



CITY COUNCIL ACTION REPORT

December 11, 2006

TO: Phillip L. Nelson, City Manager

FROM: John M. Lamerato, Assistant City Manager/Finance and Administration
Carol K. Anderson, Parks and Recreation Director

SUBJECT: Approval of Kitchen Lease – Emerald Food Service LLC

Background:

- In contract with the Area Agency on Aging 1-B, Emerald Food Services, Inc. is the food service provider for senior citizens. To provide these services the City has agreed to allow Emerald Food Service, Inc. use of the Community Center kitchen for the purpose of preparing food for this purpose. As part of this use, Emerald Food Service, Inc. will be allocated office space to conduct business associated with this service.

Financial Considerations:

- The City will generate \$9,000 annually for this use through payment by Emerald Food Service, Inc.

Legal Considerations:

- All legal considerations have been addressed in the agreement.

Policy Considerations:

- There are no policy considerations.

Options:

- City management recommends approval of the agreement. (Goal #1)

Approved as to Form and Legality:

Lori Grigg Bluhm, City Attorney

KITCHEN LEASE

THIS KITCHEN LEASE (the "Lease") is made as of the _____ day of _____, 2006, by and between the City of Troy, a Michigan Municipal Corporation, whose address is 500 West Big Beaver Road, Troy, Michigan 48084, as Lessor ("City"), and Emerald Food Services LLC, a Michigan Corporation, whose address is 1980 Greenfield, Berkley, Michigan 48072, as Lessee ("Corporation").

SECTION I – Duration of the Lease

The Lease shall be in full force during the period commencing on January 1, 2007, and ending the 31st day of December 2010, and during such additional periods as the City and the Corporation shall agree upon.

SECTION II – Purpose of the Lease

The purpose of the Lease is the use of the Community Center kitchen for on site scratch cooking by the Corporation for the Senior Citizen Nutrition program in Troy and other Oakland County communities.

SECTION III – The City's Responsibilities

- A. The City shall lease to the Corporation the Community Center kitchen and office space designated on the attached Exhibit 1 for the sum of \$750.00/month
- B. The City shall provide the use of the kitchen for the sole purpose of conducting a scratch cooking site from Monday through Friday, from 5:00 am to 2:00 pm, (on normal Corporation work days), except holidays observed by the City. The City reserves the right to occupy and use the premises at any time except as provided herein.
- B. City shall maintain the trash receptacles in the kitchen and office area.
- C. The City shall provide for the use of the following equipment currently on site: refrigeration units, ovens, stoves, steam table, sinks, garbage disposals and ice machine.
- D. The City shall pay all utility costs of the program.
- E. The City shall provide for the general maintenance of the facility except as otherwise provided in this Lease
- F. The City shall permit access to the kitchen to the Oakland County

Health Department personnel, and Office of Services to the Aging and Area Agency on Aging personnel.

SECTION IV – The Corporation's Responsibilities

- A. The Corporation shall pay the rent on or before the 1st day of each month. Checks should be made payable to: City of Troy and delivered or mailed to Carol Anderson, Parks and Recreation Director, 3179 Livernois, Troy, Michigan 48083.
- B. The Corporation shall use the kitchen for the sole purpose of conducting a scratch cooking site from Monday through Friday, from 5:00 am to 2:00 pm, (on normal Corporation work days), except holidays observed by the City.
- C. The Corporation shall provide all the food and other necessary materials for cooking and preparing the meals to be served.
- D. The Corporation shall provide all the kitchen utensils and equipment necessary for food preparation and cooking which are not currently on the site.
- E. The Corporation shall provide all the paper products, plastic silverware, condiments and other containers and utensils.
- F. The Corporation shall provide for the cleaning of the tables on a daily basis.
- G. The Corporation shall provide for all daily cleaning of the premises.
- H. The Corporation shall provide for the maintenance and cleaning of all kitchen equipment it uses as listed and provided in Section III, Paragraph C, whether owned by the City or the Corporation.
- I. The Corporation shall reimburse the City for a 25% portion of the trash disposal service, any cleaning of the stove and oven hoods, grease trap, ceiling tiles and wall washes in the kitchen within 30 days after presentation of the notice of the cost of those services.
- J. The Corporation shall reimburse the City for 50% of the cost of dumpster pick-up within 30 days after presentation of the notice of the cost of that service.
- K. The Corporation shall not make any building modifications and/or additions, including but not limited to fixtures, door, carpeting, electrical outlets and voice/data connections unless they are approved by the City in

advance of installation. Those building modifications and/or additions shall become the property of the City at the expiration or termination of this Lease. The costs associated with building modifications and/or additions that are necessary to make the space a viable office shall be the responsibility of the Corporation. Equipment brought into the space by the Corporation must also be approved in advance by the City.

- L. The Corporation shall supply the City with copies of all claims, damage or accident reports received by the Corporation, 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 on City owned property within 24 hours of the claim.
- M. The Corporation shall allow the City 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 Corporation. 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 Corporation, its employees and/or agents in which event the Corporation shall be responsible for the costs of said repair. The City will make every effort to notify the Corporation 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.
- N. The Corporation shall be liable for any personal property taxes assessed against its equipment or inventory.
- O. The Corporation shall secure all necessary insurance and hold the City harmless as set out in Section V, Paragraphs A. and B.
- P. The Corporation shall meet all rules and regulations of the Oakland County Public Health Department for the establishment and maintenance of a scratch cooking site and shall secure the approval of the Oakland County Public Health Department for the operation of the kitchen as a scratch cooking site.
- Q. The President of the Corporation or his/her designee shall meet with the Director of Parks and Recreation or his/her designee for the City on an annual basis starting in January, 2008 for the purpose of reviewing the adequacy of the service being provided, and as required at any other time.

