

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF TEMECULA
AND FOUNDATION FOR SENIOR CARE**

This Memorandum of Understanding ("MOU") is made and effective as of **February 12, 2019** between the **City of Temecula**, a municipal corporation (hereinafter referred to as "City"), and Foundation For Senior Care (hereinafter referred to as "Foundation").

1. BACKGROUND

The Foundation provides supervised care services, programs, and resource information for the senior population in identified communities of Northern San Diego and Southwest Riverside Counties; and operates an adult day care center located at 135 South Mission Road, Fallbrook CA, 92088. The Foundation adult day care center provides professional care and assistance for frail, physically challenged, and memory impaired adults. The center is open from 9:00 a.m. to 5:00 p.m. Monday-Friday excluding "major" holidays observed by the Foundation.

The City operates the Mary Philips Senior Center located at 41845 Sixth Street, Temecula, CA 92590. The Mary Philips Senior Center is open from 9:00 a.m. to 5:00 p.m. Monday-Friday excluding all City observed holidays.

The Foundation wishes to utilize City facility, Mary Philips Senior Center, as a pick-up/drop-off location offered to their clients needing transportation to the Foundation adult day care center located in Fallbrook on Tuesday and Thursday of each week, excluding holidays observed by both the Foundation and the City.

2. RECITALS

The parties agree that this MOU is made with respect to the following facts and purposes:

a. The purpose of this MOU is to document the obligations of the City and Foundation as they relate to the provision of transportation services provided by the Foundation and utilizing City facility, Mary Philips Senior Center parking lot, as a connectivity destination for pick-up and drop-off of Foundation clients.

b. The City is the owner of certain real property in the City of Temecula, known as the Mary Philips Senior Center located at 41845 Sixth Street, Temecula CA 92590.

c. The Foundation is a private organization for senior care and is offering to its clients transportation from the Mary Philips Senior Center parking lot to the Foundation Adult Day Care Center, located at 135 South Mission Road, Fallbrook CA 92088 with return service. The Foundation will offer this service to its clients on Tuesday and Thursday of each week, with a departure time of 9:00 a.m. and a return time between the hours of 4:00-4:30 p.m.

d. The City is willing to grant permission to the Foundation to utilize the Mary Philips Senior Center parking lot as a connectivity destination within the designated area, outlined in horizontal lines, in Exhibit A attached hereto and incorporated herein as though set forth in full.

e. The Foundation will not offer services on the Foundation's observed holidays as outlined in Exhibit B of this Agreement attached hereto and incorporated herein as though set forth in full.

f. The Foundation acknowledges the Mary Philips Senior Center facility will not be open on Saturday, Sunday, or City observed holidays as outlined in Exhibit B of this Agreement attached hereto and incorporated herein as though set forth in full. The City facility schedule and holidays observed may change at any time. It shall be the Foundation's responsibility to verify if the Mary Philips Senior Center facility is open and the parking lot available on the dates Foundation will be utilizing the connectivity destination.

g. The City acknowledges the Mary Philips Senior Center is a public facility and its restrooms and waiting area may be utilized by Foundation transportation clients. The Foundation shall ensure and communicate to its clients, their caretakers if applicable, and Foundation employees, volunteers, and staff that Foundation clients utilizing transportation services must be accompanied at all times.

h. The Foundation warrants and represents the transportation program and its client participation is the sole responsibility and scheduling of the Foundation and the City has no participation in or responsibility to the program, scheduling requirements, or the well-being of any of the transportation participants.

i. There shall be no cost to the Foundation for utilizing the Mary Philips Senior Center parking lot as a connectivity destination and the City shall have no oversight over the Foundation program(s) or any fees associated with the transportation services or any program and service offered or provided by the Foundation.

