



CITY COUNCIL AGENDA ITEM

Date: October 29, 2010

To: John Szerlag, City Manager

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

Subject: Approval of Kitchen Use Agreement – 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.

In the previous Kitchen Use Agreement with Emerald Food Service, the city received \$9000 annually for use of the kitchen. Emerald Food Service is aware of the city's budgetary challenges and is proposing an arrangement that will benefit the city and allow EFS to remain in the Community Center.

Recommendation

It is recommended that Council approve the Kitchen Use Agreement as the city will generate \$19,200 annually for this use through payment by Emerald Food Service, Inc.

Approved as to Form and Legality:

Lori G. Bluhm, City Attorney

KITCHEN USE AGREEMENT

THIS KITCHEN USE AGREEMENT (the "Agreement") is made as of the _____ day of _____, 2010, by and between the City of Troy, a Michigan Municipal Corporation, whose address is 500 West Big Beaver Road, Troy, Michigan 48084, as "City", and Emerald Food Services LLC, a Michigan Corporation, whose address is 3179 Livernois, Troy, Michigan, 48083, as "Corporation".

SECTION I – Duration of the Agreement

The Agreement shall be in full force during the period commencing on January 1, 2011, and ending the 30st day of September 2012, with an option to renew for another three years after that date. (Corporation does have a current contract with the Federal government to provide Meals on Wheels in the Troy area. Their contract is up for renewal at the end of September 2012).

SECTION II – Purpose of the Agreement

The purpose of the Agreement 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 provide to the Corporation the Community Center kitchen and office space designated on the attached Exhibit 1 for the sum of \$1600.00 per 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 Agreement
- 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 (SOCCRA charges); 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. The Corporation also to provide their own pest control services, if needed.
- 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 Agreement. 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, 2012 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 VII – General Provisions

A. Merger or Integration

This Agreement 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 Agreement.

B. Termination

Either party may at any time during the life of this Agreement, or any extension thereof, terminate this Agreement by giving 120 days notice in writing to the other party of its intention to do so. Should the Community Center be closed permanently or semi-permanently by City Administration or City Council, the City will notify Corporation no later than five (5) days after decision.

C. Modification

No variation or modification of the Agreement 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 Agreement 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 Agreement, 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 Agreement. 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 248.689.0001. 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 Agreement by the non-breaching party.

SECTION VIII – 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 Agreement. No suit may be commenced by the City for breach of this Agreement 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 IX – 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.

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

CORPORATION:

EMERALD FOOD SERVICES, INC.

BY: _____
Kim Haveraneck

Position: _____ President _____

Date: _____

Attest: _____

Date: _____

CITY:

CITY OF TROY, MICHIGAN

BY: _____
Louise Schilling

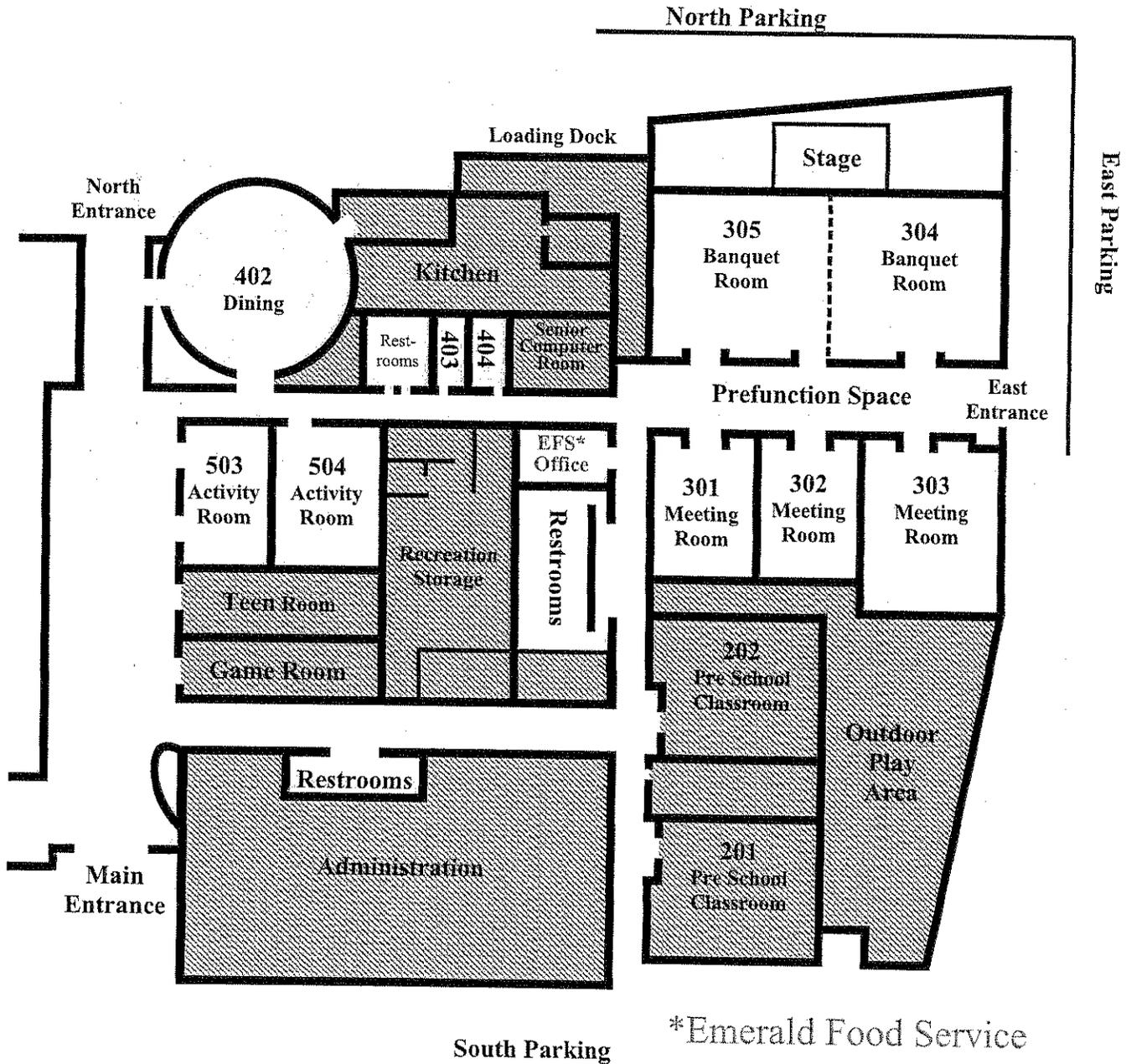
Position: _____ Mayor _____

Date: _____

By: _____
Tonni Bartholomew, City Clerk

Date: _____

Troy Community Center Rentable Space



*Emerald Food Service

Exhibit 1

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

PRODUCER Complete Sample Certificate	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: XYZ Company INSURER B: ABC Company 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:				GENERAL AGGREGATE	\$ 1,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC				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)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS				AUTO ONLY - EA ACCIDENT	\$
<input checked="" type="checkbox"/> NON-OWNED AUTOS	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					\$
	<input type="checkbox"/> 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 ADDITIONAL INSURED; INSURER LETTER: A 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