

# SAMPLE

**Catering Contract between**

**WESTERN RESERVE AREA AGENCY ON AGING**

**and**

\_\_\_\_\_ **CATERING COMPANY**

**Dated:** \_\_\_\_\_

# SAMPLE

## **AGREEMENT**

This AGREEMENT is entered into as of the date of the last signature hereto, by and between **WESTERN RESERVE AREA AGENCY ON AGING**, an Ohio Nonprofit Corporation serving the counties of Cuyahoga, Geauga, Lake, Lorain and Medina and \_\_\_\_\_ **CATERING COMPANY**.

## **RECITALS**

- Western Reserve Area Agency on Aging administers the Older Americans Act Nutrition Program with funds from one or more governmental agencies.
- Western Reserve Area Agency on Aging has contracts with various Provider Agencies to serve meals to participants in the Older Americans Act Nutrition Program.
- Western Reserve Area Agency on Aging desires to contract with \_\_\_\_\_ Catering Company to prepare and furnish meals to the sites and Provider Agencies involved in the Older Americans Act Nutrition Program.
- Western Reserve Area Agency on Aging sought bids from various caterers including \_\_\_\_\_ Catering Company pursuant to the Bid Specifications, defined below.
- Western Reserve Area Agency on Aging has deemed \_\_\_\_\_ Catering Company to be the successful bidder on the portion or portions of the Bid Specifications described herein.
- The Parties hereto desire to enter into a legally binding contract with respect to that successful bid.

NOW THEREFORE, in consideration of the covenants and agreements of the parties as set forth herein and further good and valuable consideration, the undersigned parties to this Agreement, with the intent to be legally bound, agree as follows:

## **1. DEFINITIONS**

### **1.1. AGENCY.**

“Agency” means and refers to Western Reserve Area Agency On Aging, an Ohio Nonprofit Corporation serving the counties of Cuyahoga, Geauga, Lake, Lorain and Medina as an area agency on aging (AAA) within the meaning of Ohio Administrative Code [OAC] Chapter 173-4 and OAC Sections 173-3-05 and 173-3-06.

### **1.2. BID SPECIFICATIONS.**

The term “Bid Specifications” means and refers to those documents titled Bid Specifications for The Older Americans Act Nutrition Program (OAANP) issued in May of 2012, and submitted to all potential bidders for this Contract, including the Food Preparer, setting forth and describing in detail the terms and conditions intended to be covered by this Agreement. The terms and conditions set forth in the Bid Specifications are specifically incorporated herein by reference as if fully set forth herein. In the event of any inconsistency or discrepancy between the Bid Specifications and the terms of this Agreement, except with regard to the term of this Agreement, the provisions of the Bid Specifications shall govern.

### **1.3. FOOD PREPARER.**

“Food Preparer” means and refers to \_\_\_\_\_ Catering Company, a “provider” within the meaning of OAC Chapters 173-3, 173-4 and 173-5.

**1.4. OAANP.**

The term “OAANP” means and refers to the Older Americans Act Nutrition Program administered by the Agency under the regulatory authority of the Ohio Department of Aging.

**1.5. NUTRITION SITE.**

The term “Nutrition Site” means and refers to those locations operated by Provider Agencies (hereinafter defined), for the serving of meals pursuant to the OAANP.

**1.6. ODA.**

“ODA” means and refers to the Ohio Department of Aging.

**1.7. PROVIDER AGENCIES.**

The term “Provider Agencies” means and refers to those sites and agencies and/or organizations contractually obligated to participate in WRAAA’s OAANP. The Food Preparer shall deliver meals specified in this Agreement to WRAAA’s Provider Agencies.

**2. FOOD PREPARER’S OBLIGATIONS**

**2.1. MEALS AND SUPPLIES.**

The Food Preparer agrees to prepare and deliver meals for the elderly as specified, pursuant to orders from the Agency, together with all necessary supplies, to the Provider Agencies at the Nutrition Sites in strict accordance with: (a) the requirements of the Bid Specifications, and (b) the Food Preparer’s submitted bid, as approved and accepted by the Agency. The Food Preparer’s submitted bid, as approved and accepted by the Agency, and the applicable requirements of OAC Chapter 173-4 and OAC Section 173-3-06 are fully incorporated herein by

reference, and Food Preparer agrees to comply fully with the same. The Food Preparer is prohibited from assigning any of its duties under the Contract Agreement to another provider or Food Preparer without the written authorization of the Agency.

2.1.1 The Food Preparer shall meet the Agency's specific objectives for giving priority to specific consumer groups (including those described in this section), and shall satisfy the service needs of older persons with the greatest economic and social needs. To the maximum extent feasible, the Food Preparer shall give particular attention to providing services to older persons who are low-income, who are low-income minorities, who have limited proficiency in the English language, who reside in rural areas, or who are at risk for institutional placement (frail) in accordance with their need for such services.