3. OBLIGATIONS

3.1 Obligations of the Foundation. The Foundation shall,

a. Be solely responsible for staffing, scheduling, and providing transportation services to its clients. The Foundation acknowledges its clients may be frail, physically challenged, and/or memory impaired and warrants and represents that employees, volunteers, or any staff providing transportation services are fully responsible for their client's well-being and are adequately trained, licensed, and prepared according to prevailing professional standards in caring for their clients and providing services.

b. Be solely responsible for determining the Class driver's license required per California Department of Motor Vehicle (DMV) policy for the type vehicle the Foundation utilizes for transportation services. The Foundation is also responsible for ensuring their employee(s), volunteer(s) or any staff or person assigned to provide transportation services has a valid State of California driver's license in good standing and is fit to drive.

c. Be responsible for the maintenance and any mechanical needs of Foundation vehicle(s).

d. Be solely responsible for all clients, employees, volunteers, staff and other participants utilizing and conducting the transportation services. The Foundation warrants and represents they are solely responsible for the well-being of their clients and no client shall not be left unattended at the Mary Philips Senior Center facility or parking lot prior to pick-up or after return drop-off.

e. Clearly indicate within all Foundation client release documents, advertising, flyers, social media communications, website information and all collateral materials and outreach programs that the City has no affiliation with the Foundation, is not responsible for

clients, and has no oversight of any Foundation programs, costs and fees, or transportation and other services provided.

3.2 Obligations of the City. The City shall,

a. Provide to Foundation access to the Mary Philips Senior Center parking lot for utilization as a connectivity destination to pick-up and drop-off Foundation clients participating in their transportation services program on Tuesday and Thursday of each week, excluding any City and Foundation holidays or City special events.

b. City will notify Foundation, in advance as knowingly possible, of inability to access parking lot on any day not already identified as a City holiday.

4. TERM

a. This MOU shall commence on **February 12, 2019** and shall remain and continue in effect as a multi-year agreement until **February 8, 2022**.

b. Renewal: The City and Foundation by mutual agreement may extend the term of this MOU by amendment.

c. Termination: Either party may terminate this MOU with or without cause by giving thirty (30) days prior written notice to the other party, after which neither party will have any further obligation under this MOU, except that the indemnification provisions set forth below in Section 6.

5. CONTACT INFORMATION AND NOTICES

a. The contact and notice information for the Foundation shall be:

Contact:

Foundation For Senior Care Staff
135 South Mission Road
Fallbrook, CA 92088
Foundation E-Mail: fsc@foundationforseniorcare.org
Foundation Phone Number: 760-723-7570

Notices:

Foundation For Senior Care
Attn: Rachel A. Mason
Executive Director
135 South Mission Road
Fallbrook, CA 92088

b. The contact and notice information for the City shall be:

Contact:

Mary Philips Senior Center
Yvette Martinez, Community Services Manager
41845 Sixth Street
Temecula, CA 92590
Mary Philips Senior Center

Notices:

**City of Temecula
Attn: City Manager
41000 Main Street
Temecula, CA 92590**

6. INDEMNIFICATION

The Foundation agrees to defend, indemnify, protect and hold harmless the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, agents, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Foundation's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, or the acts or omissions of Foundation, its officers, employees, agents or contractors, excepting only liability arising out of the negligence of the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency.

7. INSURANCE REQUIREMENTS

Foundation shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Foundation, its agents, representatives, or employees.

a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.
2. Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Foundation owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3. Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Foundation has no employees while performing under this Agreement, worker's compensation insurance is not required, but Foundation shall execute a declaration that it has no employees.

b. Minimum Limits of Insurance. Foundation shall maintain limits no less than:

1. General Liability: Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage.

3. Worker's Compensation as required by the State of California; Employer's Liability: One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions shall not exceed Twenty Five Thousand Dollars and No Cents (\$25,000).

d. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers are to be covered as insured's, as respects: liability arising out of activities performed by or on behalf of the Foundation; products and completed operations of the Foundation; premises owned, occupied or used by the Foundation; or automobiles owned, leased, hired or borrowed by the Foundation. The coverage shall contain no special limitations on the scope of protection afforded to the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.

2) For any claims related to this project, the Foundation's insurance coverage shall be primary insurance as respects the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees or volunteers shall be excess of the Foundation's insurance and shall not contribute with it.

3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Temecula, the Temecula Community Services District, and the Successor Agency to the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.