SECTION V – Insurance and Indemnification

- A. The Corporation shall maintain liability insurance in the amount of two million (\$2,000,000.00) 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 and use of the kitchen and office area in the Troy Community Center, 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 for attached as Exhibit 2. 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 Corporation is responsible for any deductibles under its policies of insurance.
- B. To the fullest extent permitted by law, the Corporation agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Troy, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Troy against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Troy, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Troy, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this contract for and for the preparation and service of meals.
- C. The City shall indemnify, defend, and hold harmless the Corporation from any and all claims against the Corporation resulting from the gross negligence of the City.

SECTION VI – Compliance

The City and the Corporation shall comply with all applicable laws, ordinances and regulations of the Federal, State and local governments.

SECTION VII – Discrimination Prohibited

Neither the City nor the Corporation shall discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges

of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status pursuant to 1976 P.A. 453, Section 209. The parties shall also comply with the provisions of the Michigan Handicappers Civil Rights Act, 1976 P.A. 220, and the Federal Rehabilitation Act of 1973, P.L. 93-112, which states that no employee or client or otherwise qualified handicapped individual shall, solely by reason of handicap, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The parties shall comply with all other Federal, State or local laws, regulations, and standards, and any amendments thereto, as they may apply to the performance of this Lease.

No person shall, on the grounds of race, creed, color, sex, age, national origin, height, weight, handicap, or marital status be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of this Lease. The Corporation shall comply with all applicable regulations promulgated pursuant to the Civil Rights Act of 1964.

SECTION VIII – General Provisions

A. Merger or Integration

This lease constitutes the entire contract between the parties with respect to the subject matter and there are no other further written or oral agreements with respect to this Lease.

B. Termination

Either party may at any time during the life of this Lease, or any extension thereof, terminate this Lease by giving sixty (60) days notice in writing to the other party of its intention to do so.

C. Modification

No variation or modification of the Lease, and no waiver of its provisions shall be valid unless in writing and signed by the duly authorized officers of both parties.

D. Assignment or Delegation

No assignment or delegation of this Lease shall be made in whole or in part, without the written consent of the City being first obtained.

E. Independent Contractor Provision

The relationship of the Corporation to the City shall be that of an independent contractor. No partnership, association or joint enterprise shall arise between the Corporation and the City as a result of any provision of this Lease, nor shall any provision be construed as making an employee of the Corporation an employee of the City or an employee of the City an employee of the Corporation.

F. Designation of Representatives

The Corporation designates its president, Kim Haveranek or designee, as its representative to convey complaints and grievances pertaining to the execution of this Lease. The City designates Carol Anderson, Director of Parks and Recreation or designee, as its representative for same. The Corporation representative may be reached by phone at 248-546-2700. The City's representative may be reached by phone at 248-524-3484.

G. Material Breach

Any breach of promise or covenant contained herein shall be construed as a material breach and shall be the basis for immediate termination of this Lease by the non-breaching party.

SECTION IX – Disputes

The City shall notify the Corporation in writing of its intent to pursue a claim against the Corporation for breach of any terms of this Lease. No suit may be commenced by the City for breach of this Lease prior to the expiration of ninety (90) days from the date of mailing of the notification. Within the ninety (90) day period, the City, at the request of the Corporation, shall meet with an appointed representative of the Corporation for the purpose of attempting to resolve the dispute.

SECTION X – Notice

All written notices to be given under this Lease 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.

IN WITNESS WHEREOF, The City and the Corporation have executed this Lease as of the date set forth above.

LESSEE:

EMERALD FOOD SERVICES, INC.

BY: _____
Kim Haveraneck

Position: _____
President

Date: _____

Attest: _____

Date: _____

LESSOR:

