

**AMENDED AND RESTATED
AGREEMENT FOR OPERATING AND MAINTAINING
OTSEGO COUNTY Commission on Aging (OCCOA)**

THIS AGREEMENT is made on this 10th day of February, 2016, by and between the County of Otsego, whose address is 225 W. Main Street, Gaylord, Michigan 49735 (hereafter "County" and "Commissioners") and the Otsego County Commission on Aging (OCCOA), a Michigan non-profit corporation, whose address is 120 Grandview Boulevard, Gaylord, Michigan 49735 (hereafter "OCCOA")

In consideration of the mutual agreement contained herein, the parties agree as follows:

I. GENERAL AGREEMENT

The OCCOA was established to provide services to the older adult population of Otsego County.

II. 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 five (5) years commencing with the date of execution.

C. EXTENSION

(i) Further, the terms of this Agreement shall be automatically extended, unless otherwise modified in accordance with the terms set forth herein, upon renewal of the OCCOA millage. This automatic extension shall be for the period of the millage renewal.

(ii) Further, this Agreement may be extended for such lengths or periods of time as the parties may mutually agree upon in writing.

D. AMENDMENT

Further, the terms and conditions of this Agreement, as provided herein, may be amended at any time during the above stated period with the express mutual written consent of the parties who are then bound by the terms hereof.

III. FINANCIAL GOVERNANCE

A. ANNUAL BUDGET

(i) OCCOA will present an proposed annual budget to the Commissioners prior to October 1st of each year in the format required by the Finance Committee for the operations of OCCOA for the following year beginning January 1st.

(ii) Prior to December 31st of each year, the Commissioners shall consider for approval the final budget for the operation of the OCCOA.

(iii) BUDGET AMENDMENTS: Budget amendments must be approved by the OCCOA Board and then forwarded to the Otsego County Finance Department. OCCOA shall provide an updated copy of its annual budget to the Otsego County Finance Department each time the OCCOA budget is amended, ensuring that the County has a current, updated budget at all times during the fiscal year.

B. FINANCIAL REPORTING

- (i) Beginning with the quarter ended **December 2015**, OCCOA shall provide the following quarterly accounting reports to the Otsego County Finance Department, for all funds of the OCCOA, but to include the Unrestricted funds:
 - (1) Balance Sheet – including all assets, liabilities, and fund equity
 - (2) Budget Report – including the amended budget and actual amounts for all revenues and expenditures.
 - (3) Quarterly reports must be submitted no later than the 15th day of the month following quarter-end.
- (ii) Beginning with the month ended **February 2016**, OCCOA shall provide the following monthly accounting reports to the Otsego County Treasurer:
 - (1) Report reconciling the general ledger balances in the receiving fund to the balances in the operating fund.
 - (2) Monthly reports must be submitted no later than the 15th day of the next month.
- (iii) OCCOA shall attest to the completeness and accuracy of all financial information. The County will rely on the reports to be complete and accurate upon submission.
- (iv) All corporate and financial records of OCCOA shall be available to the County or its auditors upon reasonable request.
- (v) AUDITS – 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.

C. CUSTODY OF CASH AND INVESTMENTS

- (i) All OCCOA monies shall be deposited with a bank or trust company designated by the County and approved by OCCOA. The monies may be kept in one bank account, and shall be invested as practical by the Otsego County Treasurer as authorized by law.
- (ii) All deposits must be accompanied by supporting documentation, in the format required by the Otsego County Treasurer.
- (iii) All transfers out for OCCOA disbursements must also be accompanied by supporting documentation, in the format required by the Otsego County Treasurer.
- (iv) OCCOA shall attest to the completeness and accuracy of the supporting documentation submitted for all deposits and disbursement transfers. The County will rely on the documents to be complete and accurate upon submission. OCCOA further attests that the deposits and disbursement transfers have been subject to the appropriate level of review before submission.

D. FUNDS

(i) Unrestricted Fund

- a. All revenues raised by grants, donations, fees for service, contracts, and all other sources will be considered unrestricted funds and shall be used at the sole discretion of the OCCOA. The unrestricted fund general ledger shall be maintained by OCCOA.

(ii) Operating Fund/Restricted Fund

- a. Any amount of operating funds, which are appropriated to OCCOA by the Commissioners from the OCCOA operating millage, shall be expended for daily operations or capital improvements.
- b. Such expenditures shall only be completed if they are included in the budget or approved by a specific resolution of the Commissioners.
- c. All revenues raised by rates and charges of OCCOA shall be used solely for the operation and maintenance of OCCOA.

