

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF YAKIMA
AND
YAKIMA VALLEY SENIOR CITIZENS, INCORPORATED (SENIORS, INC.)**

THIS MEMORANDUM OF UNDERSTANDING is agreed to by both the City of Yakima, a Washington municipal corporation, herein referred to as "City" and the Yakima Valley Senior Citizens, Incorporated, a Washington non-profit corporation, herein referred to as "Seniors, Inc."

NOW, THEREFORE, in consideration of the mutual covenants, promises, and Memorandums set forth herein, it is agreed by and between the City and Seniors, Inc. as follows:

1. Services. Seniors, Inc. will continue to conduct fundraisers throughout the year to raise funds to support the Harman Center in furthering services to seniors, pursuant to Seniors, Inc.'s Articles of Incorporation. The City agrees to coordinate with Seniors, Inc. regarding meetings, fundraisers, and services outlined in the scope of work, attached. Seniors, Inc. has an office provided to the organization at the Harman Center in a location to be determined by the City and which may periodically be moved pursuant to the needs of programs at the Harman Center. Meetings, events and space use is allowed as follows:

a. Board/General Meetings. All Board/General Meetings will be conducted at the Harman Center. The General Meeting is coordinated and scheduled with Harman Center Staff to ensure classroom space is available. General Meetings are conducted on the 2nd Thursday of each month, unless otherwise addressed due to facility closures. Board Meetings are conducted the Monday prior to the 2nd Thursday General Meeting.

b. Office/Coffee Bar Space & Use. An Office and Coffee Bar space is provided for Seniors, Inc. at the Harman Center. Use of space, computers, copiers, office supplies, and utilities is provided by the City as long as Seniors, Inc. uses funds to support the Harman Center in furthering services to seniors and maintaining Harman Center building, as outlined in Section 2 below.

c. Fundraising Events. If Seniors, Inc. chooses to conduct a fundraiser for the benefit of the Harman Center and where all funds from the fundraiser shall be used at the Harman Center for capital improvement projects or other projects agreed to by the City, Seniors, Inc. may use space within the Harman Center at no cost, pursuant to the consideration below. Such fundraisers shall be coordinated with the City to ensure there is adequate space and that it does not conflict with other programming, and will follow all Harman Center policies.

2. Consideration. In consideration of Seniors, Inc.'s provision of volunteers at the Harman Center and donations for facility improvements, as well as Seniors, Inc.'s compliance with this Memorandum of Understanding, the City will provide office, board meeting and fundraiser space (as outlined above) at no cost to Seniors, Inc. Further, the consideration includes the volunteer hours spent by members of Seniors, Inc. at the Harman Center, which makes the Harman Center an inviting place for seniors to visit and experience. Seniors, Inc., in consideration of this Memorandum, also agrees that each year a meeting will be held with the City to coordinate and discuss needed and desired capital improvement projects at the Harman Center for which Seniors, Inc. can pay from the monies donated and raised by Seniors, Inc. It is anticipated by the parties that yearly expenditures for facility improvements will be agreed upon by the parties to continue to provide an inviting facility to seniors in Yakima.

3. Reporting. Seniors, Inc. shall provide a written report, if requested, to the City summarizing the programming provided, the number of participants served in its programs, the number of persons attending its fundraising activities held at the Harman Center, the outcomes of programming, including funds raised at fundraising events, and a summary of how the scope of work was fulfilled. Seniors, Inc. should continue their longstanding practice of taking detailed notes and minutes at their monthly Board and General Meetings.

4. Term. The term of this Memorandum shall commence on the day on which it is signed and shall terminate on December 31, 2019, unless sooner terminated in accordance with this Memorandum. The Memorandum shall automatically renew yearly unless otherwise terminated.

5. Independent Contractor Status of Seniors, Inc. Seniors, Inc. and the City understand and expressly agree that Seniors, Inc. and its agents, directors, officers, members and volunteers are independent contractors in the performance of each and every part of this Memorandum. No officer, volunteer, and/or agent of Seniors, Inc. shall act on behalf of or represent himself or herself as an agent or representative of the City. Seniors, Inc., as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Memorandum. Seniors, Inc., its agents, directors, officers, members and volunteers, expressly represent warrant and agree that their status as an independent contractor in the performance of the work and services required under this Memorandum is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195. Seniors, Inc. and its officers, volunteers, members, agents and/or subcontractors shall make no claim of City employment nor shall claim against the City any related employment benefits, social security, or retirement benefits. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership or agency between Seniors, Inc. and the City.