CITY OF TROY, MICHIGAN

BY: _____
Louise Schilling

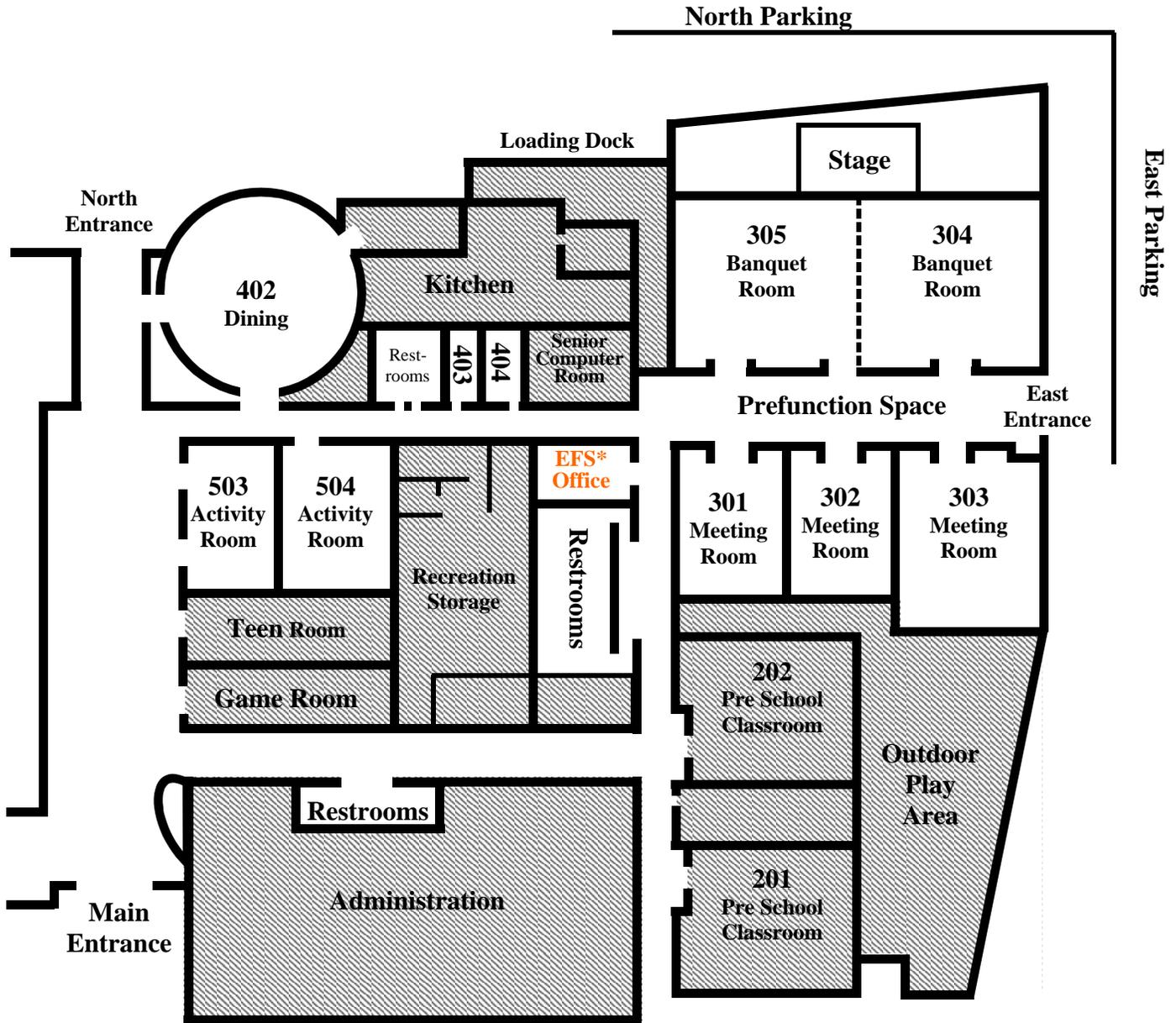
Position: _____
Mayor

Date: _____

By: _____
Tonni Bartholomew, City Clerk

Date: _____

Troy Community Center Rentable Space



*Emerald Food Service

South Parking

Exhibit 1

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

PRODUCER Complete <u>Sample Certificate</u>	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. INSURERS AFFORDING COVERAGE
INSURED Complete	INSURER A: <u>XYZ Company</u> INSURER B: <u>ABC Company</u> INSURER C: INSURER D: INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	0001	XX-XX-XX	XX-XX-XX	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$
	<input checked="" type="checkbox"/> Additional Insured - City of Troy - use wording below				PERSONAL & ADV INJURY	\$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC				GENERAL AGGREGATE	\$ 1,000,000
					PRODUCTS - COMP/OP AGG.	\$ 1,000,000
A	AUTOMOBILE LIABILITY	0002	XX-XX-XX	XX-XX-XX	COMBINED SINGLE LIMIT (Ea accident)	\$ 500,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
A	EXCESS LIABILITY	0003	XX-XX-XX	XX-XX-XX	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 1,000,000
	<input type="checkbox"/> DEDUCTIBLE					\$
	RETENTION \$					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	0004	XX-XX-XX	XX-XX-XX	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	\$
					OTHER	\$
					E.L. EACH ACCIDENT	\$ 100,000
					E.L. DISEASE - EA EMPLOYEE	\$ 100,000
					E.L. DISEASE - POLICY LIMIT	\$ 500,000
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 Additional Insured under General Liability and Excess Liability: City of Troy including Architects and Engineers, all elected and appointed officials, all employees and volunteers, boards, and commissions and/or authorities and their board members, employees and volunteers on ISO Form B or broader.

CERTIFICATE HOLDER	Y	ADDITIONAL INSURED; INSURER LETTER: <u>A</u>	CANCELLATION
City of Troy 500 W. Big Beaver Rd. Troy, MI 48084		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED OR MATERIALLY CHANGED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.	
		AUTHORIZED REPRESENTATIVE	



**CONTRACTUAL AGREEMENT
FOR SERVICES TO THE AGING**

BETWEEN

**AREA AGENCY ON AGING 1-B
29100 Northwestern Highway, Suite 400
Southfield, MI 48034
herein after referred to as the "AAA 1-B"**

and

**Emerald Food Services
3179 Livernois
Suite 100
Troy, MI 48083
herein after referred to as the "Contractor"**

for

Provision of Services to the Aging as authorized by:

**THE OLDER AMERICANS ACT, as amended
and
THE MICHIGAN OFFICE OF SERVICES TO THE AGING**

I. STATEMENT OF CONTRACTUAL AGREEMENT

- A. Agreement Period:** This agreement will commence on October 1, 2006, or once fully executed thereafter and will continue through September 30, 2009. This agreement will be in full force and effect during the entire period specified.
- B. Program Budget and Agreement Amount:** The AAA 1-B will pay the amount specified on the "Negotiated Multi-Year Contractual Terms for Federal and State Funding" section of this agreement, subject to the provisions as outlined in this agreement, the "Application for Services" and the "Service Provision Manual for Social and Nutrition Services, Fiscal Years 2007, 2008 and 2009."
- 1. Expenditure Rate:** All Social Services contracts are reimbursed under the expenditure rate methodology. Contracts are assessed and evaluated fiscally by line item spending. To receive full-reimbursement of the contract, the AAA 1-B must be fully satisfied that all costs reported and assumed under the contract, were in fact, made for authorized program

purposes. Contractors are responsible for tracking, reporting and substantiating units/clients served.

