CITY OF COSTA MESA ♦ Administrative Services Department
Recreation Division

MEMORANDUM

Date: April 29, 2010

TO: Honorable Mayor and City Council

FROM: Jana Ransom, Recreation Manager, 714-754-5654

SUBJECT: Supplemental Information to the Council Agenda Report for the Costa Mesa Senior Center Agreement – Council Meeting of May 4, 2010

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The attached Senior Center Agreement has been revised to include language in the opening paragraph in Section 8 regarding non-discrimination of users of the Senior Center on the basis of their first amendment protected activities or on the basis of their viewpoint. The added language has been underlined.

The Council has the option of:

1. Approving the proposed Agreement without the added language as provided with the City Council Agenda Report. This Agreement has been approved by the Senior Center Corporation, or

2. Approving the proposed Agreement provided with this Supplemental Report. However, this Agreement has not been approved by the Senior Center Corporation.

Distribution:
City Manager
City Clerk
Senior Corporation Board of directors
Senior Center Executive Director
Senior Center Task Force Members

Attachment: Proposed Senior Center Agreement with added language in Section 8

SENIOR CENTER AGREEMENT

This Agreement is entered into this ___ day of _____, 20__, by and between the City of Costa Mesa, a California municipal corporation, ("City"), and the Costa Mesa Senior Corporation, a California non-profit corporation ("Tenant").

RECITALS

WHEREAS, City desires to provide the senior citizens of Costa Mesa with a multipurpose senior citizens facility in which they can congregate for social and recreational activities; and

WHEREAS, Tenant was formed with its purpose to maintain and operate a multipurpose senior citizens facility for the senior citizens of the City of Costa Mesa.

NOW THEREFORE, the City and Tenant agree to the following terms and conditions:

1. PREMISES

City hereby leases to Tenant and Tenant hereby leases from City, on the terms and conditions hereinafter set forth, that certain real property commonly known as the Costa Mesa Senior Citizen Center located at 695 West 19th Street, Costa Mesa, California and described in Exhibit "A" attached hereto (the "Premises"). Premises shall mean the interior of the building and the programmable enclosed external spaces (i.e. patios).

2. TERM

The term of this Agreement is for a period of five (5) years commencing on July 1, 2010 and ending on June 30, 2015, unless terminated earlier as provided in Section 15. The City shall have the option to extend the term of this Agreement for up to three (3) additional five (5) year periods.

3. RENT

Tenant shall pay to City as rent for the Premises the sum of One Dollar ($1.00) per year, due on the first day of July of each year during the term of this Agreement. Rent shall be payable without notice or demand and without any deduction, offset, or abatement in lawful money of the United States.

4. USE

a. Tenant shall use the Premises only for providing senior citizen services and programs and for no other purpose without City's prior written consent. Tenant shall comply with all laws concerning the Premises or Tenant's use of the Premises, including without limitation, the obligation at Tenant's cost to alter, maintain or restore the Premises in compliance and conformity with all laws relating to the correction, use, or occupancy of the Premises by Tenant during the term of this Agreement. Tenant shall not use or permit the use of the Premises in any manner that will tend to create waste or a nuisance.

1. Tenant may rent facility for non-senior specific activities during hours and at such times when the center would not ordinarily be used for senior programming.

b. Tenant hereby accepts the Premises in its condition existing as of the date that Tenant takes possession of the Premises subject to all applicable zoning, municipal, county and state laws, ordinances, regulations governing or regulating the use of the Premises and accepts this Agreement subject thereto and to all matters disclosed thereby. Tenant hereby acknowledges that City has not made any representation or warranty to Tenant as to the suitability of the Premises for the conduct of Tenant's business.

c. Tenant and persons attending activities or rentals at the Premises shall have the right to use the parking lot during operating hours and hours those activities or rentals are occurring. Persons attending activities sponsored or offered through the Senior Center Corporation outside of these hours may leave their vehicles in the parking lot with a permit form issued by Senior Center staff. There shall be no charge for parking permits related to Senior Center activities.

d. City shall have the right to use the Premises for public purposes upon availability and written request by the City. Use of the Premises shall be at no cost to the City.