2.1.2 The Food Preparer warrants and covenants that during the Term of this Agreement it will have the capability to provide such service(s) as referred to above in accordance with the Ohio Department of Aging (ODA) taxonomy of services and Agency clarifications to said taxonomy. This includes the requirement to comply with the criminal records check specified in Section 173.394 of the Ohio Revised Code and Rule 173-9-01 of the Ohio Administrative Code.

2.1.3 The Food Preparer shall comply with applicable Administrative Rules during the contract period. Those Rules are posted on ODA's website and are part of the Ohio Administrative Code: [www.aging.ohio.gov/information/rules/current](http://www.aging.ohio.gov/information/rules/current).

2.1.4 The Food Preparer, providing the following services, shall comply with the applicable Rules in the Administrative Code:

<u>Rule</u>	<u>Service</u>
173-4-04	Congregate Nutrition Program

173-4-04.1 Home-delivered Nutrition Program

173-4-05 Meal Service

2.1.5 If the service provided is not specified in Rules 173-4-04, 173-4-04.1 or 173-4-05, the Food Preparer shall comply with a written specification of the service (e.g., a description of the service and any conditions for providing the service contained in the Agency's Bid Specifications or in the Food Preparer's approved proposal).

2.1.6 The Agency shall not reimburse the Food Preparer for any service unless a valid Agreement is in place at the time the service is provided. No Agreement is valid unless and until the Agreement is signed by authorized representatives from both the Agency and the Food Preparer.

2.1.7 The Food Preparer shall designate its primary contact for purposes of this Agreement. Such primary contact shall participate in Food Preparer orientation sessions at the Agency as a condition to performance of this Agreement.

2.1.8 The Food Preparer shall conform to the requirements of all applicable federal, state and local laws, regulations, federal circulars, and established guidelines incorporated by reference herein, including, but not limited to:

- A. Older Americans Act of 1965, as amended;
- B. Civil Rights Act of 1964, as amended;
- C. Section 504 of the Rehabilitation Act of 1973, as amended;
- D. Age Discrimination Act of 1975, as amended;
- E. Fair Labor Standards Act of 1938, as amended;
- F. Age Discrimination in Employment Act of 1967, as amended;
- G. State and local health, fire, safety, zoning and sanitation codes;

- H. Federal, State and local financial and payroll reporting requirements;
- I. Federal and State lobbying restrictions and reporting requirements;
- J. The Americans with Disabilities Act of 1990; and
- K. ODA and Agency Policies and Procedures.
- L. Health Insurance Portability and Accountability Act

2.1.9 The Food Preparer further agrees that no person shall on grounds of race, color, religion, sex, national origin, handicap, ancestry, age, veteran status or any other legally protected classification be excluded from participating in or be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or discrimination in Food Preparer's employment practices (including recruitment and employment).

2.1.10 If Food Preparer is approved by the Agency for and enters into a subcontracting relationship for Meal services (e.g. in times of emergency), the Food Preparer shall require that the language of subsections 2.1.8, 2.1.9 and 2.1.12 of this Agreement be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

2.1.11 If Food Preparer is approved by the Agency for and enters into a subcontracting relationship for Meal services, the Food Preparer remains responsible for ensuring that all provisions of this Agreement are met by the subcontractor Food Preparer.

2.1.12 For the period of this Agreement, the Food Preparer agrees to have executed a written Equal Employment Opportunity Affirmative Action Plan in accordance with Title VI and Title VII of the 1964 Civil Rights Act, as amended, and Appendix A to 45 CFR 74 or 45 CFR 92.36(i). The Food Preparer further agrees that the following posters and notices will be

prominently displayed at the Food Preparer's main office: (A) EEO policy statement (B) EEO posters (C) Job vacancies (D) Training sessions available (E) Discrimination complaint procedures.

2.1.13 In accord with Older Americans Act requirements, focal points, covered by this Agreement are posted on the WRAAA website at [www.psa10a.org](http://www.psa10a.org).

## **2.2. CYCLE MENUS.**

Food Preparer shall at all times follow the requirements prescribed in the Bid Specifications and the cycle menu prepared by the Agency's Licensed Dietitian [LD]. No substitutions or additions shall be made to the menu without the prior approval of Agency. A penalty to be determined in the discretion of the Agency will be assessed against the Food Preparer's monthly invoice for any unauthorized menu changes.

## **2.3. WEEKLY MEAL ORDERS.**

The Food Preparer will receive the weekly meal orders from the Agency and shall prepare meals in the quantity and type ordered and required for each site (e.g., congregate, home delivered, box lunch, frozen). The Food Preparer agrees to make all necessary adjustments to the number or type of meals ordered by the Agency in a timely manner, not to exceed forty-eight (48) hours.