Contractors receiving reimbursement under this method must submit an annual budget for approval once initial fiscal year funding levels are known. Contract addendums will be sent accordingly.

2. **Unit Rate:** All Nutrition contracts are reimbursed under the unit rate methodology. Contractors must serve all contracted units in order to receive full reimbursement under the contract.

The unit rate is negotiated at the beginning of the three-year contract cycle and will remain the same throughout the contract period, unless the contract is otherwise amended. As funding levels increase and decrease, the Contractor will adjust units accordingly, keeping the unit rate static.

3. **Equipment Purchase:** Any equipment purchases made in whole or in part with funding provided under this contract must follow the Equipment Inventory Standards as outlined in the "Service Provision Manual for Social and Nutrition Services, Fiscal Years 2007, 2008 and 2009." At the end of the contract period, the AAA 1-B reserves the right to retain or transfer the title to all items having a unit acquisition cost of \$5,000 or more, to the extent that the AAA 1-B has interest in the equipment. 45 CFR §74.34 (g)

4. **Budget Line Item Changes:** For expenditure reimbursement contracts, a deviation allowance modifying an established budget line item by \$200 or twenty percent (20%), whichever is greater, is permissible without approval of the AAA 1-B. Any line item change in excess of this provision must be made using the AAA 1-B "Budget Change Request" form prior to July 10 of any fiscal year during this contract. Line item change approval will not authorize new categories, subcontracts, equipment items, or positions not previously approved under this contract.

Note: This provision does not apply to unit rate contractors.

- C. **Purpose:** The AAA 1-B has received grants through the Administration on Aging (AoA) and the Michigan Office of Services to the Aging (OSA) for the planning and implementation of services for older persons within the counties of **LIVINGSTON, MACOMB, MONROE, OAKLAND, ST. CLAIR, AND WASHTENAW**, pursuant to Title III of the Older Americans Act of 1965, as amended to date, and the Older Michiganians Act. The AAA 1-B is undertaking activities necessary to plan and carry out services as designated by federal and state mandates and the AAA 1-B's approved Area and Annual Implementation Plans. With execution of this contract, the AAA 1-B has accepted the Contractor's Application for Provision of Services and desires to engage the Contractor to provide services as specified in that application.

1. **Beneficiaries:** The Contractor will deliver services to older adults in an accessible, efficient, and effective manner as specified in the "Application for Provision of Services" and function in accordance with all sections and attachments contained in this contract.
 2. **Contracted Service Levels:** The Contractor will make every effort to reach the contracted serving levels, including clients to be served and units to be provided, as outlined in the "Negotiated Multi-Year Contractual Terms for Federal and State Funding" section of this agreement and in the "Application for Provision of Services." Contractors reimbursed per unit will receive full reimbursement under the contract only when all contracted units have been served each year.
 3. **Participant Eligibility:** Services will be provided only to persons 60 years of age and older, unless otherwise allowed under eligibility criteria for a specific program. Services will be provided only to persons living in the service area described herein, and those who meet the service criteria will be eligible for services regardless of race, color, religion, sex, or national origin. Preference is to be given in identifying and serving those older adults in greatest economic and social need, with special emphasis on serving low-income minority individuals. Low-income older adults and those of minority ethnic populations should be served at least in proportion to their numbers in the geographic service area. Elderly members of Native American tribes and organizations in greatest economic or social need in the service area shall receive Older Americans Act funded services equivalent to the services to be received by non-Native American elderly residents in the service area. Clients of the AAA 1-B Community Care Management (CCM) program must be given priority when they are referred by CCM to the Contractor for service.
 4. **Participant Rights:** No officer, employee, or agent of the Contractor may make distinction among participants under this contract on the basis of race, color, religion, sex, or national origin. For the purpose of this contract, distinctions on the grounds of race, color, religion, sex, or national origin include, but are not limited to, the following: denial of a service or benefit or availability of a facility; providing any service or benefit to a participant which is different or is provided in a different manner or at a different time from that provided to other participants under this contract; subjecting a participant to segregation or separate treatment in any matter relative to receipt of any service; restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; or treating a participant differently from others in determining admission and eligibility.
- D. **Statement of Work:** The Contractor will perform services set forth in the objectives, targeting plans, action steps, and descriptions contained in the approved "Application for Provision of Services," and any and all other

stipulations as specified by the AAA 1-B's Board of Directors within this agreement and the "Service Provision Manual for Social and Nutrition Services."

The Contractor will provide the services specified in this contract in accordance with the Service Definitions, Minimum Standards, and policies and procedures found in the AAA 1-B's approved "Application for Service Provision" and the "Service Provision Manual for Social and Nutrition Services." These are minimum requirements and are binding upon the Contractor.

The Contractor will serve persons eligible for services under this contract regardless of other criteria for services usually applied by the Contractor.

E. Special Conditions:

1. This contract is valid upon approval of the AAA 1-B's Board of Directors and Executive Director.
2. This contract is conditionally approved subject to and contingent upon the availability of federal and state funding.
3. The AAA 1-B will not assume any responsibility or liability for costs incurred by the Contractor prior to the execution, by both parties, of this agreement.
4. The Contractor will adhere to any and all conditions set forth in the body of this document and all attachments thereto.