- d. The operating fund general ledger shall be maintained by OCCOA.
- E. SURPLUS/DEFICIT
 - (i) Surplus
 - a. Any surplus realized by OCCOA will be retained by OCCOA. During the budget process, OCCOA and the County will discuss potential uses of surplus monies (e.g. used for capital purchases, retained to enhance fund balance level, etc.).
 - (ii) Deficits
 - a. Should any year's operations result in a deficit (other than a planned reduction of fund balance that has been previously approved by the Commissioners), OCCOA agrees to:
 - i. Immediately meet with the Otsego County Budget and Finance Committee to develop a satisfactory deficit correction plan, which may include increased fees or reduced expenses.
 - ii. Should this action prove to be insufficient to correct the deficit operations, OCCOA agrees to revise the plan, and further increase fee revenue or cut expenditures to ensure that the deficit will be repaid in the next three quarters.
 - iii. Failure to operate without a deficit may result in termination of this agreement by the County.
- F. ASSETS
 - (i) All assets of OCCOA shall become the property of the County upon dissolution of the OCCOA. Nothing in this section shall in any way supersede or replace any agreements between OCCOA and any granting/funding agencies as it relates to the ownership of assets.
 - (ii) OCCOA shall follow the Otsego County Capital Asset Disposal Policy.
 - (iii) OCCOA will provide an updated list of all Capital Assets to the Otsego County Finance Department annually, each January for the preceding year.
 - (iv) OCCOA will provide an updated list of all Vehicles to the Otsego County Bus System each time a change is made to the list.
 - (v) The County shall provide property insurance, addressed in the PROPERTY INSURANCE section of this document.
- G. LONG-TERM DEBT
 - (i) All long-term debt incurred by OCCOA must first be approved by the Commissioners, along with a financial plan to satisfy all debt requirements, submitted by OCCOA.
 - (ii) In the event of default of payments of long-term debt, refer to the EVENTS AND REMEDIES OF DEFAULT section of this document.
- H. CAPITAL IMPROVEMENT PLAN
 - (i) OCCOA shall submit annually, along with its proposed budget, by October 1st, a five-year plan containing a list of planned building, equipment, and vehicle purchases and major repairs and maintenance on such items.
 - (ii) The plan and all such capital expenditures shall be approved by the Commissioners by December 31st, as part of the budget approval process.
- I. OPERATING YEAR
 - (i) It is the expectation of the County to levy the full OCCOA millage permitted by law.
 - (ii) OCCOA shall have, as its fiscal and operating year, one that begins annually October 1st and ends September 30th. With the consent of the OCCOA, the County may levy less than the full millage.

IV. MAINTENANCE AND REPAIRS

A. REPAIRS - PREMISES

(i) In the event OCCOA should own real property, OCCOA shall, at its own expense, at all times during the term of this Agreement, keep the equipment and premises in good condition and repair, and shall make all necessary and desirable repairs, restorations and replacements, both structural and nonstructural, foreseen or unforeseen, and shall use all reasonable precautions to prevent waste, damage or injury.

B. REPAIRS - EXTERNAL

(i) OCCOA shall, at its own expense, also maintain in good repair and free from dirt, snow, ice, rubbish and other obstructions or encumbrances, the sidewalks, parking areas, yards, plantings, gutters and curbs in front of and adjacent to the premises.

V. OPERATION AND MAINTENANCE

A. OPERATION AND MAINTENANCE

OCCOA shall, at its own expense, at all times during the term of this Agreement, operate and maintain the equipment and the premises.

VI. ALTERATIONS

A. ALTERATIONS TO THE PREMISES

OCCOA will make such alterations, changes, additions or improvements in or to the interior or exterior of the premises as it shall determine to be beneficial. OCCOA shall make any changes or alterations in, on or about the premises, which may be required by any applicable statute, charter, ordinance or governmental regulation or order.

B. COSTS AND EXPENSES OF ALTERATIONS

All alterations and improvements shall be at OCCOA's sole expense.

C. OWNERSHIP OF IMPROVEMENTS

In the event OCCOA should own real property, all alterations and improvements shall be the property of the County.

VII. PROPERTY/MOTOR VEHICLE LIABILITY INSURANCE

A. COST OF INSURANCE

In the event OCCOA should own real property, OCCOA shall provide property insurance, which shall cover all real and personal property on the premises on a 100% replacement cost basis. Premiums for insurance required to be carried upon or with respect to the premises or the use thereof shall be deemed operation and maintenance expenses of the OCCOA.

Insurance shall include motor vehicle liability coverage.

B. POLICY TYPE

Such policy shall be an all risks policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without limitation, flood, theft, vandalism, wind, lightning, act of war or terrorism, and malicious mischief. Coverage shall also include the cost of extra expense, for a period of 12 months, incurred by reason of the total or partial loss or damage to the premises caused by an insured peril.

VIII. LIABILITY

A. COST OF INSURANCE

OCCOA, at its expense, shall provide comprehensive/commercial general liability insurance protecting OCCOA, the County and the Commissioners of the County, the members of the OCCOA Board and their respective agents, officers and employees.

Insurance shall include coverage for Hired Car and Non-Owned Auto.

B. POLICY TYPE

- (i) Such insurance shall provide coverage for the defense of actions brought against OCCOA, its Board, 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 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.

IX. ADDITIONAL INSURANCE REQUIREMENTS

A. NAMED INSURED

- (i) OCCOA and the County shall all be named insureds on all insurance policies required hereunder and all insurance proceeds shall be payable to OCCOA and the County according to their respective interests.
- (ii) Upon request, the OCCOA shall provide the County with certified copies of the insurance policies or other evidence indicating that the insurance is in effect.
- (iii) In addition, the County shall be notified in writing at least thirty (30) days prior to cancellation, non-renewal or any material reduction of any coverage carried by the OCCOA.
- (iv) 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.
- (v) All policy forms, limits and deductibles shall be subject to approval by the County and OCCOA.