5. TAXES

Tenant shall pay before delinquency all taxes assessed against and levied upon the trade fixtures, furnishings, equipment and other personal property of Tenant contained on the Premises. If any of Tenant's said personal property shall be assessed as City's property, Tenant shall pay to City the taxes attributable to Tenant within ten (10) days after receipt of a written statement from City setting forth the applicable taxes. Failure to pay the subject taxes shall constitute a default of the Agreement as provided herein.

6. UTILITIES

a. Tenant shall make all arrangements and pay for all telephone services supplied to the Premises.

b. Tenant shall make all arrangements and pay for all utilities supplied to the Premises.

c. Building temperature shall be maintained according to industry standards in the range of 68 to 76 degrees.

d. City shall make all arrangements and pay for all utilities related to maintenance of exterior, parking lot and landscaping unless metering of said utilities is tied to Premises (i.e., electricity to parking lot lights is metered along with that of Premises).

7. MAINTENANCE AND REPAIRS

a. Except for damages caused by any negligent or intentional act or omission of Tenant, Tenant's agents, employees or invitees, City shall be responsible for maintaining and

repairing the following items: the foundations, roof, exterior doors (excluding glass), landings, balconies and exterior walls of the Premises. City shall also maintain the landscaping (hardscape and landscape maintenance), parking lot and other improvements of which the Premises are a part.

b. City shall keep in good order, condition and repair the interior of the Premises and every part thereof (including but not limited to HVAC, stoves, refrigerators, ovens). Except as specifically excluded in 7a, such maintenance shall include, but not be limited to, the following: general cleaning (janitorial services); windows (including all glass throughout Premises); damaged, broken or clogged toilets; carpets, including annual cleaning; drapes, including annual cleaning; interior doors; interior fixtures; plumbing; and other interior improvements. HVAC replacement is City responsibility. Replacement of other Capital Equipment is to be negotiated separately between Tenant and City.

c. City, at its option, may place a City employee at the Senior Center for the purpose of repairing and maintaining the Premises. Tenant shall provide a workspace for the City employee and provide storage for tools and supplies. The City employee will be available to repair and maintain the Premises. Tenant may not use the City employee worker for its services or programming.

d. Tenant shall be responsible for the repair and maintenance of all personal property including furniture, computers, office equipment, display cases, etc.

e. Roles and responsibilities of City and Tenant shall be generally set forth in Exhibit D. This exhibit may be revised by written agreement of both parties.

8. PROGRAMS AND SERVICES

Tenant has the right to reasonably control disruptive behavior at the Senior Center, but recognizes that the Senior center is a public building and place of public accommodation. Tenant shall not discriminate against qualified users of the Senior Center on the basis of their first amendment protected activities or on the basis of their viewpoint.

Tenant shall design and present recreational, cultural and social programs for senior citizens on a non-discriminatory basis compatible with the standards recommended for the operation of a senior citizens facility developed by the National Institute of Senior Citizens (NISC) of the National Council on Aging. Accreditation with the NISC is not a requirement of this contract.

a. On September 30 for the program period July through June, Tenant shall provide to the City a written "Program Report" that details programs and services offered. The Program Report shall provide, at a minimum, the name, description, goals, and number of participants for each program. In addition, the Program Report shall also include the Senior Center hours, other services not listed as a "program", rental rates and major accomplishments. Program report shall reflect how CMSC programs are compatible with NISC standards.

b. Annually, on September 30, Tenant shall conduct a survey of not less than four (4) Orange County cities, which must include two of the following cities: Newport Beach, Santa

Ana, Tustin, Irvine, and Fullerton and present a report comparing Costa Mesa senior services to those of the surveyed cities.

9. FUNDING

a. Tenant shall administer and provide through its own efforts all funding for all senior citizen programs and services undertaken by Tenant.

b. Based upon economic conditions, it is the goal of the City Council to provide funds to Tenant on an annual basis for the operation of senior citizen programs at the Premises (a "Contribution") and to increase these contributions annually. The Base Contribution approved by the City shall be in the amount of Two Hundred Forty Thousand Dollars ($240,000) payable to Tenant in four (4) quarterly payments upon receipt by City of an invoice from Tenant, which shall be processed on the first check issuance day of the months of July, October, January and April.

