

## AGREEMENT

THIS AGREEMENT, made and entered into this 3<sup>rd</sup> day of May, 2016, by and between Johnson County, Kansas (the "County"), Area Agency on Aging (the "AAA"), and Hy-Vee, Inc., doing business as Store #1464 Olathe, Store #1508 Overland Park, Store #1422 Mission, Store #1383 Lenexa, Store #1532 Prairie Village, and Store #1560 Shawnee (collectively the "Grocery Stores" or "Hy-Vee").

### WITNESSETH:

WHEREAS, the County invited formal sealed proposals (*Request for Proposal No. 2015-113*) for an alternative congregate dining site to provide nutritious meal options for seniors under a Program known as *CHAMPSS* (Choosing Healthy Appetizing Meal Plan Solutions for Seniors) for eligible persons sixty (60) years of age and older residing within Johnson County, Kansas; and

WHEREAS, in response to the County's invitation, Hy-Vee duly submitted a proposal to provide the desired and requested *CHAMPSS* Program service needs and objectives for the County; and

WHEREAS, on February 25, 2016, the Board of County Commissioners of Johnson County, Kansas, awarded a contract to the Hy-Vee as an alternative congregate dining site to provide nutritious meal options for seniors (the "Services") under the *CHAMPSS* Program for the AAA; and

WHEREAS, the County desires to purchase the Services of the Grocery Store for the *CHAMPSS* Program; and

WHEREAS, the Grocery Stores have represented to the County and AAA that they are duly qualified and licensed to provide such Services for the *CHAMPSS* Program, and are willing to provide the same, in accordance with, and subject to, the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises and covenants hereinafter given, and for other good and valuable consideration, the County, AAA and Hy-Vee hereby agree as follows:

1. **PURPOSE:** The County, through the AAA, hereby agrees to purchase the Services of the Grocery Stores (with the Grocery Stores individually referred to as a "Grocery Store"), as identified in the attached Exhibit A, as alternative congregate dining sites, and the Grocery Stores hereby agree to serve as alternative congregate dining sites, and to provide nutritious meal options for seniors under the *CHAMPSS* Program for eligible persons sixty (60) years of age and older residing within Johnson County, Kansas.

2. **TERM:** The initial term of this Agreement shall commence on or about February 27, 2016, and terminate on February 28, 2018; provided, however, this Agreement

may be renewed for up to two (2) additional two (2) year periods, upon one or more supplemental writings executed by duly authorized representatives of the parties hereto.

3. **COMPENSATION; FUNDING:** For meals provided by the Grocery Stores under this Agreement, the AAA shall pay the Grocery Stores, subject to the availability of funding, a not to exceed annual amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000.00), inclusive of expenses (hereinafter the "annual contract price"), due and payable to each Grocery Store based on meals provided at each such Grocery Store within thirty (30) days of the end of each month in which meals were served by each such Grocery Store, payment to be based on the month-end report generated by AAA. Compensation shall be paid from Title III-C1 funds of the Older Americans Act (O.A.A.). In the event that Title III-C1 funds become unavailable, the AAA shall notify the Grocery Stores, in writing, within five (5) days of such event. In such case, the Grocery Stores agree to terminate meals immediately, and the County reserves the right to terminate this Agreement, in whole or in part, as may be stated in the aforesaid written notice notwithstanding any provision to the contrary that may be contained in this Agreement regarding termination of the same. Notwithstanding the foregoing, any meals provided prior to such written notification shall be processed for payment and remittance. It is understood and agreed by the parties hereto that the annual contract price herein stated is the extent of the County or AAA's financial obligation to the Grocery Stores hereunder and is based upon the provision of Fifty Thousand Five Hundred and Thirty Two (50,532) units of service at \$5.00 per breakfast meal and \$6.00 per lunch or dinner meal provided for year one of the initial term, with a unit of service equaling one (1) nutritious meal. Should additional funding become available to allow for increasing the number of meals provided hereunder, this Agreement may be amended pursuant to Paragraph 12 hereinbelow.