6. Seniors, Inc. Fundraisers & Trips. All fundraisers for monies to be used other than for the benefit of the Harman Center, and all trips off premises (located at places other than the Harman Center even if the Harman Center is used as a meeting place or parking place) offered by Seniors, Inc. conducted throughout the year are separate and independent of use of the Harman Center, and are not supported or sponsored by the City of Yakima. This includes, but is not limited to, trips to casinos, trips to baseball games or any other event that is not coordinated through the City of Yakima, and fundraisers to raise money for any other reason other than money going directly to the Harman Center and the City of Yakima. If use of the Harman Center is necessary for other fundraisers and trips, such as the examples above, such use will be coordinated and scheduled with Harman Center staff to ensure that space and staffing needed is available, and all Harman Center policies will be followed. All City sponsored Harman Center Programs/Trips & Tours take priority over any Seniors, Inc. programs or trips when scheduling room availability if there is a conflict. Efforts will be made to accommodate all programming, however, Seniors, Inc. acknowledges that the City may not be able to accommodate every event or activity at the Harman Center.

7. Inspection of Financial Records. Seniors, Inc. will maintain records and documents necessary to assure the proper accounting of all funds paid to Seniors, Inc. In the event Seniors, Inc. receives funding of any kind from the City, or raises money on behalf of the Harman Center, the City, or any of its duly authorized representatives, will have a right to access such records and documents for the purpose of making an inspection, an audit and/or copies. In the event that any such inspection or audit identifies any discrepancy in the accounting of funds paid to Seniors, Inc. by the City, Seniors, Inc. shall provide the City with appropriate written clarification within thirty (30) calendar days of notification from the City of the discrepancy.

8. Taxes and Assessments. Seniors, Inc. shall be solely responsible for paying all related taxes, deductions, and assessments, including but not limited to, federal income tax, assessments for industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Memorandum. In the event the City is assessed a tax or assessment as a result of this Memorandum, Seniors, Inc. shall pay the same before it becomes due.

9. Nondiscrimination Provision. During the performance of this Memorandum, Seniors, Inc. shall not discriminate in violation of any applicable federal, state and/or local law or regulation, on the basis of race, color, sex, religion, national origin, creed, marital status, political affiliation, the presence of any sensory, mental or physical handicap, or any other basis that would violate state or federal law. This provision shall include but not be limited to the following: provision of services, upgrading, demotion, transfer, recruitment, advertising, selection for training, and the provision of services under this Memorandum.

10. The Americans with Disabilities Act. Seniors, Inc. agrees to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq., as amended, and its implementing regulations, and Washington State's anti-discrimination law as contained in RCW Chapter 49.60 and its implementing regulations. The ADA provides comprehensive civil rights to individuals with disabilities in the area of employment, public accommodations, state and local government services, and telecommunications.

11. Compliance with Law. Seniors, Inc. agrees to perform the services required by this Memorandum in full compliance with any and all applicable laws, rules and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local or otherwise.

12. Records Retention and Disclosure.

a. The City is required by law to comply with the Washington State Public Records Act (PRA), Chapter 42.56 RCW. All records relating to Seniors, Inc.'s services under this Memorandum of Understanding and/or on behalf of or in partnership with the City must be made available to the City, and also produced to third parties, if required, pursuant to the PRA or by law. All determinations of records subject to release under the PRA, or otherwise required by law, shall be at the sole discretion of the City. This Memorandum of Understanding and all public documents associated with this Memorandum shall be available to the City for inspection and copying by the public where required by the PRA or other law, to the extent that public records in the custody of Seniors, Inc. are needed for the City to respond to a request under the PRA, as determined by the City. If Seniors, Inc. considers any portion of any records provided to the City under this Memorandum, whether in electronic or hard copy form, to be protected from disclosure under law, Seniors, Inc. shall clearly identify any specific information that it claims to be confidential or proprietary. If the City receives a request under the PRA to inspect or copy the information so identified, and determines that the release of the information is required or otherwise appropriate, the City's sole obligation shall be to notify Seniors, Inc. of the request and the date such information will be released to the requestor unless Seniors, Inc. obtains a court order to enjoin the release, pursuant to RCW 42.56.450. If Seniors, Inc. fails to timely obtain a court order enjoining disclosure, the City will release the requested information on the date specified. The City has, and by this section assumes, no obligation on behalf of Seniors, Inc. to claim any exemption for disclosure under the PRA. The City shall not be liable to Seniors, Inc. for releasing records not clearly identified by Seniors, Inc. as confidential or proprietary. The City

shall not be liable to Seniors, Inc. for any records that the City releases in compliance with the PRA, this section, or in compliance with an order of a court of competent jurisdiction.