F. Contract Terms: This agreement contains all terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of the contract shall be deemed to exist or bind any of the parties hereto.

G. Certification: The individual or officer signing this contract certifies by his or her signature that he or she is authorized to sign this agreement on behalf of the responsible governing board, official, or Contractor.

II. GENERAL PROVISIONS

A. Contractor Responsibilities:

1. **Service Provision and Staffing:** The Contractor agrees to make every effort to maintain sufficient staff, facilities, equipment, etc., in order to deliver contracted services and further agrees to immediately notify the AAA 1-B in writing whenever it is unable to do so or is unable to provide the required quality and/or quantity of services specified within this contract.

If for any reason personnel who have a material effect on the project are lost to the project during the course of this contract, the Contractor shall promptly notify the AAA 1-B in writing of changes in personnel status, including proposed dates to fill staff vacancies and names of new staff as they are hired.

The Contractor will provide service as stated in this contract beginning on the effective date, with all required services delivered by the expiration date of the contract. Service delivery will be planned to ensure that services are available throughout the entire contract period. The Contractor will attain maximum service delivery capacity within thirty (30) days after commencement of this contract, or within the timeframes proposed in the Contractor's application, unless written authorization to the contrary is obtained from the AAA 1-B.

2. Publication Rights and Publicity for Services:

- a. Where activities under the contract result in a book or other copyrighted materials, the author is free to obtain a copyright; but the AAA 1-B, OSA, AoA, and the Department of Health and Human Services (HHS) have the option to a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all such material. The AAA 1-B, OSA, AoA, and HHS may each receive, at no cost, up to three copies of any material published under this contract.
- b. The AAA 1-B reserves a royalty-free, non-exclusive and irrevocable license to reproduce and use materials copyrighted under this contract.
- c. Published materials may not include service recipient information including any personal identification data and/or photographs without the prior written consent of the client and the AAA 1-B.
- d. The Contractor must publicize available services, using methods that are effective in reaching older persons in greatest economic and/or social need.
- e. Promotional materials including films, slides, books, reports, pamphlets, papers, or articles based on activities receiving support under this contract shall acknowledge the support of the AAA 1-B, OSA, and funding through the Older Americans Act. Such materials will also contain a statement that they comply with Title VI of the Civil Rights Act of 1964.

3. Contractor Policies and Procedures: The Contractor will make available all program policies, procedures, and bylaws as requested by the AAA 1-B.

4. Additional Resources: The Contractor will seek additional sources of funding for the service provided under this contract in order to increase resources available to serve older adults in the service area as well as to

ensure maintenance of the service in the event that federal or state funds are decreased or eliminated.

5. **Record Retention:**

- a. **Service Records:** The Contractor will maintain client and program records in the format required by AAA 1-B specifications. The format for recording such information shall be reviewed by the AAA 1-B during the assessment process.
- b. **Examination and Maintenance of Records:** The Contractor agrees to maintain all program and fiscal records required by the AAA 1-B. The Contractor is required to retain all books, records, or other documents relevant to the contract for three (3) years after final payment, at Contractor's cost, and federal auditors and any persons duly authorized by the AAA 1-B shall have full access to and the right to examine and audit any of the material during this period. If an audit is initiated prior to the expiration of the three (3) year period, and extends past that period, all documents shall be maintained until the audit is complete and all findings are resolved.

6. **Authorized Access:** The Contractor will permit the AAA 1-B, OSA, AoA, HHS, the Comptroller General of the United States, or any of their authorized agents access to any books, documents, papers, or other records of the Contractor which are pertinent to the contract, in order to make audit examination, excerpts, or transcripts so long as such access is in conformity with the Privacy Act of 1974. Access will also be granted at any reasonable time to the Contractor's facilities to observe the operation of the program.

7. **Audits:** The federal OMB Circular A-133 requires a Single Audit of agencies that expend \$500,000 or more in federal funds during the Contractor's fiscal year. Contractors that have a Single Audit performed must submit copies of the independently audited financial statements to the AAA 1-B within nine (9) months of the Contractor's fiscal year end.

Contractors expending less than \$500,000 in federal funds, and therefore not required to participate in a Single Audit, are encouraged to have a Financial Statement Audit performed at least bi-annually and submit those financial statements to the AAA 1-B.

The AAA 1-B will issue a management decision on any findings or questioned costs contained in a Contractor's financial statements within ninety (90) days after receipt of the audit report.

8. **Subcontracting:** The Contractor may not assign responsibilities or enter into subcontracts with additional parties without obtaining prior written approval of the AAA 1-B. Assignees or subcontractors shall be subject to

all conditions and provisions of the contract. The Contractor shall be responsible for the performance of all assignees or subcontractors. However, the AAA 1-B reserves the right to monitor and assess performance under the subcontract.

9. **Financial Responsibility and Allowable Costs:** The Contractor will maintain all books, records, documents, and other evidence of accounting procedures and practices, which accurately reflect all direct and in-kind costs of any nature, expended in the performance of this contract. The system must be auditable and in accordance with recognized accounting practices.

All funds received from the AAA 1-B under this contract and all match and program income related to the contract must be accounted for in a manner that is distinct and separate from all other funds received by the Contractor and separate from other grants and agreements with the AAA 1-B. Contingency funds are not allowed under this contract. Obligations, commitments, or encumbrances must be kept within the period of the contract.