## **2.4. NUTRITION SITE SUPPLIES.**

The Provider Agencies will order supplies for the Nutrition Sites on a weekly basis from the Food Preparer. The Food Preparer shall deliver all supplies prescribed in the Bid Specifications on a regularly scheduled weekly basis to each Nutrition Site and provide each Nutrition Site with weekly order sheets. The Food Preparer shall replace any supplies stolen or

destroyed at any Nutrition Site as soon as possible after receipt of notice from the Agency in order not to interfere with the next scheduled meal service. The cost of replacement of stolen or destroyed supplies will be borne by the Provider Agencies of the Nutrition Site.

**2.5. EMERGENCY FOOD/SUPPLIES.**

The Food Preparer shall be responsible for providing emergency food supplies as prescribed in the Bid Specifications and shall provide a two-day supply of emergency shelf stable meals to each home delivered meal Provider Agency 30 days before the start of each program year. Emergency meals shall meet the standards established in the Bid Specifications.

**2.6. HEATING AND PORTION CONTROL SHEETS.**

The Food Preparer shall supply each Nutrition Site with two (2) heating and portion control sheets for each menu prepared, on a weekly, bi-weekly or monthly basis. The Food Preparer agrees to use the format described in the Bid Specifications and comply with the pertinent documentation requirements prescribed in the Bid Specifications.

**2.7. PACKAGED FOOD/SUPPLIES.**

The Food Preparer shall deliver wholesome and professionally prepared and packaged food and/or supplies as prescribed in the Bid Specifications. The Food Preparer shall submit a schedule to the Agency for daily delivery of food and weekly same day delivery of supplies. Such schedules shall be part-and-parcel of this Agreement. Alteration of these schedules may be made only with prior Agency approval in writing, submitted seventy-two (72) hours in advance.

**2.8. PROVISION OF FOOD/SUPPLIES FOR OTHER PURPOSES.**

Food supplied by the Food Preparer to a Provider Agency which is not prescribed in the

Bid Specifications or which is not to be used for the purpose of satisfying the terms of this Agreement in serving the OAA Nutrition Program shall be billed directly to the Provider Agency.

**2.9. PAYMENT AND REPORTING DOCUMENTATION.**

No later than the fifth (5th) calendar day of the month following the month of service the Food Preparer will submit to the Agency all monthly documentation prescribed in the Bid Specifications, including the following:

- a) Daily meal receipts signed by the Food Preparer and the Provider Agencies;
- b) Monthly statements detailing daily meal deliveries in quantities ordered by the Agency by site (listed in alphabetical order), and meal type;
- c) Accurate monthly summaries of all meals delivered and billed by site (listed alphabetically) and type as specified in the Bid Specifications; and
- d) Monthly summaries of total meals purchased by group, type and price.
- e) Failure of the Food Preparer to submit all of the aforementioned documents by the fifth (5th) calendar day of the month following the month of service will result in delay of payment by the Agency to the Food Preparer.

2.9.1 To the extent authorized by law, the Food Preparer shall allow representatives of the Agency, ODA and the Administration on Aging access to all programmatic, fiscal, and other records related to the service(s) for planning, review, auditing, and monitoring purposes at any time during the normal working hours of the Food Preparer with no prior notification necessary, except that prior notice of at least 24 hours shall be given where access is sought to the confidential complaint files of the Food Preparer.

2.9.2 The Food Preparer shall keep confidential any Consumer information, including

but not limited to: name, address, telephone number, date of birth, gender, minority status, disability and poverty status, emergency contact person's name and telephone number, and functional abilities of Consumers, relevant to service(s) delivered.

2.9.3 The Food Preparer shall document that service(s) were delivered in accord with the ODA taxonomy of services and Agency clarifications to said taxonomy, as well as the service specifications in the applicable Administrative Rules.

2.9.4 The Food Preparer shall retain records relating to costs, work performed, meals delivered and supporting documentation for payment of all work performed and meals delivered, for all supplies and other deliverables for monitoring by the Agency and ODA and for auditing by the state auditor, the inspector general, duly-authorized law enforcement officials, and agencies of the United States government until the later of: (a) three years after the date the Food Preparer receives payment for the work, meals, or deliverables; (b) the date on which ODA, the Agency, or a duly-authorized law enforcement official concludes monitoring the records and any findings are finally settled; or (c) the date on which the auditor of the state of Ohio, the inspector general, or a duly-authorized law enforcement official concludes an audit of the records and any findings are finally settled.

2.9.5 The Office of the State Long Term Care Ombudsman of ODA shall have access to the complaint files of the Food Preparer. The Agency agrees that all information contained in said records will be treated in accord with all applicable legislation guaranteeing privacy, especially, the Older Americans Act Amendments of 1987.

2.9.6 The Food Preparer shall have the audit, review and monitoring rights to the extent provided by the Ohio Public Records Act.

2.9.7 The Food Preparer agrees to maintain its accounts and documents so as to readily permit the determination of the status of the cost of meals delivered under this Agreement at any time and to have such information readily available for examination by contracted auditors or Agency representatives.