Beginning July 1, 2010, the amount of City Base Contribution may be increased by $5,000 per year by vote of the City Council.

c. Tenant shall present to City on or before December1st of each year of this Agreement an audited financial report from the prior year July 1 through June 30.

d. Tenant is and shall act as an independent agency and not as an officer, employee or agent of City. Tenant shall secure, at its expense, and be responsible for any and all payment of income tax, social security, state disability insurance compensation, unemployment Compensation, and other payroll deductions for Tenant and its officers, agents, and employees, and all business licenses, if any are required, in connection with Tenant's use of the Premises.

e. Tenant shall not use City funds for the conduct of any religious or political activity as described in City Council Policy No. 800-3, Cultural Arts Funding Policy, attached hereto as Exhibit "B".

f. Tenant shall comply with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; payment of prevailing wages pursuant to California Labor Code Section 1720 et seq.; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Tenant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws.

g. Tenant shall establish a Drug Free Awareness Program to inform employees of the dangers of drug abuse in the workplace, the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace, and the employee assistance programs available to employees. Each employee must be notified of this Drug Free Awareness Program

and must abide by its terms. Tenant shall conform to all the requirements of City's Policy No. 100-5, attached hereto as Exhibit "C". Failure to establish a program, notify employees, or inform City of a drug related workplace conviction constitutes a material breach of this Agreement and may be cause for immediate termination of this Agreement by City.

h. In recognition of the valuable considerations provided herein, the Costa Mesa City Council shall have the right to appoint up to three persons to serve on the CMSC Board of Directors to represent the City for a term of two years each. Appointees shall have full voting privileges and shall be subject to the same prevailing conditions of service as regular CMSC Directors.

10. EQUIPMENT, FURNISHINGS AND FIXTURES

Tenant agrees that any and all equipment, furniture, fixtures and machinery purchased or provided by the City for Tenant during the term of this Agreement shall, upon termination or expiration of this Agreement, become the property of City and remain on the Premises unless otherwise agreed upon in writing by City.

11. ALTERATIONS AND ADDITIONS

a. Tenant shall not, without City's prior written consent, make any alterations, improvements or additions in or about the Premises. City may require Tenant to remove any such alterations, improvements, or additions at the expiration of the term of this Agreement and to restore the Premises to their prior condition by giving Tenant thirty (30) days written notice prior to the expiration of the term.

Tenant shall notify City in writing at least thirty (30) days before commencement of any work relating to any alterations, additions, or improvements affecting the Premises. Work shall not commence until written approval has been obtained from City. Such approval and any special conditions pertaining to the work required of Tenant by City shall be signed by the parties and made a part of this Agreement. Tenant shall procure all permits and licenses necessary before commencement of any work on the Premises.

b. Tenant shall pay, when due, all claims for labor and materials furnished to or for Tenant at or for use in the Premises. Tenant shall not permit any mechanic's liens or material men's liens to be levied against the Premises for any labor or material furnished to Tenant or claimed to have been furnished to Tenant or Tenant's agents or contractors in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction of Tenant.

c. Unless City requires their removal as set forth above, all alterations, improvements or additions that are made on the Premises by Tenant shall become the property of City and remain upon and be surrendered with the Premises at the expiration of the term of this Agreement or any early termination as provided herein. Unless otherwise agreed upon by the parties in writing, Tenant's trade fixtures, furniture, equipment and other machinery, in addition to that which is affixed to the Premises shall also become the property of City and remain upon the Premises at the termination or expiration on the term of this Agreement.

