

May 1, 2006

To: John M. Lamerato, Acting City Manager

From: Brian Murphy, Assistant City Manager/Services
Jeanette Bennett, Purchasing Director
Carol K. Anderson, Parks and Recreation Director

Subject: Agenda Item: Emerald Food Service Contract

Recommendation

City Management recommends confirmation of the one-year contract with EFS expiring April 30, 2007.

Background

The contract as attached is for one year and includes a 90-day option to cancel.

City Management intends to go out for bid or proposal on this service within 60 days. As this contract expires April 30, 2007, the new contract would commence May 1, 2007.

2005-06 Revenue

A preliminary report is attached with estimates of the total revenue generated by Emerald Foods from May 1, 2005 through April 27, 2006. Based on this report, the estimated revenue to the City of Troy is \$33,600.00 in addition to the annual rent of \$6,960.00 for annual income of \$40,560.00.

Approved as to form and legality:

Lori Grigg Bluhm, City Attorney

Attachments

3:00 PM
04/28/06
Accrual Basis

Emerald Food Service LLC
2005 / 2006 Revenue
May 2005 through April 2006

	<u>May '05 - Apr 06</u>
Ordinary Income/Expense	
Income	
4000 · Banquet Sales	217,938.57
4006 · Emerald Vending	2,758.55
4010 · Cafe Sales	204,636.72
4030 · Service Fee Income	36,900.52
4100 · Sanctuary Sales	
4110 · Liquor Sales	1,517.17
4120 · Grill Sales	2,639.72
	<hr/>
Total 4100 · Sanctuary Sales	4,156.89
	<hr/>
Total Income	466,391.25

AGREEMENT FOR THE COMMUNITY CENTER CAFÉ/PRO SHOP

THIS AGREEMENT entered into on May 1, 2006, between the CITY OF TROY, 500 W. Big Beaver Road, Troy, Michigan 48084, hereinafter referred to as the "City", and EMERALD FOOD SERVICES I, L.L.C., a Michigan limited liability company, whose address is 1980 Greenfield Road, Berkley, Michigan 48072, as the Café/Pro Shop Operator, hereinafter referred to as the "Operator";

WITNESSETH:

In consideration of the City granting to the Operator the exclusive privilege and right of conducting the sale of food, beverages, and other sundry pro shop related articles, including catering rights but excluding those times when Operator is preempted as set out in Paragraph 8, in the Troy Community Center, 3179 Livernois, Troy, Michigan 48083, the Operator agrees as follows:

1. REVENUE SHARING PLAN: Simultaneously with this Agreement, the Operator and the City are entering into an Agreement for Food Service at Sanctuary Lake Golf Course. The parties to this Agreement (Agreement for the Community Center Café/Pro Shop) desire to use the same revenue sharing plan as set out in the Agreement for Food Service at Sanctuary Lake Golf Course and, for computation purposes, the parties desire to combine the gross receipts for the food and beverage operation at both the Community Center Café/Pro Shop and Sanctuary Lake Golf Course, including all monies derived from the operation of the café/pro shop, catering service including off-premises catering where food was prepared in the Troy Community Center kitchen but excluding

revenue from coffee/tea service at the Community Center for seniors from 8:00 a.m. to noon, the golf course grill room, the golf course outside food service area, catering for golf outings and sundry items at both locations less Michigan Sales Tax (6% as of the date of this Agreement). Vending machine sales at the Troy Community Center only shall be included as part of the revenue sharing plan as set out in Paragraph 3. In exchange, the Operator agrees to pay the City an incremental percentage of the combined yearly gross receipts of both facilities with a guaranteed minimum per year based on the revenue sharing plan as follows:

<u>Yearly Gross Receipts</u>	<u>% to City</u>
0 to \$200,000	\$10,000 guaranteed minimum (Minimum guaranteed per year)
\$200,001 to \$300,000	7
\$300,001 to \$600,000	10
\$600,001 per year or more	12

Within sixty (60) days after the end of each combined fiscal year (that is, the fiscal year for both the Troy Community Center Café/Pro Shop and the Sanctuary Lake Golf Course food service), the Operator will provide an accounting of gross receipts from that previous combined fiscal year with the amount due the City of the percentage of gross receipts under the revenue sharing plan. The City has the right to request documentation of the reconciliation and shall be provided with access to books and records of the Operator for review or audit, if deemed necessary. In addition monies are due the City for that previous combined fiscal year of operation, those monies shall be paid forthwith to the City but no later than sixty (60) days after the end of that

previous combined fiscal year. In the event that the Operator submits documentation acceptable to the City that it has overpaid the City during that previous combined fiscal year of the operation under the revenue sharing plan, the City will refund the overpayment to the Operator.

The parties agree that the final figure accepted by the City as the previous combined fiscal year gross receipts shall be used to compute payments under the Agreement for the current fiscal year of operation if the option to renew the Agreement is exercised. That figure shall be divided by 12 to obtain the monthly payment amount for the current combined fiscal year of operation. Those payments shall continue to be due and payable to the City on the first (1st) of each month and calculated as set out above. At the end of each combined fiscal year that the Agreement is in effect by extensions of the Agreement, or whenever the Agreement is terminated, the Operator will provide an accounting of gross year receipts for the previous combined previous fiscal year, and/or for the current combined fiscal year to date if there is a termination of the Agreement prior to the end of a contract period, and reconcile the amount paid to the City with the amount due the City and the terms and conditions set out above for any money due to the City or any refund due to Operator shall apply.

