

## **Agreement for Providing Services to the Older Adults in Otsego County**

This Agreement, effective as of this 26<sup>th</sup> day of October, 2010, is between the County of Otsego, Michigan (hereafter County), organized and existing under the constitution and laws of the State of Michigan, and the Otsego County Commission on Aging (hereafter OCCOA), a Michigan non-profit corporation.

**Whereas**, there exists a need for services to the County's older adult population to help those residents maintain their dignity and independence by employing both a professional, caring staff and volunteer corps to combine public and private funds to offer programs that target nutritional, wellness, educational, and social needs in a progressive, proactive, and cost effective manner, and

**Whereas**, the County has shown its long-standing commitment to the older adults of Otsego County by creating the OCCOA in 1979, and

**Whereas**, the OCCOA has a long and exemplary history of providing services, such as home-delivered meals, congregate meals, in-home services, adult day services, and advocacy counseling, and

**Whereas**, the OCCOA has been incorporated pursuant to the provisions in Public Act 162 of 1982 of the State of Michigan, and

**Whereas**, the OCCOA is prepared to continue providing services to the County's older adults, and

**Whereas**, on August 4<sup>th</sup>, 2009, the voters of Otsego County authorized the County Commissioners (hereafter Commissioners) to levy a tax of up to 1.0 mills for a period of up to five (5) years, 2010 through 2014 inclusive to provide operating funds for the OCCOA, and

**Whereas**, the County and OCCOA desire to affirm the understanding and Agreement regarding the basis upon which OCCOA will provide such service, and to clarify the respective roles, responsibilities and obligations of the parties in conducting and providing such services, and

**Whereas**, as of the 1<sup>st</sup> day of October, 2010, the Otsego County Commission on Aging shall establish a non-profit corporation to provide services to the older adult population of Otsego County.

**Now, therefore, it is agreed by and between the County and OCCOA, as follows:**

**1. Terms and Amendment**

a. Terms

This Agreement contains the entire understanding and Agreement of the parties regarding the subject matter contained herein.

b. Duration

The terms of this Agreement shall be for 20 years. Upon completion of the first term, the Agreement shall automatically renew for a five (5) year term, with the second term following the first with no break in the Agreement unless both parties agree to amend or renegotiate the agreement. Thereafter, the Agreement will continue to automatically renew for five (5) year terms with the mutual agreement of both parties.

c. Amendment

Further, the terms and conditions of this Agreement may be amended at any time during the above stated period with the express mutual written consent of the parties.

**2. Revenues**

a. Annual Budget

- i. The OCCOA will present an annual budget to the County prior to October 1<sup>st</sup> of each year as required by the County Finance Committee for the following year beginning October 1, 2010.
- ii. The budget shall estimate the maximum amount of revenue which the OCCOA may obtain from:
  1. Private and government grants
  2. Donations
  3. Fees for services
  4. The OCCOA Operating Millage
  5. Fund equity

**3. Operating Year**

In order to maintain its grant funding relationships, the OCCOA will have a fiscal and operating year that begins annually October 1<sup>st</sup> and ends September 30<sup>th</sup>.

**4. Funds**

a. Restricted and Unrestricted Funds

- i. Funds raised through the millage for the OCCOA will be considered restricted funds and applied toward operations and capital improvements.
- ii. Fund raised through grants, donations, fees for service, contracts, and all other sources will be considered unrestricted funds and are the exclusive property of OCCOA. Monies from this fund may only be obligated,

transferred, or disbursed with the approval of the OCCOA Board of Directors.

- iii. Restricted funds shall be deposited by the County Treasurer in a fund dedicated to the OCCOA.
- iv. Unrestricted funds may, at the discretion of the OCCOA, be deposited with the County in a separate account dedicated to the OCCOA.
- v. The OCCOA will notify the County Treasurer of the amount and general purpose of each transfer.

## **5. Accountability**

### **a. Monthly Statements**

The OCCOA's accountant shall work with the County Treasurer each month to reconcile the OCCOA's bank statements.

### **b. Corporate Records**

All corporate records of the OCCOA shall be available to the County or its auditors upon reasonable request.

### **c. Financial Records**

The financial records for the restricted funds of the OCCOA shall be maintained in accordance with the Uniform Budget Accounting Act, being Public Act 621 of 1978, as amended.

### **d. Audits**

The OCCOA shall conduct an annual audit of its financial records in accordance with applicable law (Section 501(c)(3) of the Internal Revenue Regulations) and generally accepted accounting principles at annual intervals. The OCCOA shall complete such audit and shall provide a copy of the audit report to the County.

## **6. Liability Insurance**

### **a. Cost of Insurance**

The OCCOA, at its expense, shall provide comprehensive/commercial general liability insurance protecting the OCCOA, the County, and the County Commissioners, the OCCOA Board of Directors, and their respective agents, officers, and employees. The County will allow the OCCOA to be covered under the County's insurance if that is the most feasible and economical coverage available to the OCCOA, and the OCCOA will pay the cost of its coverage.

