

**MEMORANDUM OF UNDERSTANDING BETWEEN FULTON COUNTY, GEORGIA AND
FRIENDS OF MILLS, INC.**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered as of the _____ of May 2018, (the "Effective Date") by and between Fulton County, Georgia, a political subdivision of the State of Georgia (hereafter "the County"), acting through and on behalf of the Fulton County Department of Senior Services (hereafter "the Department") and the Friends of Mills, Inc., a non-profit corporation incorporated under the laws of the State of Georgia ("Friends of Mills").

WHEREAS, the County owns and maintains the Helene S. Mills Senior Multipurpose Facility ("Mills Senior Facility") and, through the Department, is responsible for the delivery management, operation and oversight of its senior multipurpose programs and adult day care services and activities at the Mills Senior Facility; and

WHEREAS, the Friends of Mills supports the recreational intellectual social, physical and health need of senior citizens primarily age 55 and over and thereby enhance and extend the lives of senior citizens who participate in the programs at the Mills Senior Facility by providing financial and other support through fundraising and other supporting activities as set forth in its organizational documents; and

WHEREAS, the Friends of Mills is governed in accordance with State and Federal Law; and

WHEREAS, the Board of Commissioners has determined that working with Friends of Mills to enhance programming at the Mills Senior Facility is in the best interests of the senior citizens of Fulton County; and

WHEREAS, the Board of Commissioners determined that Friends of Mills could ~~manage the rental of Mills Senior Facility facilities to~~ generate funds that the Friends of Mills would then be required to use to support and enhance programs at the Mills Senior Facility; and

WHEREAS, the Board of Commissioners determined that Friends of Mills could use the revenue from vending machines at Mills Senior Facility to support and enhance programs at the Mills Senior Facility.

NOW, THEREFORE, in consideration of the mutual promises and covenant contained herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

- (1) **Purpose.** This MOU and any attached addenda or exhibits are intended to clarify the relationship between the County acting through the Department and the Friends of Mills. This MOU is intended to reflect the formal expression of the intent and agreement between the parties and to reduce the parties' previous discussions, understandings, and agreements, both written and verbal, into a single MOU. Variations and modifications of this MOU, or waivers of its provisions, will not be valid unless they are reduced to writing, signed by the parties' duly authorized representatives, and approved by the Board of Commissioners as provided herein.
- (2) **Designated Liaisons.** The County, through the Department, and the Friends of Mills shall designate annually, by January 31st of each year, (in writing, by name, title, email address, and telephone number), their respective liaisons to serve as their main points of contact. The initial liaison for the County ("Department Liaison") will be Pamela Roshell, Director, Fulton County Department of Senior Services, 137 Peachtree Street, Atlanta, Georgia 30303, (404)612-1243, pamela.roshell@fultoncountyga.gov. The liaisons for the Friends of Mills ("Friends Liaison")

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and the Department Liaison are responsible for fostering a close working relationship in the carrying out of, and the implementation of, each party's responsibilities and obligations under this MOU.

- (3) Annual Plans. In order to coordinate the needs of the programs and activities of the Mills Senior Facility and the contributions of Friends of Mills to support and enhance the programs and activities during the term of this MOU and any extension hereof, the Friends Liaison and Department Liaison shall meet and confer to arrive at a joint Annual Plan reflecting the needs and preferences of the Department and the management of the Mills Senior Facility and the activities and projected resources that the Friends of Mills is willing to undertake. The Department and Mills Senior Facility management will provide to Friends of Mills an Annual Plan for the Mills Senior Facility by December 31 of each year. Then, the Friends of Mills will take the Annual Plan for the Mills Senior Facility into consideration when formulating its Annual Plan of activities (e.g., fundraising activities, gifts, donations, volunteer services and other in-kind contributions, projected income and disbursements, etc.) that the Friends of Mills intends to conduct or projects that it will provide during the upcoming year to support and enhance the life experiences of the senior citizens and the facility, programs, and services provided by the Department through the Benson Senior Complex for the benefit of the residents of Fulton County. The Annual Plan of the Friends of Mills will be provided to the Department on or before February 28, and the Joint Annual Plan will be determined by the Liaisons by March 31 of each year of the initial term and renewal term.
- (4) Term. This MOU shall commence upon its Effective Date and shall continue for five (5) years, which is through December 31, 2023, unless earlier terminated, and this MOU may be renewed as determined by the County Manager for another five (5) year term, with any such renewal period ending on December 31, 2028, the last year of such renewal period authorized by the County Manager.
- (5) Acceptance of Donations, Gifts or In-Kind Contributions: As provided herein, the Fulton County Board of Commissioners hereby approves and accepts donations, gifts and in-kind contributions, of any kind, in any form, offered by the Friends of Mills to Fulton County through the Mills Senior Facility; provided, however, that all donations, gifts and in-kind contributions valued in excess of \$1,000.00 shall be subject to the written approval and acceptance of the County Manager or his designee, upon the recommendation of the Mills Senior Facility manager and the Department Director, in accordance with the terms of this MOU and consistent with the overall aims, values and standards of Fulton County, and future maintenance costs, if applicable. If accepted pursuant to the terms of this MOU, the County's Risk Manager is authorized to procure applicable insurance as may be deemed appropriate. Notwithstanding any other provision herein to the contrary, the County Manager may seek Board of Commissioners' approval of any gift, donation or in-kind contribution prior to acceptance. Whenever Friends of Mills contemplates making gifts or donations to the County on behalf of the Mills Senior Facility that are valued at more than \$1,000.00, the Friends of Mills shall ensure that a form substantially the same as that attached hereto as Exhibit "A" is completed as soon as practicable to document the intent to provide the gift or donation, the recommendations of the Mills Senior Facility management and the Department, and the approval and acceptance by the County