X. OPERATIONAL INTEGRITY

A. OPERATIONS

The County covenants and agrees with OCCOA, subject to the performance by OCCOA of all of the terms, covenants, and conditions of this Agreement to permit OCCOA to operate the service for the County. OCCOA may employ such persons in such capacities as it deems advisable and may make such rules and regulations as it deems advisable and necessary to assure the efficient management and operation of OCCOA. Further, OCCOA, with the approval of the OCCOA Board and in compliance with the County's Capital Asset Disposal Policy, 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 obligations to the citizens of Otsego County.

B. BOARD MEMBERSHIP

Recommendations for OCCOA Board Membership shall be forwarded to the County Board for approval.

C. COUNTY BOARD LIAISON

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 regular OCCOA Board meetings, and that Liaison will be eligible for Committee assignments as well.

D. PERSONNEL

- (i) All personnel staffing OCCOA equipment and premises, shall be deemed to be employees of OCCOA.
- (ii) The County Administrator (or designee(s) of the County Administrator) shall be on the hiring committee for the OCCOA Executive Director position in the event of a vacancy. The Commissioners shall have the final approval on selecting the new Executive Director.
- (iii) If applicable, the County Administrator (or designee(s) of the County Administrator) shall take part in the union negotiation process. The Commissioners shall have final approval of all union contracts.

C. CONTRACTING

OCCOA, with the approval of the OCCOA Board, shall have the exclusive authority to enter into such transport, standby and special event contracts or other agreements or contracts for services as deemed necessary to carry out its obligations to the citizens of Otsego County.

XI. INSPECTION

Without notice and at reasonable times of the day, the County, through its officers, employees or agents, may enter upon the premises at any time during the term of this Agreement for the purpose of inspecting the premises and determining whether OCCOA is complying with the covenants, Agreements, terms, and conditions of this Agreement.

XII. EVENTS AND REMEDIES OF DEFAULT

A. EACH OF THE FOLLOWING SHALL CONSTITUTE AN EVENT OF DEFAULT:

- (i) OCCOA fails to submit and operate within the budget required by Section III.
- (ii) Any representation or warranty made by 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.
- (iii) 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 (other than those covered by clause (i) above) for thirty (30) days after written notice, as set forth herein, thereof shall have been given to OCCOA by the County.
- (iv) 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.
- (v) If involuntary proceedings under any bankruptcy law or insolvency act or for the dissolution of a corporation are instituted against OCCOA, or if a receiver or trustee is appointed for all or substantially all of the property of OCCOA, and such proceedings are not dismissed or such receivership or trusteeship vacated within ninety days after such institution or appointment.
- (vi) OCCOA ceases to operate or indicates its intention to do so.

(vii) OCCOA defaults on any long-term debt covenants or payments.

B. REMEDIES IN EVENT OF DEFAULT

If any event of default as defined in this Agreement shall occur and be continuing for a period of 90 days or more following written notice of default:

- (i) The County shall have the right, but not the obligation, to take any of the following action:
 - (a) The County may terminate this Agreement.
 - (b) The County, through its Commissioners, officers, agents or employees, shall, at all times, have the right to enter the premises for inspection as set forth above, and to prevent waste, damage or destruction.
 - (c) In the event of financial insolvency, bankruptcy, or cessation of operations, all assets (including but not limited to: cash, investments, receivables, and capital assets), all liabilities (including long-term debt), and fund balances for all OCCOA funds shall revert to the County immediately. Nothing in this section shall in any way supersede or replace any agreements between OCCOA and any granting/funding agencies as it relates to the ownership of assets.
- (ii) The rights provided for in this Section cumulative and are not exclusive of any other right, privilege, or remedy provided by law or in equity.

XIII. WAIVERS

A. FAILURE TO DELAY OR EXERCISE

No failure or delay on the part of the County or 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 OCCOA of any right or remedy shall preclude other or future exercise thereof or the exercise of any other right or remedy.

XIV. ASSIGNMENT

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

XV. 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 OCCOA: Otsego County Commission on Aging
120 S. Otsego Avenue
Gaylord, MI 49735
Attn: Executive Director

If to the County: County of Otsego
225 West Main Street
Gaylord, MI 49735
Attn: Otsego County Administrator

XVI. SEVERABILITY

If any one or more of the provisions contained in this Agreement or any document, instrument or Agreement 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, non-existent, and severed from the this Agreement.

XVII. 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.

XVIII. CAPTIONS

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

XIX. OTHER AGREEMENTS

This Agreement, once properly executed, supersedes, replaces and abrogates all prior agreements between the parties regarding this same subject matter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

OTSEGO COUNTY COMMISSION ON AGING

By: Mary Sanders
MARY SANDERS

Its: Board President

COUNTY OF OTSEGO

By: Kenneth Borton
KENNETH BORTON

Chairman, Otsego County Board of Commissioners