### **b. Policy Type**

- i. Such insurance shall provide coverage for the defense of actions brought against the OCCOA, its Board of Directors, Officers, and Employees for, including but not limited to, negligence, malfeasance, misfeasance, errors,

- omissions, neglect, damages, intentional acts, or other actions arising out of the operation, maintenance and activities of the OCCOA.
- ii. Such insurance shall be in limits of not less than \$1,000,000 per occurrence for injury or death to any one person, not less than \$3,000,000 per occurrence for injury or death to more than one person, and not less than \$500,000 per occurrence for property damage.
- c. Named Insureds
- i. The OCCOA and the County shall be named insureds on all insurance policies required hereunder and all insurance proceeds shall be payable to the OCCOA and the County according to their respective interests.
  - ii. Upon request, the OCCOA shall furnish County with certificates or other evidence acceptable to County indicating that the insurance is in effect and providing that County shall be notified in writing at least 30 days before cancellation of, any material change in, or renewal of the policy.
  - iii. All insurance maintained pursuant to this Agreement shall contain a clause or endorsement under which the insurer waives all rights of subrogation against any and all of the parties to this Agreement and their respective officers, commissioners, agents, and employees, with respect to losses payable under the policy.

## **7. Operational Integrity**

### **a. Operations**

The County covenants and agrees with the OCCOA, subject to the performance by the OCCOA of all of the terms, covenants, and conditions of this Agreement, to contract with the OCCOA to be the sole provider of County services to the County's older adults. The OCCOA may employ such persons in such capacities as it deems advisable and will make such rules and regulations as it deems advisable and necessary to assure the efficient management and operations of the OCCOA. Further, the OCCOA, with the approval of the OCCOA Board of Directors, shall have the authority, power, and ability to obtain, lease, purchase, acquire or transfer, sell, or dispose of such equipment as is necessary to carry out its obligation to the citizens of Otsego County.

### **b. OCCOA Oversight**

The OCCOA, as an incorporated non-profit organization, will have an independent Board of Directors to oversee all operations of the agency. The Board will function according to its bylaws, which are part of the Articles of Incorporation filed with the State of Michigan.

The Chairperson of the County Commissioners will annually appoint a Commissioner to be a Liaison to the OCCOA for a 12-month term. The appointment of a County Commissioner by the County Board of Commissioners

shall be final. The Liaison Commissioner will be expected to attend the 6 annual OCCOA Board meetings, and that Liaison will be eligible for Committee assignment as well.

c. Management

All management and administrative matters relating to the operation and maintenance of the OCCOA shall be under the sole authority and control of the OCCOA Board of Directors, subject to the laws, and terms of this Agreement.

d. Charges for Services

The establishment of all charges for services provided to older adults shall be under the complete and exclusive control of the OCCOA and the OCCOA Board of Directors. All bill processing for these services shall be the sole responsibility of the OCCOA.

e. Contracting

The OCCOA, with the approval of the OCCOA Board of Directors, shall have the exclusive authority to enter into contracts or other agreements or contracts for services as deemed necessary to carry out its obligations to the citizens of Otsego County.

f. Access to County Service Contracts

The County agrees that it will make available opportunities to the OCCOA to participate in contracts and agreements for County-wide services wherein such participation would be financially beneficial to both parties.

## **8. OCCOA Representations and Warranties**

The OCCOA Represents and Warrants that:

- a. The OCCOA is a Michigan nonprofit corporation, which is exempt from federal income taxation under section 501 (c) (3) of the Internal Revenue Code, duly organized, validly existing, and in good standing under the laws of the State of Michigan. A copy of the authorizing letter is attached.
- b. The execution, delivery, and performance by the OCCOA of this Agreement is within its corporate powers, has been duly authorized by all necessary action of its Board, and does not contravene or constitute a default under any provision of applicable law, regulations, the Articles of Incorporation, the Bylaws of the OCCOA, or of any Agreement, judgment, injunction, order, decree, or other instrument binding upon it.
- c. The officers of the OCCOA who will execute this Agreement, and all other documents, instruments, and agreements required to be delivered or contemplated under this Agreement, are or will be duly authorized by the OCCOA Board of Directors.
- d. This Agreement constitutes a valid, binding Agreement of the OCCOA, except as may be limited by bankruptcy, insolvency, reorganizing, moratorium, or other

similar laws affecting the enforcement of creditor's rights and general principles of equity.

- e. To the knowledge of the OCCOA, there is no action, suit, or proceeding pending or threatened against the OCCOA before any court or arbitrator or any governmental body, agency, or official, in which an adverse decision would materially and adversely affect the ability of the OCCOA to keep any of its obligations under this Agreement or which in any manner questions the validity of this Agreement.
- f. Upon the dissolution of the OCCOA, the Board of Directors shall, after paying or making provision for the payment of all liabilities of OCCOA, dispose of all of the assets of the OCCOA exclusively for the purposes of the Corporation to Otsego County. The OCCOA shall amend its Articles of Incorporation accordingly to designate Otsego County as the recipient of its assets upon dissolution.