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Manager. Gifts and donations made to the County on behalf of the Mills Senior Facility and valued at less than \$1,000.00 are to be recorded on a form substantially the same as that attached hereto as Exhibit "B" and acknowledged by the Mills Senior Facility Manager and the Department Director or the Director's designee. Nothing herein shall prevent Fulton County from refusing any donation, gift or in-kind contribution from Friends of Mills.

- (6) Use of County Name or Logo. The Friends of Mills is only authorized to use the County's name (including the name of a County facility or building), or logo to carry out the obligations and activities described in this MOU. Any other use is prohibited.
- (7) Fundraising activities - General Premise: Friends of Mills agrees that all funds, donations, gifts and other supports that it solicits, collects, or raises through ~~facility rentals or any other~~ activities undertaken by the Friends of Mills using the name Friends of Mills or Mills Senior Facility shall be used solely for the benefit of the programs and activities of the Mills Senior Facility.
- A. Friends of Mills agrees that it will not allow any person or entity or cause to utilize any donations made to benefit the programs of the Mills Senior Facility for other purposes.
 - B. Friends of Mills shall manage and staff its activities without the assistance of the County staff at the Mills Senior Facility. Friends of Mills shall not permit County staff to participate in any of the fundraising activities of Friends of Mills without the express written approval of the County Manager. Approval will be granted only to perform part-time work during non-working hours and then only in the sole discretion of the County Manager. Such approval, when given, may be a blanket approval for named employees.
 - C. In accordance with the policy of Fulton County as reflected in Resolution No. 95-1329, funds generated by Friends of Mills shall be used for the enhancement and expansion of senior services and shall not to be used to supplant the County's obligations to provide for ordinary expenses such as salaries, basic office equipment and office supplies. Under extraordinary circumstances, should an emergency occur that directly impacts the health or safety of the participants or their ability to enjoy a program or activity at the Mills Senior Facility, Friends of Mills may, on an emergency basis, provide goods or services that would ordinarily be provided by the County. It is expressly understood that whenever such a situation arises, the Department Liaison shall be notified immediately and in advance. Under such circumstances, Friends of Mills and the Mills Senior Facility management shall submit a completed Exhibit "C" to the Department Director.
 - D. The County will not require Friends of Mills to provide any particular goods or services or to pay for any specific expense.
 - E. The Friends of Mills agree to support programmatic activities at the Mills Senior

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Facility by using good faith efforts to provide financial and other support to the Mills Senior Facility. Examples of activities may include but are not limited to fundraising, ~~rental of facility~~, vending machines, collection of out of county fees paid by non-resident participants, grants, bequests, sponsorships, and other income-producing activities, as determined by the Friends of Mills in conjunction the Department Liaison and consistent with their Joint Annual Plan provided for in section 3 above.

- F. Sponsorships which would require the name and/or logo of the sponsor in conjunction with reference to the Mills Senior Facility or Fulton County on published materials will in all instances be subject to prior approval by the County Manager. Decisions by the County Manager will be made within thirty (30) days of a request if the sponsorship supports an event or activity.

~~G. The County and the Friends hereby agree that all Facility rentals will be on substantially the same terms and conditions set forth in the Facility Rental Application and Agreement, in the form attached hereto as Exhibit "D" (the "Rental Agreement"), as such Rental Agreement is modified from time to time.~~

- H. Subject to the terms of this MOU, the County hereby authorizes the Friends of Mills to ~~continue to manage rental of the Facilities at the Mills Senior Facility according to the fee schedule last adopted by the Board of Commissioners (January 1, 2016, Item No. 16-0027) and~~ to use basic office space at the Mills Senior Facility. ~~Funds acquired by the Friends of Mills as a result of this use of the Facilities shall enhance and expand programs and activities offered at or by the Mills Senior Facility for its participants.~~

- I. Subject to the terms of this MOU, the County hereby authorizes the Friends of Mills to continue to utilize revenue from vending at the Mills Senior Facility to enhance and expand programs and activities offered at or by the Mills Senior Facility for its participants.