2.9.8 If the Food Preparer receives funds to administer activities not covered under this agreement, the Food Preparer agrees to develop and maintain documentation describing the method used to allocate any line-item costs that are shared by the meal service and other such activity and to have such information readily available for examination by contracted auditors or Agency representatives.

## **2.10. FOOD SAFETY AND QUALITY ASSURANCES**

It is the responsibility of the Food Preparer to demonstrate to the Agency that the meals being provided pursuant to this Agreement meet the safety and quality levels prescribed in the Bid Specifications. Consistent with the Bid Specifications, and in order to provide assurances of quality and safety, the Food Preparer shall, at a minimum comply with the following:

2.10.1 If required by law, Food Preparer shall become, and remain licensed by the Division of Meat Inspection of the Ohio Department of Agriculture. Even if not required to be licensed, the Food Preparer nonetheless shall voluntarily agree to be bound by the provisions applicable to such licensees including the inspection requirements of the Division of Meat Inspection of the Ohio Department of Agriculture, or equivalent safeguards. Ohio Revised Code §§ 918.01-918.31.

2.10.2 Food Preparer shall at all times comply with the Ohio Uniform Safety Code, OAC-Chapter 3717-1.

2.10.3 Food Preparer must provide the Agency with a current copy of the Food Preparer's Ohio Food Service Operation License and/or a copy of Federal and/or State, Inspection Number no later 60 days before the start of each program year.

2.10.4 The Food Preparer's staff responsible for food service management and/or the person in charge of Food Preparer's food service operation must be certified in food protection as prescribed in the Bid Specifications, including a certification evidenced by completion of the ServSafe Program developed by the Education Foundation of the National Restaurant Association.

2.10.5 In addition to the inspection rights afforded the Agency in the Bid Specifications and elsewhere in this Agreement, the Agency reserves the right at any time and for any reason to engage the services of a certified food laboratory for the purpose of testing questionable food items, as provided under the regulations of the Ohio Department of Health and Ohio Department of Agriculture.

2.10.6 The Food Preparer shall develop all written plans prescribed in the Bid Specifications, including a Hazard Analysis Critical Control Point (HACCP) system and an emergency contingency procedure as required in the Bid Specifications.

2.10.7 Food Preparer shall comply with each and every safety and quality standard specified in the Bid Specifications and any applicable laws and regulations which may apply, and shall also provide such additional assurances of the safety and quality of the meals being provided pursuant to this Agreement as may from time to time be required by the Agency.

2.10.8 The Agency, ODA or the Administration on Aging may conduct on-site monitoring of a service(s) for which funds are being reimbursed under this Agreement at any time during the normal working hours of the Food Preparer with no prior notification necessary, and the Food

Preparer agrees that representatives of the Agency, ODA or the Administration on Aging shall be given full access to the premises upon which such service(s) is being provided.

**2.11. ASSIGNED FOOD PREPARER REPRESENTATIVE.**

The Food Preparer shall provide a representative, available Monday through Friday between 6:00 a.m. and 5:00 p.m. to answer questions and/or requests. This representative shall be an employee of the Food Preparer and responsible for the daily operation of the Agreement and shall meet when requested with the Agency and any other persons concerned with the OAANP as determined by the Agency. The representative shall attend meetings when requested by any representative of the Agency to discuss, among other issues, such things as ethnic, regional and religious preferences, seasonings, preparation, delivery and supplies. The representative and/or other employees of the Food Preparer, shall, if required by Agency, attend educational seminars and obtain certification in health and sanitation practices. The Food Preparer shall notify the Agency of changes in Food Preparer personnel significant to the performance of this Agreement. This requirement includes, but is not limited to the following personnel: (a) the representative responsible for the daily operation of the contract, (b) the chief Food Preparer administrator in this geographical area, (c) the regional general manager or district manager, (d) the dietitian and (e) the chef. The changes must be submitted in writing by the Food Preparer to the Agency, two (2) weeks prior to any changes. The Food Preparer shall also provide an emergency representative hierarchy as prescribed in the Bid Specifications, available on weekends, or on weekdays after business hours.

**2.12. ADVERTISING AND COMMERCIAL PROHIBITIONS.**

The Food Preparer will not use this program to promote commercial or brand name products, including its own name. Any publicity or release mentioning the Agency, program

name or any individual site, participant or staff members must first be approved by the Agency. The Food Preparer agrees that all public notices and publicity regarding this program shall state that: “This program is made possible by a grant from the Ohio Department of Aging through the Western Reserve Area Agency on Aging”.

### **2.13. CANCELLATION OF MEAL ORDERS.**

The Food Preparer shall accept cancellation upon twelve (12) hours notice of any day’s order when the cause is beyond the control of the Agency. Deliveries will be received and payment made for such meals if the Food Preparer is not given twelve (12) hours notice of cancellation unless notification is received in sufficient time for the Food Preparer to hold or recall deliveries and meals may be reutilized.