#### **9. OCCOA Covenants**

The OCCOA covenants and agrees that so long as this Agreement shall remain in effect, unless the County waives compliance in writing:

- a. The OCCOA will promptly inform the County of any occurrence which constitutes an event of default as defined in this Agreement or which, with the giving of notice or lapse of time, or both, would constitute such an event of default and of any other occurrence which materially affects its financial condition adversely or its ability to comply with its obligations under this agreement.
- b. The OCCOA shall maintain its existence as a Michigan nonprofit corporation in good standing with the State of Michigan. The OCCOA shall comply with all governmental laws, regulations, and orders applicable to it, the failure to comply with which would have a materially adverse effect on the financial condition, business, or operations of the OCCOA or would affect the validity or enforceability of this Agreement.
- c. The OCCOA shall maintain its tax-exempt status under federal income tax laws and regulations, and none of its revenues, income or profits, either realized or unrealized, and none of its assets or property will be distributed to any of its employees, or inure to the benefit of any private person, association, or corporation, other than for the lawful corporate purposes of the OCCOA.

#### **10. Events and Remedies of Default**

Each of the following shall constitute an event of default:

- a. Any representation of warranty made by the OCCOA in this Agreement, or which is contained in any certificate or other document delivered at any time pursuant to

this Agreement, proves to have been false, incorrect, or incomplete in any material respect when made or deemed to be made.

- b. The OCCOA fails to observe or perform any covenant or Agreement contained in this Agreement or in any certificate or other document delivered pursuant to this Agreement.
- c. The OCCOA files a petition in bankruptcy, insolvency, dissolution or for reorganization or arrangement under the laws of the United States or of any state, or voluntarily takes advantage of any such law, or act, or is dissolved (voluntarily or involuntarily), or makes an assignment for the benefit of creditors.
- d. If involuntary proceedings under any bankruptcy law or insolvency act or for the dissolution of a corporation are instituted against the OCCOA, or if a receiver or trustee is appointed for all or substantially all of the property of the OCCOA, and such proceedings are not dismissed or such receivership or trusteeship vacated within 90 days after such institution or appointment.
- e. OCCOA ceases to operate or indicates its intentions to do so.

#### **11. Remedies in Event of a Default**

If any event of default as defined in this Agreement shall occur and be continuing, the rights provided for in this Section are cumulative and are not exclusive of any other right, privilege, or remedy provided by law or in equity.

#### **12. Waivers**

- a. Failure or Delay to Exercise

No failure or delay on the part of the County or the OCCOA in exercising any right, power, or remedy contained in this Agreement shall operate as a waiver of any right, duty, requirement, or obligation provided by this Agreement.

- b. Partial Exercise

No single or partial exercise by the County or the OCCOA of any right or remedy shall preclude the exercise of any other right or remedy.

#### **13. Assignment**

OCCOA and the County agree not to sell, assign, mortgage, pledge or in any way transfer this Agreement.

#### **14. Notice**

All notices, requests, and other communications to any party to this Agreement shall be in writing and shall be given to each party at its address set forth below or such other address as such party may hereafter specify, in writing:

If to the OCCOA:                      Otsego County Commission on Aging  
120 Grandview Blvd.

Gaylord, MI 49735  
Attn: Board Chair

If to the County: County of Otsego  
225 W. Main St.  
Gaylord, MI 49735  
Attn: Otsego County Administrator

**15. Severability**

If any one or more of the provisions contained in this Agreement or any document, instrument or contract required pursuant to this Agreement should be declared invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired. The document shall be read as if the provision or provisions are null, void, nonexistent, and severed from this Agreement.

**16. Governing Law**

This Agreement, and the rights and obligations of the parties under this Agreement, shall be governed by, construed, and interpreted in accordance with the laws of the State of Michigan.

**17. Captions**

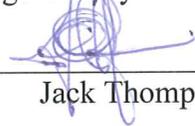
The captions contained in this Agreement are for convenience and for reference only and shall not limit or define the provisions of this Agreement, or affect its interpretation or construction.

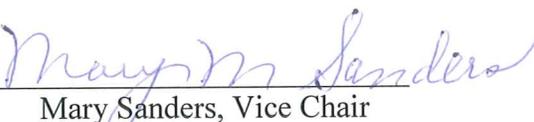
**18. Other Agreements**

This Agreement, once properly executed, supersedes, replaces and abrogates all prior agreements between the parties.

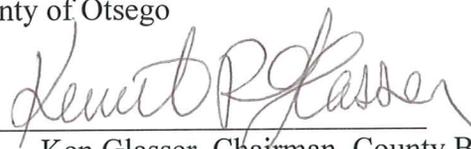
AGREED:

Otsego County Commission on Aging

By:   
\_\_\_\_\_  
Jack Thompson, Chair

By:   
\_\_\_\_\_  
Mary Sanders, Vice Chair

County of Otsego

By:   
\_\_\_\_\_  
Ken Glasser, Chairman, County Board of Commissioners

By:   
\_\_\_\_\_  
John Burt, County Administrator