Further, this Agreement is subject to the provisions of the Kansas Cash Basis Law, *K.S.A. 10-1101 et seq.*, and amendments thereto, (the "Act"). By virtue of this Act, the County is obligated only to pay periodic payments as contemplated by this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the County's current budget year (i.e., January 1 to December 31) or from funds made available from any lawfully operated revenue producing source. Should the County fail to budget, appropriate or otherwise make available funds for payments due under this Agreement in any budget year, this Agreement shall be deemed terminated on the last day of the then current budget year for which appropriations were received, without penalty or expense to the County of any kind whatsoever.

4. **GROCERY STORE SERVICES:** The Services as required to be provided by the Grocery Stores hereunder shall include the following:

- a. A nutritious meal will be provided for eligible seniors between the hours of 8:00 a.m. to 7:00 p.m. or comparable every day of the week, excluding Christmas Day. Eligible meals will include breakfast, lunch, and dinner.

- b. The Grocery Stores agree to provide meals that will consist of 1/3 of the Dietary Reference Intake (DRI) which includes:

3 ounces meat/protein, 2/3 cup fruit and one (1) cup of vegetable,  
8 ounces low fat 1% milk (packaged in carton or bottle), 2 ounces of  
whole or enriched grains, with margarine, if appropriate.

- c. To ensure healthy meals, it's desirable that the Grocery Stores each have a dietitian registered and/or licensed (both designations are preferred) on staff to work with the AAA Nutrition Staff on providing meals/menus that meet the guidelines utilizing the food based meal patterns.
- d. The Grocery Stores will provide no less than four options for meat, fruit, and vegetables for lunch and dinner in the kitchen area. Fish will be offered a minimum of twice a week. All food must be prepared fresh. No leftovers will be served to CHAMPSS participants. Healthy specialty bar meals/options, soup/salad, salads, and cold meals are preferred in addition to traditional hot meals.
- e. The Grocery Stores must have public WIFI for the i-Pod Touch (provided by the AAA) to transmit meal authorization to CHAMPSS Program.
- f. The Grocery Stores are responsible for maintaining the equipment provided by AAA. If the equipment is damaged due to negligence or misuse, the respective Grocery Stores will be responsible for the cost of repair and/or replacement.

- g. In lieu of payment, the Grocery Stores will receive from the customer, at time of purchase the *CHAMPSS CARD*. (Exhibit 1) The Grocery Stores will swipe the *CHAMPSS Card* for each CHAMPSS customer. The card will serve as payment for the choice of one complete meal from the 5 food group selections.
- h. The Grocery Stores shall comply with all applicable federal, state and local laws and regulations governing the preparation and handling of food, and shall procure and keep in effect all necessary licenses/permits in a prominent place within the meal preparation area as required.
- i. Hy-Vee shall indemnify the County and/or AAA against any loss or damage (including attorney's fees and other cost of litigation) caused by negligent acts or omissions of agents or employees of Hy-Vee. Hy-Vee shall defend any suit against the County and/or AAA alleging personal injury, sickness or disease arising out of the consumption of the food served at the Grocery Stores. The AAA shall promptly notify Hy-Vee in writing of any claims against the County or AAA, and in the event of a suit being filed.
- j. The Grocery Stores shall not advertise, promote, reproduce, or publish any report, information, data, or other documents produced in whole or part pursuant to the terms herein without the prior written consent of AAA.
- k. The Grocery Stores shall not deny any services or otherwise discriminate in the delivery of services to anyone who meets the eligibility criteria for the *CHAMPSS* Program, as determined by the AAA. Discrimination on

the basis of race, color, religion, sex, age, sexual orientation, national origin, ancestry, physical or mental disability or because such person is a recipient of Federal, State, or local public assistance is prohibited.

- l. The Grocery Stores shall submit an updated health inspection report to the AAA each time an inspection is completed of the Grocery Stores by the County and/or the Kansas Department of Agriculture.
- m. The Grocery Stores will allow the County or AAA to conduct one field audit per year to evaluate adherence to program requirements.

5. **AAA SERVICES:** The AAA will provide the following to the Grocery Stores:

- a. The staff of the Grocery Stores will be trained on the policies and procedures of the *CHAMPSS* Program by the AAA Nutrition Staff.
- b. I-Pod Touch.
- c. Signage to identify qualifying *CHAMPSS* selections.
- d. The AAA will generate a month-end report from the meal tracking system that will be issued as an invoice for payment to the Grocery Stores.