### **2.14. LIABILITY INSURANCE.**

The Food Preparer shall secure and maintain, at minimum, the insurance prescribed in the Bid Specifications, in the form prescribed in the Bid Specifications, for the Term of this Agreement and any renewal period:

- A. General commercial liability insurance, both public and automobile, against claims for injury and/or death in the amount of not less than \$1,000,000 per 1,000 meals delivered daily, up to a maximum of \$5,000,000 aggregate and per occurrence, together with food product liability insurance coverage for claims relating to injury from food product in an amount not less than \$2,000,000 per occurrence.
- B. Motor vehicle and other property damage insurance in an amount not less than

\$50,000 for property damage (including damage or theft or loss involving the property of a Provider Agency or Consumer) in any one accident or occurrence.

- C. Fidelity bond or employee theft coverage on persons handling OAANP program funds in the amount of no less than 10% of the amount payable to Food Preparer under this Agreement.
- D. Full replacement value property insurance on equipment or capital improvements funded at least in part by Agency grant funds or OAANP program income.
- E. The insurance required under this Agreement shall cover the acts and/or omissions of both paid employees and volunteers working for the Food Preparer.

A copy of the insurance policy or policies shall be supplied to the Agency no later than 60 days before the start of each program year.

#### **2.15. INDEMNIFICATION OBLIGATIONS.**

To the extent authorized by law, the Food Preparer agrees to indemnify and hold the Agency, the Provider Agencies and ODA harmless from any and all claims, demands, damages, suits, judgments, awards, costs and expenses, including but not limited to attorney's fees, arising from, resulting from or attributable to the misfeasance, malfeasance, non-performance of services or performance of services under this Agreement by the Food Preparer and/or its volunteers, excepting only those matters or occurrences caused by the sole negligence of the Agency.

### **3. AGENCY'S OBLIGATIONS**

#### **3.1. PAYMENT.**

The Agency agrees to pay a per meal price for each acceptable meal provided by the Food Preparer during the term of this Agreement in accordance with the following table. The Group listed refers to the locations of the nutrition sites as prescribed in the Bid Specifications:

<b>GROUP</b>	<b>MEAL TYPE</b>	<b>PRICE PER MEAL</b>
A	Congregate	\$0.00
	Home-Delivered – Regular	\$0.00
	Home-Delivered – Emergency	\$0.00
	Home-Delivered – Frozen/Weekend	\$0.00
	Home-Delivered – Frozen/Holiday	\$0.00
B	Congregate	\$0.00
	Home-Delivered – Regular	\$0.00
	Home-Delivered – Emergency	\$0.00
	Home-Delivered – Frozen/Weekend	\$0.00
	Home-Delivered – Frozen Holiday	\$0.00
C	Congregate	\$0.00
	Home-Delivered – Regular	\$0.00
	Home-Delivered – Emergency	\$0.00
	Home-Delivered – Frozen/Weekend	\$0.00
	Home-Delivered – Frozen/Holiday	\$0.00
D	Congregate	\$0.00
	Home-Delivered – Regular	\$0.00
E	Congregate	\$0.00
F	Congregate	\$0.00

During the Term of this Agreement it is estimated that the number of meals will be as set forth on the appropriate Appendix page of the Bid Specifications. The Agency reserves the right to increase or decrease the number of meals provided pursuant to this Agreement at any time during the Term or any renewal period. It is understood that there will be no adjustment in the price per meal except as set forth in the Bid Specifications.

Monthly payments shall be made by the Agency within fifteen (15) days after approval by the Agency of the reports and supporting documentation required from the Food Preparer pursuant to Paragraph 2.9 of this Agreement. If any such reports and documentation are submitted after their due date, then no payment shall be made until thirty (15) days after those late reports and documentation are received by the Agency. If any reports or documentation are deemed by the Agency not to be complete and accurate, then no payment shall be made until thirty (15) days after documents deemed by the Agency to be complete and accurate are received.

3.1.2 Funds spent during the Term of this Agreement shall be reported on the Request for Payment no later than January 31, 2014, and if this Agreement is renewed in accordance with Paragraph 4.2 of this Agreement such information shall thereafter be reported properly no later than January 31, 2015.

3.1.3 If any reports required during the Term of this Agreement are received by the Agency after January 31, 2014, or if any reports required during any renewal Term of this Agreement are received by the Agency after January 31, 2015, the outstanding funds shall not be paid to the Food Preparer.

### **3.2. LOSS OF FUNDING.**

The Food Preparer understands that the funds allocated to this contract are subject to increase or decrease or may be eliminated at any time prior to the final payment to the Food Preparer under this Agreement by the Agency based on its notification of grant awards from the ODA. The funding source for this Contract Agreement is \_\_\_\_\_ funds provided through the Ohio Department of Aging (ODA). Consequently, it is understood by the Food Preparer that this Agreement is dependent upon Older Americans Act and other federal and state fund allocations, and that this Agreement may be rescinded, canceled, decreased or modified by the

Agency based on the receipt of insufficient federal and/or state revenues, or other contractual and/or performance problems between the Parties, or between the Parties and any governmental entity, which may arise during the term of the Agreement.