2. SEPARATE AGREEMENTS: It is understood and agreed that a separate Agreement establishing terms and conditions between the City and Operator for food service at Sanctuary Lake Golf Course is being signed simultaneously with this Agreement. That Agreement for Sanctuary Lake Golf Course includes the revenue sharing plan as set out in Paragraph 1 of this Agreement. If the

Agreement for Food Service at Sanctuary Lake Golf Course is terminated or not extended but this Agreement is not terminated or is extended, the revenue sharing plan set out in Paragraph 1 shall continue in effect without including gross receipts from Sanctuary Lake Golf Course. Renewal or extension of this Agreement is not contingent on renewal or extension of the Sanctuary Lake Golf Course Agreement.

3. VENDING MACHINES: The Operator shall have the exclusive right to contract with a vendor to provide for vending machine service at the City of Troy Community Center. The Operator shall in no way represent to any persons, corporations or any other entity that they are acting as an agent of the City of Troy or have the authority to bind the city to any contracts. No vending machine shall contain cigarettes, tobacco products or alcoholic beverages but rather shall contain food and non-alcoholic beverage items only. The Director of Parks and Recreation or his or her designee shall approve the vending machine items and prices. Gross receipts from vending machines sales shall be included as part of the revenue sharing plan set out in Paragraph 1. Those gross receipts shall be that percentage of revenue paid to the Operator under its contract with the vending machine vendor. Those gross receipts shall be added into total gross receipts per year and paid to the City as provided in Paragraph 1.

The City shall have the right to verbally request a copy of the signed agreement or any amendments, supplements or subsequent agreements between the Operator and the vending machine vendor or vendors and the Operator shall provide the same within ten (10) days of the request.

4. LOCATION OF VENDING MACHINES: The Director of Parks and Recreation, or his or her designee, shall have the sole discretion to determine where the vending machines are placed in the Community Center and how many vending machines shall be on the premises at any one time. Once the initial determination is made regarding the location and number of vending machines, the Director of Parks and Recreation shall give thirty (30) days written notice of any change to the location and number of vending machines.

5. OPERATIONAL HOURS OF VENDING MACHINES: All vending machines shall be accessible to the public when the Café/Pro Shop is closed to the public.

6. MAINTENANCE OF PREMISES AND REPAIR OF VENDING MACHINES:

The Operator is responsible for the cleaning, maintenance and repair of the vending machines and all costs associated with the cleaning, maintenance and repair of the vending machines. The Operator shall make a good faith effort to see that the vending machines are fully operational at the times set out in Paragraph 5. If the City notifies the Operator of the need for cleaning, maintenance or repair of any vending machine and the Operator fails to correct the problem within three (3) days, the City may take reasonable action to correct the problem. Any costs incurred by the City for the cleaning, maintenance or repair of the vending machines will be the responsibility of the Operator. Invoices submitted to the Operator by the City for reimbursement of said costs shall be paid within fifteen (15) days.

7. USE OF KITCHEN AND LIMITATIONS: The Operator shall provide a food/beverage service to all users of the Troy Community Center. The Operator

shall provide coffee/tea service in the Dining Room for seniors from 8:00 a.m. to noon at a maximum price of \$.30/cup.

The Operator shall be the exclusive caterer of commercially prepared food/beverage served in the following rooms of the Troy Community Center: 301,302,303, 304,305 AND 402. Another caterer may be used if the Operator is first consulted and acknowledges that it cannot provide the food requested by a group. User groups that wish to have food/beverages catered for their meetings shall make arrangements, including payment, directly with the Operator.

The Operator's services shall include preparation, delivery and clean-up of food/beverages.

The Operator shall not have the exclusive catering rights to serve pre-packaged food/beverage and items prepared from scratch at home for meetings and events in rooms not set out in this Paragraph. User groups will be permitted to bring snacks and food made from scratch at home but not meals to serve its members.

The Operator shall provide complimentary dinner and beverages for 100 persons from the catering menu for one (1) Parks and Recreation Department program each year of the Agreement (for example, the Friday Frolic or Senior Dance). Said event will be chosen at the discretion of the City.

8. PREEMPTION OF USE OF KITCHEN: The Operator shall have exclusive use of the kitchen except if preempted by the Troy Parks and Recreation Department for special programs and events. The City will make every effort to notify the Operator of those programs and events as soon as possible before each event.

The Operator, who at the effective date of this Agreement, is also the provider of senior lunches for the Senior Citizen Nutrition Program in Troy, acknowledges that, if in the future, the Operator is no longer providing senior lunches under that program that the contractor for the Senior Citizens Nutrition Program will preempt the Operator for use of the kitchen during the times it is necessary to prepare senior lunches for that program, generally, Monday through Friday from 6:00 a.m. to 2:00 p.m. Operator will not be allowed any use of the kitchen during those times it is preempted as set out herein.