10. **Program Income/Voluntary Cost Share and Contribution for Services:** Program income is defined as “earnings or contributions provided by or on behalf of an elderly client for a direct service received.” Income earned independent of the availability of funds from OSA are “Additional Resources.” No older person shall be denied service because he/she fails to contribute all or part of the cost of service.

The Contractor will use program income/voluntary cost share for allowable costs under the program through which it was generated to support and/or expand services. The Contractor will apply the additive alternative to the use of program income as outlined in the “Service Provision Manual for Social and Nutrition Services.” Program income may not be used as a source for required match.

11. **Insurance Coverage:** The Contractor must maintain liability insurance in amounts necessary to cover claims specific to the services being provided which may arise out of the Contractor’s operations under the terms of the contract as outlined in the “Service Provision Manual for Social and Nutrition Services.”

B. AAA 1-B RESPONSIBILITIES

1. **Reimbursement:** The AAA 1-B will provide reimbursement to Contractor on the condition that the Contractor meets all terms of service provision, reporting, and record retention contained herein.
2. **Staffing:** The AAA 1-B will provide staff for planning, consultation, resource pooling, and coordination. The AAA 1-B will also assist the

Contractor in identifying other resources to enhance federal and state funded services, developing programs to benefit the aged, and facilitating efficient and appropriate service delivery.

3. **Policies and Procedures:** The AAA 1-B will recognize the Contractor's autonomy in determining its own policies for administering its services and programs, provided that they remain in compliance with Service Definitions, Minimum Standards, and policies established by the AAA 1-B, OSA, and AoA. The "Service Provision Manual for Social and Nutrition Services" is the primary, though not exclusive, reference for AAA 1-B policies and procedures.
4. **Notification:** The AAA 1-B will provide the Contractor with notification of any alleged violation of this contract or of any alleged violation of AAA 1-B, OSA, or AoA policies and regulations and shall specify a period of time for compliance with said policies, regulations, or contractual agreements. The deadline for compliance with stated policies, regulations, or contractual agreements shall be determined by the AAA 1-B, consistent with the Probation, Suspension, and Termination section of this contract.
5. **Assessment and Monitoring:** The AAA 1-B will annually conduct formal on-site programmatic and fiscal assessments of the Contractor to ensure that service programs for older persons are being operated in accordance with service contracts and that older persons are realizing the intended benefits. The AAA 1-B will further monitor Contractor performance by requesting information through formal reports from the Contractor, in accordance with AAA 1-B requirements.

III. **ASSURANCES**

- A. **Compliance with Applicable Laws:** The Contractor agrees to comply with the provisions of the Older Americans Act and the regulations and policies pertaining thereto; with all other applicable federal laws and regulations, including licensure requirements; with policies and procedures of the AAA 1-B, OSA, and HHS; and with all applicable state and local laws. This specifically includes OSA service definitions, minimum standards, and units of service, and AAA 1-B specifications and limitations as outlined in the "Service Provision Manual for Social and Nutrition Services" for the period of the contract.

- B. Non-Discrimination:** The Contractor must operate in compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375 and codified in (5 CFR §900, Subpart F); the Federal Civil Rights Act; the Elliott-Larsen Civil Rights Act (P.A. 453 of 1976); the Michigan Persons with Disabilities Civil Rights Act (P.A. 220 of 1976); the Rehabilitation Act of 1973 (P.L. 93-112); and any other federal or state law, local ordinance, rule, regulation, or standard that may apply to an individual's civil rights.
- C. Debarment and Suspension:** Assurance will be given by the Contractor to the AAA 1-B that the Contractor, to the best of its knowledge, complies with 45 CFR §74.13, by certifying that Contractor, its principles and/or employees are not debarred or suspended from receiving federal funds. The Contractor will further assure that should exception be given that allows the Contractor to use subcontractors in the course of providing service under this contract, that the subcontracted entity and its principles are not debarred or suspended from receiving federal funds.

The Contractor will submit to the AAA 1-B all information requested about names of persons with an ownership or controlling interest in the Contractor and past business transactions. Further, the Contractor is required to disclose whether any person with an ownership or controlling interest in the Contractor have been convicted of a criminal offense related to their involvement in any programs under Titles III, XVIII, XIX, or XX of the Social Security Act since the inception of these programs. The AAA 1-B may immediately terminate the contract if the Contractor does not comply.

- D. Procurement and Property:** The Contractor assures that all purchases and transactions made under this contract conform to applicable provisions of 45 CFR §74.31-74.37 in the acquisition, transfer, replacement, or disposition of real property, equipment, or supplies. The Contractor agrees to adhere to the AAA 1-B's Equipment Policy as outlined in the budget and reporting instructions in the "Service Provision Manual for Social and Nutrition Services."
- E. Health Insurance Portability and Accountability Act (HIPAA):** To the extent that this act is relevant to the service provided by the Contractor, the Contractor assures that it complies with HIPAA and attests to this compliance in the "Business Associate Agreement" at the time of application.
- F. Confidentiality:** The Contractor assures that the use or disclosure of information concerning services, applicants, or recipients obtained in connection with the performance of this contract shall be restricted to purposes directly connected with the program implemented by this contract as required by the Privacy Act of 1974. The AAA 1-B shall have access to client, service, or participant files in order to administer programs as long as access conforms to the Privacy Act of 1974.

Information about older persons collected by the Contractor as part of its responsibility under the contract shall not be disclosed without the individual's

informed written consent. Referrals to other agencies providing services must also have the individual's informed written consent.