4) The Foundation's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5) Each insurance policy required by this agreement shall be endorsed to state in substantial conformance to the following: If the policy will be canceled before the expiration date the insurer will notify in writing to the City of such cancellation not less than thirty (30) days' prior to the cancellation effective date.

6) If insurance coverage is canceled or, reduced in coverage or in limits the Foundation shall within two (2) business days of notice from insurer phone, fax, and/or notify the City via certified mail, return receipt requested of the changes to or cancellation of the policy.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of A-:VII or better, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

f. Verification of Coverage. Foundation shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Foundation's insurer may

provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

8. INDEPENDENT CONTRACTOR

a. Foundation is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Foundation shall at all times be under Foundation's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Foundation or any of Foundation's officers, employees, or agents except as set forth in this Agreement. Foundation shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Foundation shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Foundation in connection with the performance of this Agreement. Except for the fees paid to Foundation as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Foundation for performing services hereunder for City. City shall not be liable for compensation or indemnification to Foundation for injury or sickness arising out of performing services hereunder.

9. ASSIGNMENT

The Foundation shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Foundation's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Foundation.

10. LICENSES

At all times during the term of this Agreement, Foundation shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

11. GOVERNING LAW

The City and Foundation understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Temecula. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

12. LEGAL RESPONSIBILITIES

The Foundation shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Foundation shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Foundation to comply with this section.

13. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

14. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Foundation warrants and represents that he or she has the authority to execute this Agreement on behalf of the Foundation and has the authority to bind Foundation to the performance of its obligations hereunder. The City Manager is authorized to enter into an amendment on behalf of the City to make the following non-substantive modifications to the agreement: (a) name changes; (b) extension of time; (c) non-monetary changes in scope of work; (d) agreement termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF TEMECULA

FOUNDATION FOR SENIOR CARE

(Two Signatures of corporate officers required unless corporate documents authorize only one person to sign the agreement on behalf of the corporation.)

By: _____

Michael S. Nagggar, Mayor

By: _____

Rachel A. Mason, M.S., M.A.
Executive Director

ATTEST:

By: _____

Randi Johl, City Clerk

By: _____

Mike McReynolds, Foundation President
Senior Care Board of Directors

APPROVED AS TO FORM:

By: _____

Peter M. Thorson, City Attorney

FOUNDATION

Foundation for Senior Care

Attn: Rachel A. Mason, M.S., M.A.
Executive Director

135 South Mission Road

Fallbrook, CA 92088

Phone: 760-723-7570

Cell Phone: 909-838-8071

E-Mail: mason@foundationforseniorcare.org

PM Initials: 

Date: 1/23/19

EXHIBIT A

EXHIBIT A

PARKING LOT MAP OF MARY PHILIPS SENIOR CENTER

The Foundation for Senior Care is authorized to pick-up and drop-off their clients at the Mary Philips Senior Center parking lot on Tuesday and Thursday of each week, excluding any City and Foundation holidays or City special events within the designated area outlined in horizontal lines on the attached map attached hereto and incorporated herein as though set forth in full.