9. HOURS OF OPERATION: The operating schedule for the Café/Pro Shop, unless preempted as set out in Paragraph 8, shall be as follows:

- A. Monday to Friday: 7:00 a.m. to 1:30 p.m. and 5:00 p.m. to 8:00 p.m.
- B. Saturday and Sunday: 9:00 a.m. to 3:00 p.m.
- C. The schedule may change to meet user demand as agreed to by the parties.

10. MAINTENANCE OF PREMISES: The Operator shall maintain the interior of the kitchen/dining area (except the dining area floor), the service window, if applicable, and all adjacent areas in a clean and neat manner and in compliance with all City ordinances, State law and applicable health standards and regulations. The Operator shall maintain the trash receptacles in the kitchen/dining area. The Operator is responsible for cleaning all equipment and reporting any type of mechanical problem to the Parks and Recreation Department.

11. OPERATOR'S EMPLOYEES: The Operator shall provide appropriate uniforms and name badges for its employees and shall require that all employees maintain themselves and their uniforms in a clean and neat appearance. The Operator is responsible for all wages, benefits or any other condition of employment and acknowledges that its employees have no employment relationship with the City. The City shall have the right to mandate that the Operator terminate an employee for inappropriate behavior. The Operator shall have three (3) days from the date that is first has information that the City has requested that an employee be terminated, to file a written request for an informal meeting with the Department of Parks and Recreation. That request shall set out the reason for the Operator's objection to the City's request to terminate the employee and the Operator's proposal as to what action, if any, should be taken against the employee. The City and the Operator shall meet informally as soon as possible at a mutually convenient date and make a good faith effort to resolve their differences. If an agreement regarding the employee cannot be reached, the Operator shall terminate the employee.

12. INSPECTIONS AND REPAIRS: The City shall have the right to enter and/or inspect the kitchen area at any reasonable time and make repairs and/or improvements as it deems necessary. The expense of periodic maintenance caused by normal wear and tear of the kitchen equipment will be paid by the City. Other repairs will be done at the City's expense unless it is determined that the repair was necessary due to the misuse or negligence of the Operator, its employees and/or agents in which event the Operator shall be responsible for the

costs of said repair. The City will make every effort to notify the Operator in advance if non-City employees will be entering onto the premises at the City's request. Any additions, repairs and/or improvements made on the premises shall become property of the City.

13. NO INTOXICATING LIQUOR: The Operator, its employees and/or agents shall not sell intoxicating liquor or permit and/or knowingly allow intoxicating liquor to be consumed in the kitchen/dining area or in any part of the Community Center where it is catering. The Operator shall be deemed responsible if such conduct occurs. The Operator shall not sell or provide intoxicating liquor for off-premises catering where food has been prepared in the Troy Community Center kitchen.

14. KITCHEN SUPPLIES/EQUIPMENT AND MODIFICATIONS: The Operator shall provide all necessary small cooking utensils and disposable supplies and personnel to staff the operation of the kitchen/dining area and the catering service. Building and/or equipment modifications shall be approved in advance by the City and shall become the property of the City at the conclusion or upon termination by either party of this Agreement. Additionally, the City shall approve equipment brought into the facility by the Operator or at the request of the Operator in advance of delivery to the Community Center.

15. PRICES/PRICE AND HOURS CHANGES: Products sold or marketed, the prices charged and the operation schedules of the kitchen/dining area are subject to regulation by the City and , once established, no changes shall be made without prior approval of the Director of Parks and Recreation or his/her

designee. Prices will be re-evaluated at the conclusion of each year of the Agreement. Increases in prices shall be no greater than the percentage increase of the Consumer Price Index of Food Eaten Away from Home. Prices shall be posted for patrons and a detailed printed description of prices shall be available for review by the City.

16. RECORDS: The Operator shall keep accurate records of all sales and receipts through the use of computerized/electronic cash registers which provide daily tapes and reports. Those cash registers shall be approved by the City prior to commencement of the Agreement. The Operator shall submit a copy of its monthly Michigan Department of Treasury Sales Tax Return by the 20th date of the month following the month for which the Return was filed. An annual report, summarizing the monthly reports, shall be submitted to the City within sixty (60) days after the first anniversary date of the Agreement and each year thereafter that the Agreement is in effect. The City shall have the right to inspect the books, records and inventories of the Operator at any reasonable time.

17. RENTAL OF ADDITIONAL SPACE: In addition to the terms and conditions of this Agreement, the Operator shall be entitled to the use of an additional 464 square feet of space within the Troy Community Center as shown on the attached Exhibit A for a rental payment of \$6,960.00 per year or \$580.00 per month (\$15.00 per square foot). By the first (1st) day of each month, the Operator shall pay rent of \$580.00 per month for this space. This space is to be used only for office and for business relating to the operation of the Troy Community Center and/or Sanctuary Lake Golf Course food service. This

provision for rental of space runs with this Agreement only and shall become null and void at the expiration of the Agreement or at the termination for any reason and the space shall be vacated within ten (10) days of the either of those occurrences.