**3.3. MENUS.**

The Agency shall provide menus for four (4) master menus but reserves the right to modify the menus at any time as required by federal and state mandates or as deemed necessary by the Agency's LD.

**3.4. WEEKLY MEAL ORDERS.**

The Agency will issue weekly meal orders to the Food Preparer each Thursday no later than 3:00 p.m. The Agency shall give at least twenty-four (24) hours notice to the Food Preparer of any reasonable changes in the number of meals required during a specific week or, in emergency situations, a change in the type of meal to be served.

**4. TERM OF AGREEMENT**

**4.1. INITIAL TERM.**

The term of this Agreement ("Term") shall be from January 1, 2013, through and including December 31, 2013, unless extended pursuant to Section 4.2 below or terminated earlier pursuant to Section 4.3 below.

**4.2. EXTENSION OF TERM OF AGREEMENT.**

In the sole discretion of the Agency, and in accordance with the Bid Specifications, this Agreement may be extended for an additional twelve (12) months for the period from January 1,

2014 through and including December 31, 2014. The Agency will, in writing, notify the Food Preparer of its intent to extend the Agreement for an additional twelve (12) month period no later than October 1, 2013. If the Food Preparer does not demonstrate satisfactory performance during the Initial Term of this Agreement, this Agreement will not be extended. If not extended, this Agreement will terminate by its own terms on December 31, 2013.

#### **4.3. EARLY TERMINATION OF THE AGREEMENT.**

The Agency or the Food Preparer may terminate this Agreement during the Term, or any renewal thereof, in accordance with the provisions of the Bid Specifications and this subsection.

4.3.1 If the Agency determines in its sole discretion that any noncompliance with the terms of this Agreement and/or the Bid Specifications on the part of the Food Preparer endangers the life, health or safety of any Provider Agency staff or any consumers, the Agency may require immediate suspension of the Food Preparer's performance and/or terminate this Agreement by orally notifying the Food Preparer of such suspension and/or termination. Such suspension shall be confirmed in writing to the Food Preparer within three (3) business days following oral notification. Such termination will be effective 48 hours after oral notice is given, so long as written confirmation thereof, setting forth the specific reasons for the termination, is provided to the Food Preparer within three (3) business days following the oral notification.

4.3.2 If the Food Preparer is found to be in violation of any state and/or local health, fire, safety, zoning and/or sanitation codes, the Food Preparer must notify the Agency immediately. The Agency may suspend the grant without advance notice, including any payments in whole or in part due under this Agreement, for the Food Preparer's failure to comply with state and local health, fire, safety, zoning and/or sanitation codes. The Agency will give written notice of the specific reasons for the suspension to the Food Preparer, and thereafter Food Preparer shall

provide evidence that the violations were promptly corrected. No such suspension will be lifted absent such evidence, and the failure to provide such evidence may be grounds for termination of this Agreement.

4.3.3 The Agency may terminate this Agreement, during the Initial Term or during any extension under subsection 4.2, without obligation (a) if ODA determines, through the appeals process or through monitoring, that the Agreement was entered into inappropriately, or (b) if funding is decreased or eliminated at any time, or (c) if funds are not available to pay for the Food Preparer's service, products or meal program, or (d) if a situation arises that was unforeseen, within the meaning of OAC 173-3-06(B)(3), at the time the Agency and the Food Preparer entered into this Agreement or extended this Agreement. The Agency may otherwise terminate this Agreement if the Food Preparer fails to comply with any material provision of this Agreement and/or the Bid Specifications, in whole or in part. Prior to terminating the Agreement pursuant to this subsection, the Agency shall notify the Food Preparer, in writing, of the specific area of noncompliance. The Food Preparer shall have ten (10) days from receipt of the notice of non-compliance to cure any such defects, and shall provide the Agency with proof of cure. If the Food Preparer has not completely restored compliance within the ten (10) day period, the Agency may terminate this Agreement by furnishing the Food Preparer with written notice ten (10) days prior to the effective date of termination.

4.3.4 The Food Preparer may terminate this Agreement prior to its expiration date if the Agency fails to comply with any material provision of this Agreement. Prior to terminating this Agreement, the Food Preparer shall notify the Agency, in writing, of the specific area of noncompliance. The Agency shall restore compliance within thirty (30) days of receipt of notice. If the Agency has not completely restored compliance within the thirty (30) day period, the Food Preparer may terminate this Agreement by furnishing the Agency with written notice thirty(30)

days prior to the effective date of termination. Upon such a termination pursuant to this Subsection 4.3.4, the Food Preparer shall be entitled to compensation for services rendered in the satisfactory performance of this Agreement, provided that the Food Preparer submits properly completed invoices to the Agency covering services rendered, not later than thirty (30) days after the date of termination. If the Food Preparer otherwise voluntarily decides that it no longer wishes to provide services under this Agreement, the Food Preparer may not terminate services without the consent of the Agency. If the Agency consents to such a voluntary termination by the Food Preparer, the Food Preparer shall not terminate services until the first day of the third month after the Agency has consented.