6. **TERMINATION:** Subject to the termination provisions of Paragraph 3 hereinabove, either party may terminate this Agreement without cause by giving thirty (30) days' notice, in writing, to the other party, unless circumstances would warrant immediate termination due to general health, safety, or welfare reasons, in which case this Agreement may be terminated immediately upon written notice. Further, the County reserves the right to terminate, upon written notice to the Grocery Stores, this Agreement, in whole or in part, for the convenience of the County, whenever it shall determine such termination is in the sole best interest of the County. In the event of such termination for convenience, the Grocery Store shall be compensated for Services performed through and up to the effective date of such termination.

7. **INSURANCE:** The Grocery Store shall be required to maintain and carry in full force and effect for the duration of this Agreement, insurance coverage of the types, requirements and minimum liability limits:

(a) Commercial General Liability including Product and Contractual Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Minimum \$2,000,000 aggregate. Coverage must include Premises and Operations (including food service); Contractual Liability; Products and Completed Operations Liability.

(b) Workers' Compensation and Employer's Liability: Workers' Compensation – Statutory Workers' Compensation including an all states endorsement; Employer's Liability (E.L. and Disease):

- (1) Bodily Injury by Accident \$300,000 Each Accident
- (2) Bodily Injury by Disease \$300,000 Policy Limit
- (3) Bodily Injury by Disease \$300,000 Each Employee

(c) Commercial Automobile Liability: \$500,000 Combined Single Limit for bodily injury and property damage per accident, covering all owned, non-owned, and hired vehicles.

The Board of County Commissioners, Johnson County, KS, its officers, Commissions, Agencies and employees, ("BOCC") shall be named as Additional Insured under the Commercial General Liability policy. The Additional Insured requirement shall be subject to the limitation of liability for claims within the scope of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., and amendments thereto, and does not create a partnership or joint venture between the BOCC and the Grocery Stores under this Agreement.

Prior to contract execution, the Grocery Stores shall furnish Certificate(s) of Insurance verifying the required insurance is in full force and effect in accordance with this Agreement. Within five (5) business days of expiration of any insurance coverage, the Grocery Stores shall provide renewal Certificate(s) of Insurance as required by this Agreement. The Certificate Holder shall be as follows:

Board of County Commissioners  
Johnson County, Kansas  
c/o Risk Manager  
111 South Cherry Street, Suite 2400  
Olathe, Kansas 66061-3486

The full description of the work to be performed, bid/project number, and the required Additional Insured language shall be referenced on the Certificate(s) of Insurance in the Description of Operations section. Prior to any cancellation or non-renewal by its insurer the Grocery Stores or its Agent shall provide Certificate Holder not less than thirty (30) days advance written notice of such cancellation or non-renewal by its insurer of the Grocery Stores' insurance coverage. It is the Grocery Stores' sole responsibility to provide this notice to Certificate Holder. Failure to provide notice shall not relieve the Grocery Stores of its obligations under this Agreement.

It is further agreed that any insurance and self-insurance maintained by the Board of County Commissioners, Johnson County, Kansas its officers, Commissions, Agents and employees shall apply in excess of and not contributory with any insurance and self-insurance maintained by the Grocery Stores.

In the event the Grocery Stores procures insurance coverage that is not written on an "occurrence basis" the Grocery Stores shall at all times, including without limitation, after the expiration or termination of this Agreement for any reason, maintain insurance coverage for any liability directly or indirectly resulting from acts or omissions of the Grocery Stores occurring in whole or in part during the term of this Agreement (hereinafter "Continuing Coverage"). The Grocery Stores may maintain such Continuing Coverage through the procurement of subsequent policies that provide for a retroactive date of coverage equal to the retroactive date of the insurance policy in effect as of the effective date of this Agreement, the procurement of an extended reporting endorsement (commonly known as "tail coverage") applicable to the insurance coverage maintained by the Grocery Stores during the term of this Agreement, or such other method acceptable to County. The Grocery Stores shall maintain the full limit of coverage as stated above for the Statute of Repose.