b. The records relating to the actions taken and work done pursuant to this Memorandum shall, at all times, be subject to inspection by the City. Senior Inc.'s records relating to this Memorandum will be provided to the City upon the City's request.

c. Seniors, Inc. shall promptly furnish the City with such information and records which are related to this Memorandum as may be requested by the City. Until the expiration of six (6) years after completion of the terms and conditions of this Memorandum, or for a longer period if required by law or by the Washington State Secretary of State's record retention schedule, Seniors, Inc. shall retain and provide the City access to (and the City shall have the right to examine, audit and copy) all of Seniors, Inc.'s books, documents, papers and records which are related to this Memorandum.

d. All City information which, under the laws of the State of Washington, is classified as public or private, will be treated as such by Seniors, Inc. Where there is a question as to whether information is public or private, the City shall make the final determination. Seniors, Inc. shall not use any information, systems, or records made available to it for any purpose other than to fulfill the Memorandum duties specified herein. Seniors, Inc. agrees to be bound by the same standards of confidentiality that apply to the employees of the City and the State of Washington. The terms of this section shall be included in any subcontracts executed by Seniors, Inc. for work associated with this Memorandum.

13. No Conflict of Interest. Seniors, Inc. covenants that neither it nor its officers have any interest and shall not hereafter acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Memorandum. Seniors, Inc. further covenants that it will not recruit anyone or any entity having such a conflict of interest during the performance of this Memorandum.

14. City Does Not Provide Insurance. It is understood that the City does not maintain liability insurance for Seniors, Inc. and/or its officers, agents, volunteers or subcontractors.

15. Insurance Required.

a. Liability Insurance. Before this Memorandum is fully executed by the parties, Seniors, Inc. shall provide the City with a Certificate of Insurance as proof of liability insurance providing coverage for bodily injury and property damage with limits not less than One Million Dollars per occurrence, and Two Million Dollars in the aggregate. Coverage shall also be provided for Non-Owned and Hired Automobile Liability, with a limit no less than One Million Dollars. The above coverage limits may be satisfied by the procurement of an Umbrella or Excess policy if necessary. The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Memorandum. The policy shall name the City, its elected and appointed officials, officers, employees, agents and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without giving the City thirty (30) days prior written notice. The Certificate of Insurance shall be provided to the City annually with each new insurance policy period. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

b. Directors and Officers Insurance. Before this Memorandum is fully executed by the parties, Seniors, Inc. shall provide the City with a Certificate of Insurance as proof of directors and officers liability coverage with total minimum liability limits of One Million Dollars (\$1,000,000) per claim combined single limit bodily injury and property damage, and One Million Dollars (\$1,000,000) aggregate. The certificate shall clearly state who the provider is, the amount of

coverage, the policy number, and when the policy and provisions are in effect. Said policy shall be in effect for the duration of this Memorandum. The policy shall name the City, its elected and appointed officials, officers, agents, volunteers and employees as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without giving the City thirty (30) days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. If the policy is written on a claims made basis, the coverage will continue in force for an additional two years after the completion of this Memorandum.

c. Seniors, Inc. shall require that all subcontractors it enters into Memorandums with shall maintain and provide proof of insurance in accordance with this section, including but not limited to the same level of coverage and naming the City, its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington, or an approved surplus lines company.

d. Survival. The provisions of this section shall survive the expiration or termination of this Memorandum with respect to any event occurring prior to such expiration or termination.

16. Indemnification and Hold Harmless.

a. The City shall protect, defend, exonerate, and indemnify and hold harmless Seniors, Inc., its directors, officers, members, volunteers and employees from and against any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings, causes of action, and all judgments, awards, damages, costs and expenses of any kind or nature whatsoever, including, but not limited to, attorneys' fees, disbursements and court costs, resulting from death, personal harm or bodily injury to any person or damage or destruction to Seniors, Inc. or any third party or third parties to the extent caused by any intentional and/or negligent act and/or omission for the City, its elected and appointed officials, agents, officers, and employees and/or subcontractors, arising out of this Memorandum.