## **5. RECOVERY OF FUNDS**

5.1 The Food Preparer shall return any funds received for providing services, if the Agency ascertains that the Food Preparer (a) was paid for any service it did not provide, or for service that it provided that did not comply with the Administrative Code, the Revised Code, or any other law that regulates the Food Preparer or the services provided, or (b) did not comply with the requirements set forth in the Agency's Bid Specifications and/or the Food Preparer's approved Proposal, or (c) failed to document the provision of any service as required under this Agreement.

5.2 The Agency may recover its payment made for any such service from the Food Preparer by withholding funds due to the Food Preparer under this Agreement or any other Agreement the Food Preparer enters into with the Agency, whether that Agreement is currently in effect or at any time after the termination of this Agreement. Recovery may also be sought by legal action. The maximum amount of funds to be paid under this Agreement may, in the discretion of the Agency, be reduced by the amount of the funds recoverable under this Section.

5.3 If the Food Preparer is subject to OMB circular A-133 requirements the Food Preparer shall obtain an independent audit by a certified public accountant which encompasses the grant period and funds under this Agreement within nine months after the end of the Term (or extended Term) of this Agreement and shall provide the Agency with a copy of such audit within ten (10) calendar days after an audit report is received by the Food Preparer.

5.4 If the Food Preparer is not subject to OMB circular A-133 requirements, but nonetheless obtains an annual audit which covers any part of this grant period, Food Preparer shall submit a copy of such audit to the agency within ten (10) calendar days after an audit report is received by Food Preparer.

5.5 The Food Preparer agrees that such audit will be engaged and performed in accord with all State and Federal regulations governing audits of the funds paid under this Agreement.

5.6 In the event an audit discloses a discrepancy the Food Preparer shall respond in writing to the Agency, within ten (10) calendar days of a written receipt of any audit findings pertaining to the Food Preparer's OAANP service(s), with a plan to resolve said findings. If said response is not received by the Agency within the said ten (10) calendar days, the Agency may suspend payments to Food Preparer until corrective action acceptable to the Agency is implemented or the Agency may take other action.

5.7 The Food Preparer agrees to reimburse the Agency any funds paid under this Agreement which are found in the course of an audit to have been improperly or illegally used.

## **6. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

6.1 In accord with the applicable Policies and Procedures of the Ohio Department of

Aging, the Agency, the Health Insurance Portability and Accountability Act (HIPAA), and subsection 2.9.2 of this Agreement the Food Preparer shall maintain procedures to ensure the protection of the confidentiality of any information about older persons collected in the delivery of services.

6.2 The Food Preparer shall store Consumer records, if any, in a designated, locked storage space.

6.3 The Food Preparer shall not use or disclose any information concerning a Consumer for any purpose directly associated with the provision of services, unless the Food Preparer has documentation of the Consumer's consent to do so.

6.4 The Food Preparer is prohibited from using or disclosing any information concerning a Consumer for any purpose not directly associated with the provision of services, even if the Consumer consents to doing so.

6.5 Any Food Preparer who is a mandatory reporter shall immediately notify the county department of job and family services, or the agency the county department of job and family services designates to provide adult protective services, if the Food Preparer has reasonable cause to believe a Consumer is the victim of abuse, neglect, or exploitation, and the Food Preparer has the consent of the Consumer. The Food Preparer shall notify the Agency of abuse, neglect or exploitation with or without such consent.

## **7. FOOD PREPARER ROLE IN CASE OF DISASTER**

Upon request by the Agency, the Food Preparer is required to cooperate with the Agency and ODA to assess the extent of the disaster impact upon persons aged sixty years and over, and to

coordinate the public and private resources in the field of aging in order to assist older disaster victims whenever the President of the United States declares that the Food Preparer's service area is a disaster area.

## **8. GENERAL PROVISIONS**

### **8.1. AMENDMENT.**

Any amendment to laws, rules or regulations cited in this Agreement will result in a correlative modification to this Agreement without the necessity of executing a written amendment. However, this Agreement may otherwise be modified only in writing signed by both parties. No agent, employee or representative the Agency, other than its Executive Director, may change this Agreement or waive any of its provisions.