IV. FINANCIAL REQUIREMENTS AND COMPENSATION

- A. **Availability of Funds:** This contract is entered into subject to the availability of federal and/or state funds. If for any reason federal or state funds are decreased or eliminated, the AAA 1-B reserves the right to decrease funding levels or terminate this contract upon written notice.

Termination or reduction in the amount of funding shall take effect immediately upon receipt of written notice to the Contractor, unless a different effective date is specified in the notice. A copy of the policy, law, rule, or regulation change shall be provided to the Contractor upon request. In such event, the Contractor shall have no recourse upon termination other than payment for allowable services rendered until the termination date.

It is expressly understood that the total compensation provided by the AAA 1-B, for all services detailed within the terms of the contract, shall not exceed that federal and/or state funding amount specified on the cover page of this contract, or on any approved addendum which supercedes the original contract terms.

- B. **Match Requirement:** Local match is required for all federal and/or state funded programs and will be made up of cash and/or in-kind resources, as specified in the "Service Provision Manual for Social and Nutrition Services."
- C. **Allowable Costs:** The Contractor may not make expenditures or incur obligations in excess of the authorized program budget. Any costs incurred by the Contractor that are not within the approved budget under this contract are not allowable costs and will be the sole responsibility of the Contractor. The Contractor will refer to OMB Circular A-122 or contact the AAA 1-B if there are questions as to what constitutes an allowable cost to this contract.
- D. **Payment and Operating Advance:** Subject to the availability of funds, the Contractor shall be reimbursed monthly, for one-twelfth of the federal/state share on the total contract amount, with the exception of the first month in which two payments will be made and last month in which no payment will be made. Before making payment to a Contractor, the AAA 1-B will evaluate the Contractor's cash requirements and cash balance on hand and may adjust the payment as deemed appropriate by the AAA 1-B.

V. REPORTING AND CONTRACT CLOSEOUT

- A. **Monthly and Quarterly Reporting:** The Contractor agrees to submit program narrative, and statistical, NAPIS, and fiscal reports at times prescribed by, and on forms approved by, the AAA 1-B. The "Service Provision Manual for Social and Nutrition Services" contains reporting requirements for regular periodic

reports. The Contractor, upon request, shall submit additional reports deemed necessary by the AAA 1-B.

Failure to submit accurate or timely reports may result in the AAA 1-B's withholding contract funds or the initiation of appropriate disciplinary action.

- B. Closeout:** When the contract is concluded or terminated, the Contractor will submit all financial, performance, and other reports to the AAA 1-B within forty-five (45) days. A final fiscal report for all expenditures under the contract will be among the reports submitted. The AAA 1-B will make payments to the Contractor for allowable reimbursable costs not covered by previous payments. The Contractor will immediately refund to the AAA 1-B any payments or funds advanced to the Contractor in excess of allowable reimbursable expenditures.

VI. AMENDMENTS AND SEVERABILITY

- A. Revision:** The AAA 1-B or the Contractor may request changes in the scope of the services to be performed under this contract. Any changes to this contract will be valid only if made in writing and accepted by both parties to this contract. When any material change in the operation of the Contractor or the AAA 1-B occurs which affects the contract, a contract addendum is necessary. Changes, which are mutually agreed upon, become effective when incorporated into a signed contract addendum. No other understanding, including oral agreements, shall bind the parties. The AAA 1-B and/or the Contractor will make any revisions in this contract in accordance with the AAA 1-B's policies and procedures relating to revisions in the budget and/or contract.
- B. Reprogramming:** The AAA 1-B periodically reviews Contractor expenditures. If under spending of three percent (3%) or more for nutrition services, or ten percent (10%) or more for social services is projected, the AAA 1-B may act to reprogram funds to another service and/or agency. Such actions will be in accordance with the Reprogramming Procedures of the AAA 1-B.
- C. Severability:** If any provision of this agreement or any provision of any document attached to or incorporated by reference is waived or held to be invalid, such waiver or invalidity will not affect other provisions of this agreement.

VII. CONFLICT OF INTEREST

- A. Conflict of Interest:** The Contractor shall maintain written standards of conduct governing the performance of its employees engaged in the contracted program. No employee, officer, or agent shall participate in the selection, award, or administration of the contract if a real or apparent conflict of interest is or may be involved. Such a conflict would arise when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the Contractor. The officers, employees, and agents of the Contractor shall neither solicit nor accept gratuities, favors, or anything of

monetary value from contractors, or parties to sub agreements. However, the Contractor may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employers, or agents of the Contractor.

- B. Relationship:** The Contractor and its staff are independent of the AAA 1-B. The Contractor is not permitted or authorized to make any agreement on behalf of the AAA 1-B. The Contractor staff are not employees of the AAA 1-B nor entitled to its employee benefits.