b. Seniors, Inc. shall protect, defend, exonerate, and indemnify and hold harmless the City, its elected and appointed officials, agents, officers, volunteers and employees from and against any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings, causes of action, and all judgments, awards, damages, costs and expenses of any kind or nature whatsoever, including, but not limited to, attorneys' fees, disbursements and court costs, arising out of, relating to, or connected with the activities and scope of work of Seniors, Inc. related to this Memorandum.

c. Seniors, Inc. shall protect, defend, exonerate, and indemnify and hold harmless the City, its elected and appointed officials, agents, officers, volunteers and employees from and against any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings, causes of action, and all judgments, awards, damages, costs and expenses of any kind or nature whatsoever, including, but not limited to, attorneys' fees, disbursements and court costs, resulting from death, personal harm or bodily injury to any person or damage or destruction to the City or a third party or third parties to the extent caused by any intentional and/or negligent act and/or omission of Seniors, Inc., its directors, officers, members, employees, agents, volunteers and/or subcontractors, arising out of this Memorandum.

17. Assignment. This Memorandum, or any interest therein, or claim herein, shall not be assigned or transferred, in whole or in part, by Seniors, Inc. to any other person or entity without the prior written consent of the City, which may be withheld for any reason. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Seniors, Inc. stated herein.

18. Termination. Either party may terminate this Memorandum, with or without cause, by giving the other party forty-five (45) days written notice of termination unless otherwise agreed to by the parties. All personal property of Seniors, Inc. shall be removed from the Harman Center on or before the termination date. Any personal property not removed before the termination date shall be considered abandoned and will become the property of the City to do with as it wishes.

19. Drug Free Workplace. Seniors, Inc. shall comply with all applicable state and federal rules, regulations and statutes pertaining to a drug free workplace. Seniors, Inc. shall make a good faith effort to ensure that all members, employees, directors, agents and volunteers of Seniors, Inc. do not purchase, transfer, use or possess either legal or illegal drugs or alcohol or abuse prescription drugs in any way while working on state, county, or municipal property. Events or activities that have been permitted to have alcohol by both the City and the Washington State Liquor and Cannabis Board may allow alcohol during the specific time period of the event, subject to the event's permit.

20. Notices. Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand delivered to the parties at their addresses as follows:

TO CITY: Recreation Program Supervisor
City of Yakima - Harman Center at Gaillean Park
101 N 65th Ave
Yakima, WA. 98908

TO SENIORS, INC: President, Myles Franklin
Yakima Valley Senior Citizens, Inc
101 N 65th Ave
Yakima, WA 98908

Or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by certified mail, postage prepaid, or hand delivered. Such notices shall be deemed effective when mailed or hand delivered at the addresses listed above.

21. Survival. Any provisions of this Memorandum which impose an obligation after termination or expiration of this Memorandum shall survive the term or expiration of this Memorandum and shall be binding on the parties to this Memorandum after termination or expiration.

22. Severability. If any portion of this Memorandum is changed per mutual Memorandum, or any portion is held invalid, the remainder of the Memorandum shall remain in full force and effect.

23. Non-Waiver. The waiver by Seniors, Inc. or the City of the breach of any provisions of this Memorandum by the other party shall not operate to be construed as a waiver of any subsequent breach by either party or prevent either party thereafter from enforcing such provisions.

24. Third Parties. City and Seniors, Inc. are the only parties to this Memorandum and the only parties entitled to enforce its terms. Nothing in this Memorandum gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third parties.

25. Integration and Supersession. This Memorandum sets forth all the terms, conditions and Memorandums of the parties relative to the subject matter herein and supersedes any and all such former Memorandums, oral or written, which are hereby declared terminated and of no

further force and effect upon the execution of this Memorandum. There are no terms, conditions or Memorandums with respect to this Memorandum or the scope of work, except as herein provided.

26. Amendment. This Memorandum shall not be amended or modified unless reduced to writing and signed and executed by both parties.

27. Governing Law and Venue. This Memorandum shall be governed and construed in accordance with the laws of the State of Washington. Venue for any action to enforce this Memorandum shall be in Yakima County Superior Court.

28. Authority. The person executing this Memorandum on behalf of Seniors, Inc. represents and warrants that he or she has been fully authorized by Seniors, Inc. to execute this Memorandum on its behalf and to legally bind Seniors, Inc. to all the terms, performances and provisions of this Memorandum.

CITY OF YAKIMA

YAKIMA VALLEY SENIOR CITIZENS, INC

By: _____
Cliff Moore, City Manager

By: Myles Franklin
Myles Franklin, President

Date: _____

Date: 1/24/2019

ATTEST:

Sonya Clara-Tee, City Clerk