- A. Equipment and Building Modifications: The Operator shall provide all necessary equipment, supplies and building modifications for the space. Building modifications and additions, including but not limited to fixtures, a door, carpeting, electrical outlets and voice/data connections must be approved by the City in advance and shall become the property of the City at the expiration or termination of this Agreement. The costs associated with building modifications that are necessary to make the space a viable office shall be the responsibility of the Operator. Equipment brought into the space must also be approved in advance by the City.
- B. Maintenance: The Operator shall maintain the interior of the space in a clean and neat manner and in compliance with all City ordinances and State law. This includes, but is not limited to, the removal of trash to the proper containers.
- C. Hours of Availability: The Operator acknowledges that the rental space shall only be available during the hours of operation of the Troy Community Center. The Operator also waives any claim or cause of action regarding the non-availability of the space as set out herein or for emergency periods when, due to weather electrical power outages,

or acts of nature, the Troy Community Center remains closed for operation.

18. ASSIGNMENT OF AGREEMENT/INDEPENDENT CONTRACTOR: The Operator shall have no authority or power to assign, sublet and/or transfer any rights, privileges or interests under this Agreement without prior written consent from the City. The Operator acknowledges that it is an independent contractor with no authority to bind the City to any contracts or agreements, written or oral.

19. COMPLIANCE WITH LAWS: The Operator shall at all times be in compliance with all federal and state statutes and the City ordinances and with all Oakland County Health Department licensing requirements, rules and regulations.

20. INSURANCE: The Operator shall maintain liability insurance in the amount of three million (\$3,000,000.00) dollars for any actions, claims, liability or damages caused to persons and/or property arising out of the operation and/or maintenance of the food service, kitchen/dining area and its catering operation both on-premises and off-premises where food has been prepared in the Troy Community Center kitchen, in addition to product liability insurance and worker's compensation. All insurance coverage shall be approved by the City.

Certificates of Insurance shall comply with the sample form attached to the Request for Proposal. The City shall be named as an additional insured under all policies except worker's compensation. All insurance companies must be licensed and admitted to do business in the State of Michigan. All insurance set out herein shall be maintained for the duration of the Agreement. Failure to

maintain coverage or to continue to maintain coverage shall be considered a breach of contract with immediate termination of the Agreement at the will of the City. The Operator is responsible for any deductibles under its policies of insurance.

21. INDEMNIFY/HOLD HARMLESS: The Operator agrees to indemnify and hold the City harmless for any claims, actions, liabilities or damages arising out of the operation, maintenance or management of the food service, kitchen/dining area, on-premises catering and off-premises catering where food has been prepared in the Troy Community Center kitchen.

22. REPORTS OF CLAIMS: Copies of all claims, damage or accident reports received by the Operator, its employees and/or its agents, whether submitted to an insurance company or not, relating to any damage or accident that occurred or is alleged to have occurred shall be sent to the City.

23. PERSONAL PROPERTY TAXES: The Operator shall be liable for any personal property taxes assessed against its equipment or inventory.

24. UTILITY COSTS: The City will pay utility costs.

25. TERM OF AGREEMENT: The effective date of this Agreement is May 1, 2006 and shall terminate one (1) year from that date or on April 30, 2007 unless cancelled by either party upon ninety (90) days written notice sent by certified mail as set out in Paragraph 26. Cancellation may be without cause by either party.

26. NOTICE: All written notices to be given under this Agreement shall be mailed by certified mail, return receipt requested, to the other party at its address

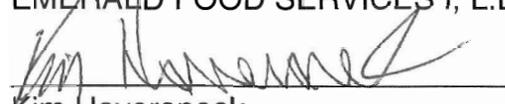
set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to mailing.

27. SECTION HEADINGS: All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provisions of this Agreement.

28. SEVERABILITY: If any provision of this Agreement or the application of such provision to any person, entity or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances, other than those as to which it is held invalid, shall not be affected.

29. ENTIRE AGREEMENT: This Agreement incorporates by reference the Request for Proposal and the Operator's Proposal as thought fully set out herein. These documents constitute the entire Agreement and any changes thereto shall be in writing signed by both parties unless otherwise set out in this Agreement.

IN WITNESS WHEREOF, the City and the Operator have executed this Agreement.

EMERALD FOOD SERVICES I, L.L.C.


Kim Haveranek
Member

CITY OF TROY,

By: Louise E. Schilling, Mayor

By: Tonni Bartholomew, City Clerk

Dated: 5/1/06

AGREEMENT
FOOD SERVICE AT SANCTUARY LAKE GOLF COURSE

THIS "AGREEMENT" entered into on May 1, 2006, between the CITY OF TROY, 500 W. Big Beaver Road, Troy, Michigan 48084, hereinafter referred to as the "City", and Emerald Food Services I, L.L.C., a Michigan limited liability company, whose address is 1980 Greenfield, Berkley, Michigan 48072, hereafter known as the food service provider for Sanctuary Lake Golf Course, hereinafter referred to as the "Operator";

WITNESSETH:

In consideration of the City granting to the Operator the exclusive privilege and right of conducting the sale of food, beverages including alcoholic beverages, vending machines, and catering rights for golf outings at the Sanctuary Lake Golf Course, the parties agree as follows:

1. REVENUE SHARING PLAN: Simultaneously with this Agreement, the Operator and the City are entering into an Agreement for use of the kitchen at the Troy Community Center, catering rights and the rental of space at the Community Center. The Community Center Café/Pro Shop Agreement sets up a revenue sharing plan.