### **8.2. NOTICES.**

Notices under this Agreement shall be in writing and may be delivered in person, by certified mail (return receipt requested), by overnight mail (proof of delivery required), or by facsimile (to the Food Preparer, only). All such notices permitted or required by this Agreement will be deemed sufficient if sent via certified mail, return receipt requested to the Parties as follows:

**AGENCY:**

Mr. Ronald Hill, CEO  
Western Reserve Area Agency on Aging  
925 Euclid Avenue, Suite 600  
Cleveland, OH 44115

**FOOD PREPARER:**

\_\_\_\_\_ Catering Company  
Attention: \_\_\_\_\_

ABC Street  
Cleveland, OH 44115  
Fax: ( ) \_\_\_ - \_\_\_\_

### **8.3. AUTHORIZED SIGNATURES**

The individuals who have signed this document represent that they have full authority to bind the parties herein.

### **8.4. GOVERNING LAW AND FORUM**

This Agreement shall be construed in accordance with Ohio law and specific applicable Federal statutes, rules and regulations. Any litigation to enforce this Agreement shall be brought in the Cuyahoga County Court of Common Pleas or in the United States District Court for the Northern District of Ohio, in Cleveland, Ohio.

### **8.5. COUNTERPARTS**

This Agreement may be executed in counter-parts by any of the parties hereto, and as so executed shall constitute one agreement.

### **8.6. BINDING AGREEMENT**

This Agreement shall be binding upon the parties and upon their heirs, administrators, representatives, executors, successors and assigns, predecessors, subsidiaries, other related business entities, directors, employees, agents, representatives, attorneys and all persons acting by, through, under or in concert with any of them and shall inure to the benefit of the other parties hereto, and their heirs, administrators, representatives, executors, successors and assigns, predecessors, subsidiaries, other related business entities, directors, employees, agents, representatives, attorneys and all persons acting by, through, under or in concert with any of them,

and each of them, and to their heirs, administrators, representatives, executors, successors and assigns.

#### **8.7. COMPLETE AGREEMENT**

This Agreement represents, constitutes and incorporates the entire, exclusive and complete understanding of the Parties mentioned herein and reduces to writing all oral negotiations and agreements.

#### **8.8. SEVERABILITY**

The provisions of this Agreement are severable and if any one or more provisions may be determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions and any partially unenforceable provision to the extent enforceable in any jurisdiction shall nevertheless be binding and enforceable.

### **9. APPEALS**

9.1 The Food Preparer has the right to appeal adverse action by the WRAAA in accordance with the following process and Rule 173-3-09 of the Administrative Code. The Food Preparer may appeal an adverse action decision made by WRAAA as follows:

- A. An appealing Food Preparer must submit a letter, signed by the official authorized to sign the appeal, to the Chief Executive Officer of the WRAAA with a copy sent to the President of the Board of Trustees of the WRAAA, within two (2) working days of receipt of written notice of an adverse action taken by WRAAA. The ground for appeal must be specified in the appeal letter.

- B. If the Appeals Committee approves the appeal request and determines that the appeal is within the above-established criteria, a meeting of the Appeals Committee will be scheduled within five (5) working days, with an appearance by the appealing Food Preparer, to review the adverse decision and recommend the final action by the Board of Trustees. Appealing Food Preparer will be notified that the Appeals Committee has concluded that the appeal is not within the above-established criteria or of the date and time of the meeting. If there is a meeting, the Appeals Committee will render a final recommendation, in writing, within five (5) working days after the meeting, which shall become the final decision of the WRAAA unless appealed to the Board of Trustees.
- C. An appealing Food Preparer may by letter appeal a notice from the Appeals Committee that an appeal is not within the above-established criteria or appeal the final recommendation of the Appeals Committee to the Board of Trustees, with a copy to the Chief Executive Officer of the WRAAA, within two (2) working days of receipt of written notice of the final recommendation of the Appeals Committee. The ground for appeal must be specified in the appeal letter.
- D. The Board of Trustees, or in its absence the Executive Committee, will review a notice that an appeal is not within the above-established criteria or the final recommendation of the Appeals Committee at its next meeting, adopt a final course of action and notify the appealing Food Preparer about the Agency's final decision in writing within five (5) working days. The decision of the Board, or its Executive Committee, shall be the final decision of the WRAAA, which may be appealed by the Food Preparer to ODA.

E. An agency may request a hearing by the Ohio Department of Aging. ODA shall only honor a request for an appeal hearing before ODA if the Food Preparer has fully complied with the written process for appealing an adverse action by WRAAA, WRAAA has rendered its final decision on the appeal, and the ODA has lawful jurisdiction over the appeal. ODA shall hold a hearing and render its final decision on the appeal no later than thirty (30) business days after the date of the hearing.

To request a hearing before ODA, the Food Preparer shall submit a written request to ODA's director via certified mail no later than fifteen (15) business days after the date that WRAAA renders its final decision. The appeal process shall comply with Rule 173-3-09.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

Signed in the Presence Of:

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Witness

AGENCY  
Western Reserve Area Agency on Aging  
By: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Witness

FOOD PREPARER  
\_\_\_\_\_ Catering Company  
By: \_\_\_\_\_  
Date: \_\_\_\_\_