12. INSURANCE

a. Tenant shall obtain and maintain during the term of this Agreement all of the following insurance coverage:

i. Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence and aggregate.

ii. Workers' compensation insurance as required by the State of California.

iii. Personal property insurance for actual cash value against the hazards of fire, theft, burglary, vandalism and malicious mischief.

b. Endorsements shall be obtained for the policies providing the above insurance for the following three provisions:

i. Additional Insureds:

"The City of Costa Mesa and its elected and appointed boards, officers, agents, volunteers and employees are additional insureds with respect to this subject property and contract with City."

ii. Notice:

"Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."

iii. Other Insurance:

"Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

c. Tenant shall provide to City certificates of insurance showing the insurance coverage and required endorsements described above, in a form and content approved by City, prior to the execution of this Agreement.

d. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Tenant may be held responsible for payments of damages to persons or property.

13. INDEMNITY

Tenant shall indemnify and hold City harmless from and against any and all claims arising from Tenant's use or occupancy of the Premises or from the conduct of its business or from any activity, work, or things which may be permitted to suffered by Tenant in or about the Premises

including all damages, costs, attorney's fees, expenses and liabilities incurred in the defense of any claim or action or proceeding arising therefrom.

14. ASSIGNMENT

Tenant shall not voluntarily or by operation of law assign, transfer, sublet, mortgage, or otherwise transfer or encumber all or any part of Tenant's interest in this Agreement or in the Premises without City's prior written consent. Any attempted assignment, transfer, mortgage, encumbrance, or subletting without such consent shall be void and shall constitute a breach of this Agreement and be cause for termination of this Agreement.

Regardless of City's consent, no subletting or assignment shall release Tenant of Tenant's obligation to pay the rent and to perform all other obligations to be performed by Tenant hereunder for the term of this Agreement.

15. DEFAULT

a. The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by Tenant:

i. Failure to pay rent when due, if the failure continues for five (5) days after written notice has been given to Tenant.

ii. Failure to pay taxes on Tenant's property, when due, if the failure continues for ten (10) days after written notice has been given to Tenant.

iii. Abandonment and vacation of the Premises (failure to occupy the Premises for fourteen (14) consecutive days shall be deemed an abandonment and vacation).

iv. Failure to perform any other provision of this Agreement if the failure to perform is not cured within thirty (30) days after written notice thereof has been given to Tenant by City.

b. Notices given under this section shall specify the alleged default and the applicable provisions of this Agreement, and shall demand that Tenant perform the provisions of this Agreement or pay the rent that is in arrears as the case may be, within the applicable period of time. No such notice shall be deemed a forfeiture or a termination of this Agreement unless City so elects in the notice.

c. If Tenant commits a default under this Agreement, City shall have the right to terminate this Agreement upon sixty (60) days' advance notice. This remedy is not exclusive, but is cumulative and in addition to any remedies now or hereafter allowed by law.

16. SIGNS

Tenant shall not have the right to place, construct or maintain any sign, advertisement, awning, banner, or other exterior decorations on the building or other improvements that are a part of the Premises without City's prior written consent.

17. SURRENDER

a. On the last day of the term hereof, or on any early termination, Tenant shall surrender the Premises to City in good condition, broom clean, ordinary wear and tear excepted. Upon City's written consent, Tenant shall remove, at its sole cost, any such designated personal property and fixtures on the Premises occasioned by its use thereof. Tenant shall also repair any damages created by the removal of such designated personal property and fixtures. If Tenant fails to surrender the Premises to City on the expiration or termination of the Agreement as required by this section, Tenant shall defend and hold City harmless from all damages resulting from Tenant's failure to vacate the Premises, including, without limitation, claims made by any succeeding Tenant resulting from Tenant's failure to surrender the Premises.

b. In the event City determines that Tenant's use of the Premises constitutes a violation of law, a nuisance or waste, Tenant shall surrender the Premises on three (3) days' written notice, and Tenant shall hold City harmless from all damages resulting from City's efforts to abate such activities.

18. HOLDING OVER

If Tenant, with City's consent, remains in possession of the Premises after the expiration or termination of the term of this Agreement, such possession by Tenant shall be deemed to be a tenancy from month-to-month at a rental in the amount of the last annual lease payment divided by twelve (12) plus all other charges payable hereunder, upon all the provisions of this Agreement applicable to month-to-month tenancy.