The parties to this Agreement (Food Service at Sanctuary Lake Golf Course Agreement) desire to use the same revenue sharing plan as set out in the Community Center Café/Pro Shop Agreement and, for computation purposes, the parties desire to combine the gross receipts for the food and beverage operation at both the Community Center Café/Pro Shop and Sanctuary Lake Golf Course, including all monies derived from the operation of the café/pro shop, catering service including off-premises catering where food was prepared in the Troy Community Center kitchen but excluding revenue from coffee/tea service at the Center for seniors from 8:00 a.m. to noon, the golf course grill room, the golf course outside food service area, catering for golf outings and sundry items at both locations less Michigan Sales Tax (6% as of the date of this Agreement). Vending machine sales shall be included as part of the

revenue sharing plan as set out in the Community Center Café/Pro Shop Agreement, Paragraph 3. A sixteen percent (16%) service fee in lieu of a gratuity may be added to catering for golf outings only. That 16% service fee shall be included in the gross receipts under this Agreement. In exchange, the Operator agrees to pay the City an incremental percentage of the combined yearly gross receipts of both facilities with a guaranteed minimum per year based on the revenue sharing plan as follows:

<u>Yearly Gross Receipts</u>	<u>% to City</u>
0 to \$200,000	\$10,000 guaranteed minimum (Minimum guaranteed per year)
\$200,001 to \$300,000	7
\$300,001 to \$600,000	10
\$600,001 per year or more	12

Within sixty (60) days after the end of each combined fiscal year (that is, the fiscal year for both the Troy Community Center Café/Pro Shop and the Sanctuary Lake Golf Course food service), the Operator will provide an accounting of gross receipts from that previous combined fiscal year with the amount due the City of the percentage of gross receipts under the revenue sharing plan. The City has the right to request documentation of the reconciliation and shall be provided with access to books and records of the Operator for review or audit, if deemed necessary. If additional monies are due the City for that previous combined fiscal year of operation, those monies shall be paid forthwith to the City but no later than sixty (60) days after the end of that previous combined fiscal year. In the event that the Operator submits documentation acceptable to the City that it has overpaid the City during that previous combined fiscal year of the operation under the revenue sharing plan, the City will refund the overpayment to the Operator.

The parties agree that the final figure accepted by the City as the previous combined fiscal year gross receipts shall be used to compute payments under the Agreement for the current fiscal year of operation if the option to renew the Agreement is exercised. That figure shall be divided by 12 to obtain the monthly payment amount for the current combined fiscal year of operation. Those payments shall continue to be due and payable to the City on the first (1st) of each month and calculated as set out above. At the end of each combined fiscal year that the Agreement is in effect by extensions of the Agreement, or whenever the Agreement is terminated, the Operator will provide an accounting of gross year receipts for the previous combined previous fiscal year, and/or for the current combined fiscal year to date if there is a termination of the Agreement prior to the end of a contract period, and reconcile the amount paid to the City with the amount due the City and the terms and conditions set out above for any money due to the City or any refund due to Operator shall apply.

2. SEPARATE AGREEMENTS: It is understood and agreed that a separate Agreement establishing terms and conditions between the City and Operator for food, catering and vending service at Troy Community Center Café/Pro Shop is being signed simultaneously with this Agreement. That Agreement for Sanctuary Lake Golf Course includes the revenue sharing plan as set out in Paragraph 1 of this Agreement. If the Agreement for the Community Center Café/Pro Shop is terminated or not extended but this Agreement is not terminated or is extended, the revenue sharing plan set out in Paragraph 1 shall continue in effect without including gross receipts from the Troy Community Center food, catering and/or vending service. Renewal or extension of this Agreement is not contingent on renewal or extension of the Agreement for the Community Center Café/Pro Shop Agreement.

3. USE OF KITCHEN AND LIMITATIONS: The Operator shall provide a food/beverage service to all users of the Sanctuary Lake Golf Course. The Operator shall be the exclusive caterer of commercially prepared food/beverages served at the golf course. User groups that

wish to have food/beverages catered for their events shall make arrangements, including payment, directly with the Food Service Operator. The Operator's services shall include preparation, delivery, and clean up of food and/ or beverages.

4. HOURS OF OPERATION: The operating schedule for the Sanctuary Lake Golf Course shall be as follows unless the designated City representative provides written amendments to the following schedule:

MINIMUM OPENING DATES AND TIMES

April 1st – April 25th:	Monday thru Sunday 7:30 am
April 26th – May 16th:	Monday thru Sunday 7:00 am
May 17th – June 6th:	Monday thru Sunday 6:30 am
June 7th – August 22nd:	Monday thru Friday 6:30 am Saturday & Sunday 6:00 am
August 23rd – September 5th:	Monday thru Sunday 6:30 am
September 6th – September 26th:	Monday thru Sunday 7:00 am
September 27th – November 15th:	Monday thru Sunday 7:30 am

Note: Opening dates and times are subject to change to meet user demand. A minimum of 72 hours notice will be given for all changes.

