notices, requests and demands made by the CITY and

CCSCA regarding this MOU shall be directed as follows:

To the CITY: City of Culver City
 City Manager
 9770 Culver Boulevard
 Culver City, CA 90232

To CCSCA: Culver City Senior Citizens Association, Inc.
 4095 Overland Avenue
 Culver City, CA 90230

Either party may, on notice to the other, change their address for notices.

D. Modification of Agreement. This MOU may not be modified, nor may any of the terms, provisions or conditions be modified or waived or otherwise affected, except by a written amendment signed by all PARTIES hereto.

E. Assignment Prohibited; Hypothecation. This MOU is for the specific benefit of CCSCA and any attempt by CCSCA to assign the benefits or obligations of this MOU without prior written approval of CITY shall be prohibited and shall be null and void. CCSCA shall not mortgage, pledge, or otherwise hypothecate PRCS FACILITIES or PRCS RESOURCES as security for the payment of any debt, for the purpose of securing funds for CCSCA's use, and any such instrument shall be null and void insofar as the PRCS FACILITIES or PRCS RESOURCES are concerned.

F. Governing Law and Litigation Fees. The terms of this CCSCA MOU shall be interpreted according to the laws of the State of California. If litigation arises out of this CCSCA MOU, then the parties shall attempt to mediate the dispute, in good faith, prior to taking any other action. If mediation is unsuccessful, the parties may agree to arbitrate the dispute in accordance with the rules of the American Arbitration Association. If either party does not agree to arbitration or is unsatisfied with the results of the arbitration, then venue shall be in the Superior Court of Los Angeles County. In the event of legal action, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and costs and expenses actually incurred, in addition to any other relief the court deems just and proper. The parties agree to provide each other with ninety (90) days' written notice of intent to take legal action to enforce the terms and conditions, responsibilities and duties as outlined in this CCSCA MOU, prior to the filing of any legal action.

G. Waiver. If at any time one party shall waive any term, provision or condition of this CCSCA MOU, either before or after any breach thereof, no party shall thereafter be deemed to have consented to any future failure of full performance hereunder.

H. Integrated Agreement. This CCSCA MOU represents the entire agreement between CITY and CCSCA regarding the subject matters hereof, and all preliminary negotiations and agreements are deemed a part of this CCSCA MOU. No verbal agreement or implied covenant shall be held to vary the provisions of this CCSCA MOU. This CCSCA MOU shall be binding upon and inure to the benefit of all parties to this CCSCA MOU and their directors, officers, officials, agents, employees, former employees, members, volunteers, successors and assigns, and all persons or entities acting by, through, under or in concert with them, and any subsequent successors and assigns.

I. Severability. If any section, paragraph, sentence, clause, phrase or portion of this CCSCA MOU is deemed invalid, then that invalidity shall not affect the validity of the remainder of this CCSCA MOU.

J. Indemnification and Hold Harmless. CCSCA shall indemnify, defend and hold harmless CITY and its elected officials, officers, employees, agents and volunteers (hereinafter collectively, "Indemnitees"), from and against any and all liability, claims, damages, judgments or awards, including costs, for damage to real or personal property, or personal injury or death, resulting from CCSCA's, or any of its directors', officers', employees', agents', contractors', subcontractors' or volunteers' acts, errors or omissions arising out of or connected with this MOU. In addition, CCSCA shall indemnify, hold harmless and defend Indemnitees for any and all claims, judgments, demands and liability, including attorney fees and medical, court and appeals board and any other costs related to any worker's compensation claim, benefits or liability resulting from any injury to any CITY employee resulting from CCSCA's, or any of its directors', officers', employees', agents', contractors', subcontractors' or volunteers' acts, errors or omissions arising out of or connected with CCSCA PROGRAMMING, use of PRCS FACILITIES and/or PRCS RESOURCES and/or any other provisions of this MOU.

K. Insurance. Without limiting any other obligation set forth in this MOU, CCSCA shall provide City with a Certificate of Insurance in the amount of Two Million Dollars (\$2,000,000) for General Liability (the "Policy"), as set forth in and in addition to the insurance requirements attached as Exhibit A to this MOU. That amount may be provided by two separate One Million Dollar (\$1,000,000) policies. The Policy(ies) shall provide, or be endorsed, with an endorsement approved by the City Attorney's Office, which shows CITY and its elected officials, officers, employees, agents and volunteers are additional insureds under the Policy, the Policy is primary, the Policy has a severability provision and any other City-policy is non-contributing.

L. Term of MOU. This MOU shall become effective on the date it is executed by CITY. This MOU shall have an initial term from its effective date until June 30, 2016. At the end of this initial term, this MOU shall automatically renew on an annual basis unless otherwise modified or terminated in accordance with

Sections 6.D and 6.M of this MOU, respectively.

M. Right to Terminate MOU. CITY or CCSCA may terminate this MOU, with or without cause, by providing 90 days' written notice to the other PARTY. In the event of termination of this MOU, CCSCA's use of PRCS RESOURCES and/or PRCS FACILITIES shall also terminate.

N. Maintenance of Charitable 501(c)(3) Status, Insolvency/Bankruptcy, Cease to Exist: During the term of this CCSCA MOU, in the case CCSCA should lose its status as a 501(c)(3) organization, become insolvent or bankrupt, or cease to exist as a corporate entity, such would constitute a default under this CCSCA MOU. Should CCSCA fail to cure such default, once notified of such default by CITY, within 90 days of such notice, then CITY may terminate this CCSCA MOU provided that such termination shall not become effective until 30 days after the date of such termination is provided by CITY.

O. No Interest in Real Property: This MOU does not create any interest in real property. However, if it is determined this MOU creates a taxable interest for any purpose, then CCSCA shall be solely responsible to pay such taxes.

P. Effective Date. The effective date of this MOU is the date it is signed on behalf of the CITY and shall remain in full force and effect until amended or terminated as provided herein.

Q. Future Cooperation: Nothing in this MOU prevents consideration by the PARTIES of further partnership and collaboration between the CITY and CCSCA.

R. Authority to Enter Into Agreement: The individual(s) executing this MOU on behalf of each PARTY is authorized to execute this MOU on behalf of said PARTY. Each PARTY has taken all actions required by law to approve the execution of this MOU.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by and through their respective authorized officers, as of the date written herein below.

CCSCA

Date: _____

Date: _____

CITY OF CULVER CITY

JOHN M. NACHBAR, City Manager

Date: _____

APPROVED AS TO FORM:

CAROL A. SCHWAB, City Attorney

DRAFT