- J. Subject to the terms of this MOU and approval of the Board of Commissioners, the County hereby authorizes the Friends of Mills to continue to utilize revenue from Out of County fees paid by non-resident participants at the Mills Senior Facility to enhance and expand programs offered at or by the Mills Senior Facility for its participants.

- K. Subject to the terms of this MOU, the County hereby authorizes the Friends of Mills to continue to promote the Friends of Mills and to solicit contributions through the website of the Mills Senior Facility, if any.

- (8) Tax-exempt status. The Friends of Mills shall be and remain, for the term of this MOU and any extension hereof, a duly authorized, tax-exempt entity pursuant to Section 501(c)(3) of the Internal Revenue Code.

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- (9) Compliance with applicable laws. The Friends of Mills agrees that at all times it is in possession any funds or other property that it solicited or raised for the benefit of Fulton County, or a County department, facility, program, or activity, such Friends Group shall remain in compliance with all federal and state laws and regulations pertaining to fundraising or other solicitation of any donations, gifts or in-kind contributions. Unless expressly provided by statute, regulation, court order, or express agreement of the parties, Friends of Mills will not be required to pay over to the County any sums of money held by Friends of Mills in reserve or in trust for the benefit of the senior citizens and the facility, programs, and services provided by or in partnership with the Department at the Mills Senior Facility.
- (10) Recordkeeping and Annual Financial Reports. Friends of Mills agrees to maintain accurate records of income and expenditures and disposition of funds raised by Friends of Mills in accordance with good accounting practices. Friends of Mills agrees to provide an annual financial report such as that provided to potential donors, Form 990 return, and a detailed statement or other record of income and expenses by category of income/activity. These financial reports are intended to inform the discussion of the Department Liaison and the Friends Liaison about the success of the annual plan of the prior year and new goals for the upcoming year for the parties' Joint Annual Plan. The Friends of Mills shall provide these financial reports to the County no later than June 15 following the end of the Friends of Mills's accounting period each year during the initial term and renewal term, if any.
- (11) Financial Management Review. The County's review of the financial management of funds raised by Friends of Mills in the name or for the benefit of the Harriett G. Mills Senior Multipurpose Facility is an essential best practice to ensure that funds so raised are used solely to support and enhance the programs and activities of the Mills Senior Facility. Friends of Mills agrees to permit the County to verify income and expenses at any time mutually agreeable to the parties or upon thirty (30) days' notice during the term of this MOU.
- (12) Meetings. The Friends of Mills agrees to provide notification of monthly meetings to the Department Liaison and a representative of the Department may attend monthly meetings of the Friends of Mills for the purpose of facilitating dialogue and receiving Departmental updates.
- (13) Insurance. The Friends of Mills agrees to secure insurance covering all services provided pursuant to this MOU based on the following: (i) Commercial General Liability (CGL) Insurance, with coverage limits of no less than \$300,000.00 per occurrence. The Certificate of Insurance shall list Fulton County Government as an Additional Insured under the Friends of Mills CGL Policy via attachment of an Additional Insured Endorsement form CG 2010 (11/85 version), its equivalent or on a blanket basis. In addition, Friends of Mills shall have in effect an Events Rider and Liquor Liability Rider whenever liquor will be sold or served during an event with \$1,000,000.00 per occurrence policy limits and again naming Fulton County Government as an Additional Insured as set forth herein. Because the Rental Agreement attached as Exhibit C and referred to in Section 7(G), above, requires the party renting the facility to provide insurance coverage for Events and Liquor Liability in the amount of \$1,000,000.00 per occurrence naming Fulton County Government as an Additional Insured, Friends of Mills may, in lieu of providing its own Events and Liquor Liability Rider, substitute

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~~proof of the third party's insurance being in effect by providing a Certificate of Insurance with the Additional Insured Endorsement to the Fulton County Risk Manager Eldridge Morris Eldridge.morris@fultoncountyga.gov prior to the event. In all cases, the Additional Insured Endorsement must accompany the Certificate of Insurance.~~ The County's Risk Management Division may require additional proof of insurance, including but not limited to policy certificates and endorsements reasonably in accordance with the foregoing requirements. ~~Friends of Mills shall notify Risk Management in writing in the event insurance is changed for any reason.~~ The Friends of Mills agrees to keep the required general liability insurance coverage in force at all times during the term of this MOU and any extension hereof.