OPERATING TIMES FOR OUTSIDE GRILL AND BEVERAGE CART

The Outside Grill and Beverage Cart are expected to be open and running daily. The outside grill is to be opened no later than 9:30 a.m. and close no earlier than 5:00 p.m. daily. Upon agreement with the Director of Golf, the schedule may be changed to due weather and/or special circumstances.

Vending machines will be placed and filled for operation during the normal golf season with the exception of any vending machines that are placed in the golf range area. The golf range vending machines will be maintained during the entire year.

5. MAINTENANCE OF PREMISES: The Operator shall maintain the interior of the kitchen/dining area, vending area(s), outside food service area, the service window, if applicable, and all adjacent areas in a clean and neat manner and in compliance with all City ordinances, State law and applicable health standards and regulations. The Operator shall maintain the trash receptacles in all kitchen / dining areas. The Operator is responsible for cleaning all equipment and reporting any type of mechanical problem to the Parks and Recreation Department. The City has a contractor for the cleaning of all restrooms. However, the Operator shall be responsible for making sure that all restrooms which are located in the kitchen and grilling area only are kept in a clean and neat manner when the restroom cleaning contractor is not on site. This includes the picking up of all trash left on floors or counter-tops, restocking hand towels, toilet tissue, soap, and emptying any trash receptacles if needed. It will be the responsibility of the Operator to lock entrance and exit gates to the facility at the end of each day.

6. OPERATOR'S EMPLOYEES: The Operator shall provide appropriate uniforms and name badges for its employees and shall require that all employees maintain themselves and their uniforms in a clean and neat appearance. The Operator is responsible for all wages, benefits or any other condition of employment and acknowledges that its employees have no employment relationship with the City. The City shall have the right to mandate that the Operator terminate an employee for inappropriate behavior. All employees serving alcoholic beverages shall do so within the guidelines of the State of Michigan Liquor Laws and may be terminated due to violations of this law.

7. INSPECTION AND REPAIRS: The City shall have the right to enter and/or inspect the kitchen area at any reasonable time and make repairs and/or improvements, as it deems necessary. The City will pay the expense of periodic maintenance caused by normal wear and tear of the kitchen equipment. Any maintenance or repair to Operator equipment is the sole responsibility of the Operator. Other repairs will be done at the City's expense unless it is determined that the repair was necessary due to the misuse or negligence of the Operator, its employees and/or agents in which event the Operator shall be responsible for the costs of said repairs. The City will make every effort to notify the Operator in advance if non-City employees will be entering onto the premises at the City's request. Any additions, repairs and/or improvements made on the premises shall become the property of the City.

8. SERVING OF ALCOHOLIC BEVERAGES:

(A) The City shall require the Operator to maintain its liquor license for the premises known as Sanctuary Lake Golf Course under the Operator's name and keep the license in good standing during the term of the Agreement. Violation of the State of Michigan Liquor laws will be considered as a violation of the Agreement and may result in termination of the Agreement at the City's discretion. Employees serving alcoholic beverages shall do so in compliance with the State of Michigan Liquor laws and guidelines as set forth by the Michigan Liquor Control Commission. Serving violations by an employee will be just cause for termination of the Agreement at the City's discretion, and the Operator shall be deemed responsible if such conduct occurs. The Operator shall in no way jeopardize the liquor license obtained for the Sanctuary Lake Golf Course facility.

(B) The City grants to the Operator the possession and control of the Sanctuary Lake Golf Course, which includes the Outside Grill, for the limited purpose of controlling and monitoring

the consumption of alcohol on the premises, including the collection of money for alcoholic beverages. The City reserves to itself the exclusive right to operate the golf business at Sanctuary Lake Golf Course, including the collection of all fees related to playing of golf and the operation of a pro shop.

(C) The Operator agrees to assume the responsibilities of a liquor licensee at Sanctuary Lake Golf Course, and agrees to be responsible for all sanctions and/or penalties assessed for alleged violations of the Michigan Liquor Control Commission's Administrative Rules and Regulations and/or federal, state, or local laws concerning the sale of alcohol at Sanctuary Lake Golf Course. This includes the assumption of a licensee's responsibility for the actions of the Operator's employees, agents and/or representatives who sell alcohol.

(D) The Operator agrees that there shall be no sales of alcohol on the Sanctuary Lake Golf Course proper, but that the Operator, if licensed to do so by the Michigan Liquor Control Commission, may sell up to two beers per golfer at the Club House or the Outside Grill, which the golfer can then take onto the golf course for consumption.