VIII. LIABILITY

- A. Hold Harmless:** The Contractor agrees to indemnify, save, and hold harmless the AAA 1-B and OSA against any and all expense and liability of any kind which the AAA 1-B and/or OSA may sustain, incur, or be required to pay arising out of the implementation of this contract. However, these provisions shall not apply to liabilities or expenses caused by or resulting from the willful or negligent acts or omissions of the AAA 1-B or OSA or any of its officers or employees. In the event the Contractor becomes involved in or is threatened with litigation, the Contractor shall immediately notify the AAA 1-B. The AAA 1-B shall inform OSA and may enter into litigation to protect the interests of the AAA 1-B.
- B. Disputes:** The Contractor will notify the AAA 1-B in writing of its intent to pursue a claim against the AAA 1-B for breach of any terms of the contract. No suit may be commenced by the Contractor for breach of the contract prior to the expiration of sixty (60) days from the date of such notification. Within the sixty (60) day period, the Contractor, at the request of the AAA 1-B, must meet with the Executive Director of the AAA 1-B to attempt to resolve the dispute.
- C. Notice:** Any notice or notices required or permitted to be given pursuant to this contract may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the addresses listed on page one of this agreement.
- D. Jurisdiction:** This is a State of Michigan contract and is governed by the laws of Michigan. Any dispute arising as a result of this agreement will be resolved in the State of Michigan.
- E. Probation, Suspension, and Termination:** The Contractor and the AAA 1-B agree to adhere to the AAA 1-B "Probation/Suspension/Termination Procedures" as outlined in the "Service Provision Manual for Social and Nutrition Services, Fiscal Years 2007, 2008 and 2009" when action must be taken to place the contractor on probation, or suspension or termination of the contract is necessary.
- F. Contractor Right to Appeal AAA 1-B Decisions:** The Contractor and the AAA 1-B agree to adhere to the AAA 1-B "Applicant/Contractor Administrative Appeal

Procedure” as outlined in the “Service Provision Manual for Social and Nutrition Services, Fiscal Years 2007, 2008 and 2009” when a Contractor wishes to appeal an AAA 1-B decision.

However, regardless of conditions specified within this contract, the AAA 1-B may terminate or reduce funding under the contract if there are alterations or changes in the rules, regulations, laws, or policies to which the AAA 1-B must comply, or if there is any termination or reduction in the allocation or allotment of funds provided to the AAA 1-B. These alterations, decisions, and/or amendments may not be appealed.

- 1) Develop agreements with Nutrition Service Incentive Program's (NSIP) in service area to purchase meals under contract on a routine basis as determined by contractors congregate and/or home delivered meal participation.
- 2) Communicate changes in 2006-2009 menu standards to nutrition program participants that focus on chronic disease prevention (i.e. increase fruits and vegetables, focus on whole grains, reduce sodium, limit: fats, foods high in simple sugars) through nutrition education and point of service messages.
- 3) Submit Nutrition Site Change Request for proposed congregate site with advance notice to seek AAA1-B board of director approval per RFP guidelines.
- 4) This project will be targeted to older adults that reside in South Central Oakland County: Berkley, Beverly Hills, Birmingham, Clawson, Franklin, Oak Park, Royal Oak Township, Southfield, and Troy.

Emerald Food Services agrees to furnish and deliver all supplies and perform all services set forth in the attached contractual agreement; the Area Agency on Agency 1-B's (AAA 1-B) "Request for Proposals and Service Provision Manual for Social and Nutrition Services, Fiscal Years 2007, 2008 and 2009"; and the Application for Service Provision for the consideration stated herein within the above stated geographic service area(s) of Region 1-B, to be provided at the site locations identified in the Application for Service Provision for the three-year period of this contract. The rights and obligations of the parties to this contract will be subject to and governed by the provisions as attached.

This is a performance based contract, the contractor will receive the above stated federal/state funds each fiscal year of the multi-year contract cycle providing that the number of units stated above are fully served each fiscal year of the multi-year funding cycle. The final number of units served are determined from the NAPIS reporting system, less any Holiday Meals on Wheels units served. If serving levels are not fully satisfied, the funding level would be reduced each fiscal year by the number of contract units that were not served. The contractor will not receive additional federal/state funding for serving above the contract level. Throughout the multi-year cycle, the contractor agrees to keep the unit rate. If the funding level should change during the multi-year cycle, contractor will receive an addendum reflecting the change in the funding level as well as the commensurate change in the number of units that are to be served. All awards are made pending the availability of funds and may be adjusted at any time during the multi-year cycle.

Nutrition Services Incentive Program (NSIP) funding is provided each year of the contract in addition to the federal/state unit rate. Contractor will receive a monthly payment of \$.56 per unit based on the number of units served as reported on the #1020M monthly fiscal report. The final NSIP unit-rate is determined at the end of each fiscal year after all eligible units have been reported and reconciled in the NAPIS system. Once the final unit rate is determined, contractor will receive a payment adjustment if there is an increase in the unit rate or will be billed for the difference if the unit rate decreases to less than \$.56.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the day and year last specified below:

SIGNATORIES

<p>Emerald Food Services</p> <p>By: <u><i>Kim Haverameck</i></u></p> <p>Typed Name: <u>KIM HAVERAMECK</u></p> <p>Title: <u>President</u></p> <p>By: _____</p> <p>Typed Name: _____</p> <p>Title: _____</p> <p>Date: <u>9/18/06</u></p>	<p>Agency on Aging 1-B</p> <p>By: <u>[Redacted Signature]</u></p> <p>Typed Name: <u>Robert McMahon</u></p> <p>Title: <u>Board of Directors Chair</u></p> <p>By: <u>[Redacted Signature]</u></p> <p>Typed Name: <u>Sandra K. Reminga</u></p> <p>Title: <u>AAA 1-B Executive Director</u></p> <p>Date: _____</p>
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(Contract signatures must be of Chairperson/President of Board and Agency Director, or comparable authorized officials.)

<u><i>Kag</i></u>	<u>9-06-06</u>	<u><i>P.H.</i></u>	<u>9/16/06</u>
CPS	Review Date	FA	Review Date
_____	_____	_____	_____
CPS		CPS	Date Received