- (14) *Fulton County Not Liable for Friends.* Fulton County, its officials and employees shall not be liable for any acts or omissions committed by the Friends of Mills or any of the Friends of Mills's officers, directors, members, contractors, agents, representatives, or volunteers.
- (15) *Non-discrimination.* All activities undertaken by the Friends of Mills shall be free of discrimination on the basis of race, color, sexual orientation, national origin, disability, religion, age, or sex.
- (16) *Ethics.* All County officers, officials, and employees must comply with the Fulton County Ethics Code in all of their conduct or dealing with the Friends of Mills. No Fulton County officials or employees will serve in a management function or leadership role with the Friends of Mills.
- (17) *Non County Agents.* The Friends of Mills acknowledges that its members and volunteers are not agents, employees, or representatives of Fulton County or any County department, program, or facility. The Friends of Mills agrees that it shall not represent itself to any person or entity as an agent or representative of Fulton County. The Friends of Mills agrees that it shall not permit any Friends member or Friends volunteer to represent himself or herself to any person or entity as an agent, employee, or representative of Fulton County. Upon learning that any Friends member or volunteer has misrepresented his or her association with Fulton County, the Friends of Mills shall immediately report to the Department Liaison all details as they have been heard or observed. To the extent that a member of Friends of Mills is appointed to serve on a Board created by and for Fulton County, that member may identify him or herself as a member of such Board.
- (18) *Notices.* Any and all notices, permitted or required under this MOU shall be in writing, signed by the party giving such notice and shall be delivered personally, or sent by registered or certified mail, to the other party, at its address provided by the respective party's liaison. The date of personal delivery or the date of mailing, as the case may be, shall be the date of such notice.
- (19) *No Assignment of MOU.* Neither party shall attempt to make any purported assignment of this MOU, or any part thereof, or delegate the performance of any duties.
- (20) *Suspension.* The County, acting through the County Manager or his/her designee, shall have the right to suspend immediately the performance of the Friends of Mills under this MOU on an emergency basis or whenever necessary, in the opinion of the County Manager or his/her

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designee, that suspension is necessary to avert a life-threatening situation or other sufficiently serious risk to the County, any County asset or resource or those of its citizens.

- (21) Termination. This MOU may be terminated by either party prior to expiration of the term on the following conditions: (a) If the other party commits a material breach of the MOU and fails to cure said breach to the non-breaching party's reasonable satisfaction after receiving thirty (30) days written notice; or (b) without cause, if the terminating party gives six (6) months prior written notice to the other party. Upon expiration of the term of this MOU or termination of the MOU, the parties shall, using good faith efforts, agree upon any outstanding present and future obligations and performance commitments to one another, and shall arrange for a proper accounting and work plan for any and all such obligations.
- (22) Indemnification. The Friends of Mills agrees to release, indemnify, defend and hold harmless the County, its Commissioners, officers, employees, subcontractors, successors, assigns and agents (the "Indemnitees"), from and against any and all losses, claims, damages, liabilities, costs and expenses (including but not limited to all actions, proceedings or investigations in respect thereof and any reasonable costs of judgments, settlements, court costs, attorney's fees or expenses, regardless of the outcome of any such actions, proceeding or investigation), caused by or arising out of any act or omission by the Friends of Mills, its directors, officers, employees or agents at the Mills Senior Facility. Notwithstanding the foregoing, in no event shall the Friends of Mills be liable to indemnify the Indemnitees for consequential, special or punitive damages, or for any losses, claims, damages, liabilities, costs and expenses arising out of the willful misconduct or negligence of the Indemnitees.
- (23) Governing law. This MOU shall be governed in all respects, as to validity, construction, capacity, and performance or otherwise, by the laws of the State of Georgia.
- (24) Severability. If any provision of this MOU shall be determined by any court having competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of this MOU shall not be affected thereby, but shall continue in full force and effect as though such invalid, illegal, or unenforceable provision were not a part hereof.
- (25) Disputes. The parties shall make their best, good faith efforts to resolve any controversy or claim arising out of or relating to this MOU, or the breach thereof, through mediation.
- (26) Costs and Expenses. Unless otherwise provided in this MOU, each party shall bear all fees and expenses incurred in performing its obligations under this MOU.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals as of the date first written above.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]

**Fulton County, Georgia, on its own behalf and on
the behalf of the Department of Senior Services**

Robert L. Pitts
Chairman, Board of Commissioners

Attest:

Approved as to Form:

Tonya R. Grier
Clerk to the Commission

Y. Soo Jo
County Attorney

[SEAL]

Agreed as to Content:

Ladisa Onyiliogwu, Director
Department of Senior Services

Friends of Mills, Inc.

Steven Dalton, CFO