(E) The City agrees to provide the Operator with a motorized golf cart, at no charge, for operation by the Operator's employees on the Sanctuary Lake Golf Course, in order to facilitate monitoring of alcohol consumption. The Operator agrees to coordinate its operation of the golf cart with the City's Director of Golf Operations, and understands and agrees that the City may provide back up security to monitor alcohol consumption on the Sanctuary Lake Golf Course.

(F) The Operator recognizes and agrees that the operation and control of normal golf activities lies exclusively with the City, except as otherwise provided in this Agreement.

(G) The Operator agrees to indemnify and hold the City harmless from any and all claims arising out of the sale of alcoholic beverages by the Operator, its employees, its agents and/or its representatives which occurred on City property.

(H) Both the City and the Operator acknowledge that a liquor license in the restaurant industry has a significant market value. Operator further acknowledges that if it desired to open a restaurant with liquor service in the private sector, it would have to secure a liquor license. The liquor license would have to be approved by a municipality, which might have a limited number of licenses or no licenses available; or the Operator might have to pay a substantial amount of money to purchase an existing liquor license from another liquor licensee. Operator understands that the City is not in the restaurant industry but desires to enhance the services available to the public at the City's Sanctuary Lake Golf Course, a municipal golf course, by having food and beverage service on the premises. The Operator acknowledges that it is the City's responsibility to insure a smooth transition of any food or beverage service at the Sanctuary Lake Golf Course if the Operator's Agreement is not renewed or if it is terminated. Therefore, the City is willing to forgo payment by the Operator of the market value of the liquor license which the City has agreed to approve for issuance to the food service vendor of the Sanctuary Lake Golf Course as part of the award of the bid in this matter, but if and only if, the food service vendor, in this instance the Operator, transfers the liquor license acquired by the food service vendor, in this instance the Operator, for Sanctuary Lake Golf Course to the City or the City's approved vendor at the termination of the Agreement by either party for any cause and/or for non-renewal of the Agreement. The Operator understands that this paragraph is an essential term and condition of this Agreement that the liquor license acquired by the Operator shall remain with the premises known as Sanctuary Lake Golf Course. The Operator understands that, but for the Operator's agreement to the terms and conditions in this

paragraph, that City Council would not have approved this Agreement. Therefore, the Operator shall transfer the liquor license acquired for the Sanctuary Lake Golf Course to the new food service vendor selected by the City Council or to the City upon termination for any cause or by any party of the Agreement or upon non-renewal of the Agreement.

(I) Upon termination of this Agreement by either party or upon expiration and non-renewal of the Agreement, the Operator shall cooperate fully and professionally to insure the transfer of the liquor license to the new food service vendor or the City, at the City's discretion. The Operator acknowledges that failure to cooperate in the transfer of the liquor license as set out herein will result in severe money damages to the City, loss of the liquor license and loss of the market value of the liquor license by the City. In lieu of a denial by a court of specific performance under this Agreement for the transfer of the liquor license to the City or a new food service vendor approved by the City, the City shall be entitled to payment of the market value of the liquor license in the amount of \$100,000.00, representing a minimum market value of the liquor license.

(J) Although the term of this Agreement is a one (1) year period commencing on May 1, 2006, the City agrees that if this Agreement is terminated prior to April 30, 2007 by the City for reasons other than violation of the State of Michigan Liquor Law and guidelines as set forth by the Michigan Liquor Control Commission, the City will purchase and take possession of all non-food inventory including by way of example, but not limited to, dishes, small wares, silverware, glasses, serving pieces, equipment (including any specialized golf carts), non Emerald Food Service signage, and the like. The cost for such purchases shall be the Operator's documented cost of acquisition for such items minus depreciation based on the rules and regulations published by the Internal Revenue Service Act 1986, as amended. The Operator shall also have the discretion to remove those items from the premises and not receive payment as set out

herein. The City shall pay the costs of the non-food inventory as set out herein within sixty (60) days after receipt of documentation of Operator's cost.

(K) Additionally, if the Agreement is terminated by the City within the one (1) year period for reasons other than violation of the State of Michigan Liquor Law and guidelines as set forth by the Michigan Liquor Control Commission, the City shall also pay to the Operator the documented cost associated with the acquisition of a liquor license for example, the application and processing fee. The City shall not be responsible for the potential market value of the liquor license, any unopened liquor or other items not directly related to the acquisition of a liquor license. The City shall pay the costs for the acquisition of the liquor license as set out herein within sixty (60) days after receipt of documentation of Operator's cost.

9. ENTERTAINMENT: There shall be no entertainment including, but not limited to, music, singers, dancing, videos, movies, DVD's, modeling, magicians, without approval of the Director of Parks and Recreation.

10. KITCHEN SUPPLIES / EQUIPMENT AND MODIFICATION: The Operator shall provide all necessary supplies and personnel to staff the operation of the kitchen/dining area(s), catering service for golf outings, and vending machines that are required and not on the ***Kitchen Equipment*** List attached to the Request for Proposal. Building and/or equipment modifications shall be approved in advance by the Director of Parks and Recreation or his or her designated representative and shall become the property of the City at the conclusion or upon termination by either party of this Agreement. Additionally, the designated City representative shall approve equipment brought into the facility by the Operator or at the request of the Operator in advance of delivery to the Sanctuary Lake Golf Course. Any modification or

addition of equipment required by the Oakland County Health Department shall be the responsibility of the Operator.