19. NOTICES

Any demand, notice or declaration provided for under this Agreement shall be in writing and served either personally or sent by registered or certified United States mail, postage prepaid, addressed to the parties as set forth below:

CITY	TENANT
City Clerk	President
City of Costa Mesa	Costa Mesa Senior Center Corp.
77 Fair Drive	695 West 19th Street
Costa Mesa CA 92626	Costa Mesa CA 92627

Such notice shall be deemed to be received within forty-eight (48) hours from the time of mailing, if mailed as provided for in this Section 19.

20. INSPECTIONS

City shall have the right to enter the Premises at all reasonable times, without notice, for the purpose of inspecting same, showing the same to prospective purchasers or lenders, and

making such alterations, repairs, improvements or additions to the Premises or to the building of which the Premises are a part as City may deem necessary or desirable.

21. SENIOR TRANSPORTATION SERVICES

a. City may, in its sole discretion, provide or cause to be provided, at its own cost and expense, a transportation program for the purpose of transporting senior citizen residents of the City to various locations throughout the City. As funding permits, the senior transportation service shall be available from 8am until 5pm, Monday through Friday and shall be open to all seniors who are residents of the City. These hours may be changed by mutual consent of City and Tenant. All trips conducted through the senior transportation service shall be limited to within the city limits of the City, with the exception of Hoag Hospital Newport Beach. Trips conducted through the senior transportation service may be taken to locations necessary to improve the seniors' quality of life. Examples include trips for doctor appointments, banking, shopping, senior activities or visits with friends.

b. City shall provide, or cause to be provided as funding permits, the following: vehicle(s) to be used for senior transportation; drivers; maintenance of vehicles; and insurance.

c. The Senior Transportation Services will not operate on the following City holidays: New Years Day, Martin Luther King Day, Presidents Day, Memorial Day, 4th of July, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day unless requested and approved in advance. Notice of any changes to the holiday schedule shall be posted in a highly visible location at the Senior Center. City shall provide to Tenant as much notice as is reasonably possible of scheduled maintenance for the senior transportation service and other planned circumstances under which the senior transportation services will not be provided.

d. Tenant shall provide the following: scheduling services for the senior transportation services; telephone information service for users to ask questions, make reservations, etc.; daily trip sheets that include the itinerary of individuals and pickup/drop-off times and locations to City; and a log of individuals/trips/locations to City on a weekly basis. Tenant will cooperate fully with any and all audits and inspections of the senior transportation services by City and/or outside agency.

22. WAIVERS

No waiver by City of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. City's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of City's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by City shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of City's knowledge of such preceding breach at the time of its acceptance of such rent.

23. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all writings and oral negotiations. This

Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto.

24. SEVERABILITY

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

25. TERMINATION

Either party may terminate this Agreement at any time by giving the other written notice no fewer than ninety (90) days in advance of such termination and in accordance with the provisions set forth in Section 19. In the event of such termination, City has the right to recover from Tenant the worth, at the time of the award, of the unpaid rent that had accrued at the time of the termination of this Agreement and any other amount, including, but not limited to any court costs and attorney's fees necessary to compensate City for the eviction of Tenant.

26. CORPORATE AUTHORITY

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, City, by order of its City Council, has caused this Agreement to be executed on its behalf by the Mayor of said City, and Tenant has caused this Agreement to be executed by its officers.

DATED this __ day of _____, 2010

CITY OF COSTA MESA

By: _____
Mayor

COSTA MESA SENIOR CORPORATION

By: _____

Title: _____

APPROVED AS TO FORM:

_____
City Attorney

APPROVED AS TO CONTENT

_____
Recreation Manager

ATTEST:

_____
City Clerk and ex-officio Clerk
of the City of Costa Mesa

EXHIBIT A

DESCRIPTION OF PREMISES

EXHIBIT B

COUNCIL POLICY 800-3

EXHIBIT C

COUNCIL POLICY 100-5

EXHIBIT D

ROLES AND RESPONSIBIILTIES