Mary Phillips Senior Center

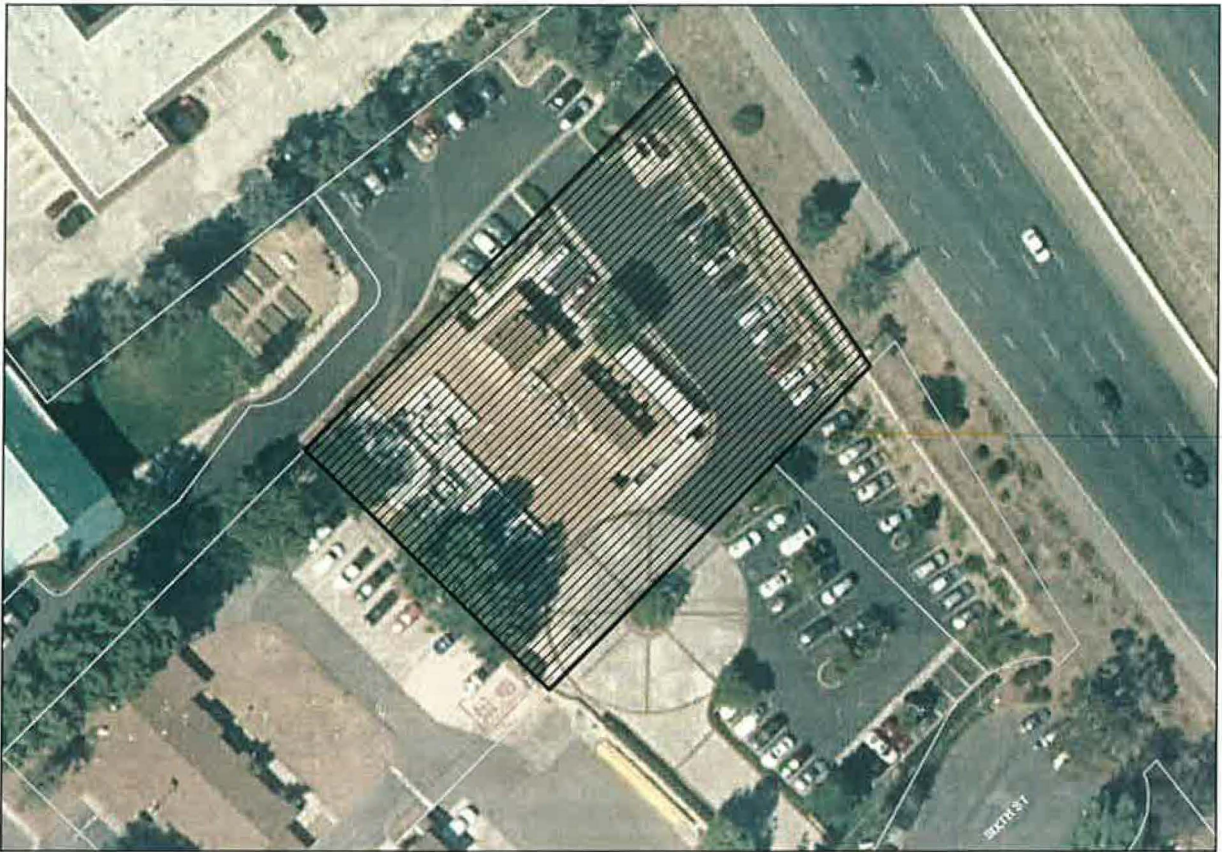


EXHIBIT B

HOLIDAYS OBSERVED BY CITY AND FOUNDATION

The Mary Philips Senior Center is open from 9:00 a.m. to 5:00 p.m. Monday-Friday excluding all City observed holidays. The Foundation center is open from 9:00 a.m. to 5:00 p.m. Monday-Friday excluding "major" holidays observed by the Foundation. The City and Foundation schedules are per the attached listing attached hereto and incorporated herein as though set forth in full. Foundation acknowledges the Mary Philips Senior Center facility and parking lot schedule may change at any time for any reason and City observed holidays may also change at any time. There are also occasions the City closes the Mary Philips Senior Center for special events. It shall be the Foundation's responsibility to verify the availability and schedule of the Mary Philips Senior Center on those dates Foundation will utilize the City facility parking lot for connectivity destination.

CITY OF TEMECULA OBSERVED HOLIDAYS

The City of Temecula observes the following holidays. If the holiday falls on a Saturday, the holiday is observed the Friday before the holiday date. If the holiday falls on a Sunday, the holiday is observed the Monday following the holiday date.

½ day – New Year's Eve Afternoon (Observed)

New Year's Day

Martin Luther King, Jr. Birthday

President's Day

Memorial Day

Independence Day

Labor Day

Veteran's Day

Thanksgiving Day

Friday after Thanksgiving

½ day – Christmas Eve Afternoon (Observed)

Christmas Day

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Independence Day

Labor Day

Veteran's Day

Thanksgiving Day

Friday after Thanksgiving

Christmas Day