11. PRICES / PRICE AND HOUR CHANGES: Products sold or marketed, the prices charged, and the operation schedules of the kitchen/dining area(s) are subject to regulation by the City and, once established, no changes shall be made without prior approval of the Director of Parks and Recreation or his/her designee. Prices will be re-evaluated at the conclusion of each year of the Agreement. Increases in prices shall be no greater than the percentage increase of the Consumer Price Index of Food Eaten Away from Home. Prices shall be posted for patrons and a detailed printed description of prices shall be available for review by the City.

12. RECORDS: The Operator shall keep accurate records of all sales and receipts through the use of computerized/electronic cash registers which provide daily tapes and reports. The City, prior to commencement of the Agreement, shall approve the cash registers that will be used for the operation of the food services described in this agreement. At the City's option, Operator shall make available for inspection by the City, or its designated representative or shall submit forthwith at City's request, a copy of its monthly Michigan Department of Treasury Sales Tax Return. An annual report, summarizing the monthly reports, shall be submitted to the City within sixty (60) days after the first anniversary date of the Agreement and each year thereafter that the Agreement is in effect. The City shall have the right to inspect the books, records, and inventories of the Operator at any reasonable time.

13. ASSIGNMENT OF AGREEMENT / INDEPENDENT CONTRACTOR: The Operator shall have no authority or power to assign, sublet and/or transfer any rights, privileges or interests under this Agreement without prior written consent from the City. The Operator

acknowledges that it is an independent contractor with no authority to bind the City to any contracts or agreements, written or oral.

14. COMPLIANCE WITH LAWS: The Operator shall at all times be in compliance with all federal and state statutes and City ordinances and with all Oakland County Health Department licensing requirements, rules and regulations. The serving of alcoholic beverages will be in full compliance with State of Michigan Liquor Laws. The Operator will be responsible to obtain a State of Michigan Liquor License and keep it in force during the term of the contract. If the Operator receives liquor violations that jeopardize the facility's liquor license, the violations will be considered a breach of contract and, at the City's discretion, the contract may be terminated.

15. INSURANCE: The Operator shall maintain liability insurance for any actions, claims, liability or damages caused to persons and/or property arising out of the operation and/or maintenance of the food service, kitchen/dining area(s) and its catering operation for golf outings where food has been prepared in the Sanctuary Lake Golf Course food preparation area(s), in addition to liquor liability insurance, product liability insurance, and worker's compensation. All insurance coverage shall be approved by the City. Certificates of Insurance shall comply with the sample form attached to the Request for Proposal. The City shall be named as an additional insured under all policies except worker's compensation. All insurance companies must be licensed and admitted to do business in the State of Michigan. All insurance set out herein shall be maintained for the duration of the Agreement. Failure to maintain coverage or to continue to maintain coverage shall be considered a breach of contract with immediate termination of the Agreement at the will of the City. The Operator is responsible for any deductibles under its policies of insurance. The Operator agrees to indemnify and hold the City harmless for any claims, actions, liabilities or damages arising out of the operation,

maintenance or management of the food service, kitchen/dining area(s), vending area(s), on-premises catering for golf outings where food has been prepared in the Sanctuary Lake Golf Course food preparation area(s).

16. REPORTS OF CLAIMS: Copies of all claims, damage, or accident reports received by the Operator, its employees and/or agents, whether submitted to an insurance company or not, relating to any damage or accident that occurred or is alleged to have occurred shall be sent to the City.

17. PERSONAL PROPERTY TAXES: The Operator shall be liable for any personal property taxes assessed against its equipment or inventory.

18. UTILITY COSTS: The City will pay utility costs.

19. TERM OF AGREEMENT: The effective date of this Agreement is May 1, 2006 and shall terminate one (1) year from that date or on April 30, 2007 unless cancelled by either party upon ninety (90) days written notice sent by certified mail as set out in Paragraph 20. Cancellation may be without cause by either party. If cancellation by the City is without cause prior to April 30, 2007, the additional terms of Paragraphs 8(J) and 8(K) shall apply.

20. NOTICE: All written notices to be given under this Agreement shall be mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to mailing.

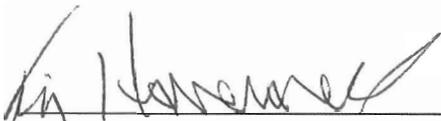
21. SECTION HEADINGS. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

22. ENTIRE AGREEMENT: This Agreement incorporates by reference the Request for Proposal, General Specifications, Vendor's Questionnaire, and the Operator's Proposal as set out herein. These documents constitute the entire Agreement and any changes thereto shall be in writing signed by both the parties unless otherwise set out in the Agreement.

IN WITNESS WHEREOF, the City and the Operator have executed this Agreement.

EMERALD FOOD SERVICES I, L.L.C.

CITY OF TROY,



By: Kim Haveranek
Member

By: Louise E. Schilling, Mayor

By: Tonni Bartholomew, City Clerk

Dated: 5/1/06