8. **ASSURANCES; RIGHT TO AUDIT:** The Grocery Stores and the AAA, in carrying out this Agreement, shall comply with all existing federal, state and local laws relative to equal opportunity and nondiscrimination, all of which are incorporated by reference and made a part of this Agreement.

The Grocery Stores agree that the County, or any of its authorized representatives, shall have access to and the right to examine and audit, at reasonable times during ordinary business hours at the Grocery Stores, and with reasonable advance notice, any and all books, documents, papers and records of the Grocery Stores related solely to the services provided by Grocery Stores hereunder, or any change order or contract modification thereto, or with compliance with any clauses thereunder. Such records shall include hard copy as well as computer readable data.

9. **SERVICE MODIFICATION:** The Grocery Stores agrees to notify the AAA in writing thirty (30) days in advance of any changes which will affect service delivery under this Agreement and further agrees that no such changes shall be implemented without prior written consent of the AAA.

10. **ASSIGNMENT:** The Grocery Stores shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement or the right, title or interest to execute this Agreement without the previous written consent of the AAA, but in no event shall such consent relieve the Hy-Vee or the Grocery Stores from their respective obligations under, or change, the terms of this Agreement.

11. **INDEPENDENT CONTRACTOR STATUS:** Hy-Vee and the Grocery Stores shall be deemed as independent contractors under this Agreement and not as agents or agencies of the AAA or Johnson County, Kansas Government. Nothing herein shall be

deemed or construed to create a joint venture, partnership or agency relationship between the parties for any purpose.

12. **AMENDMENT:** This Agreement may be amended by written addendum mutually agreed to and signed by duly authorized representatives of both parties.

13. **GOVERNING LAW:** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Kansas. In the event that the parties hereto are unable to resolve any controversy or claim arising out of, or relating to, this Agreement or the making, performance or interpretation of the same without resort to the courts, the parties agree that exclusive jurisdiction and venue over such matter shall be the District Court of Johnson County, Kansas.

14. **DISPUTE RESOLUTION:** The parties are fully committed to working with each other throughout this Agreement, and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the County and Hy-Vee and the Grocery Stores each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions hereunder.

15. **WARRANTY OF ABILITY TO PERFORM:** The Grocery Stores shall warrant that there is no action, suit, proceeding, inquiry or investigation at law or equity, before or by a court, governmental agency, public Board or body, pending or threatened, to the best of the Grocery Stores' knowledge, that would in any way prohibit, restrain or enjoin the execution or delivery of the Grocery Stores' obligations, diminish the Grocery Stores' obligations, or diminish the Grocery Stores' financial ability to perform the terms of this Agreement. During the initial term of this Agreement, or any renewal term thereof, if any of the aforementioned events occur, the Grocery Stores must immediately notify, in writing, the County of the same.

16. **WAIVER:** The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of the either's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

17. **FORCE MAJEURE:** Neither party shall be liable for any delays or failures in performance due to circumstances beyond its control, provided the party experiencing the force majeure condition provides immediate written notification to the other party and takes all reasonable efforts to cure said condition.

18. **SEVERABILITY:** All agreements, clauses and covenants contained herein are severable, and in the event any of them shall be held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be interpreted as if such unconstitutional, invalid or unenforceable agreement, clause or covenant were not contained herein.

19. **ENTIRE AGREEMENT:** This instrument contains the entire agreement between the parties regarding the subject matter hereof. It may not be changed orally, but only by agreement in writing signed by the party against whom enforcement of any waiver, change, modification of discharge is sought.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute the above and foregoing Agreement on the day and year first above written.

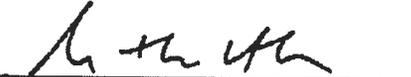
HY-VEE, INC.

By



Brett Bremser, Executive Vice President

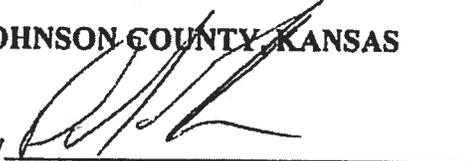
By



Nathan Allen, Assistant Secretary

JOHNSON COUNTY, KANSAS

By



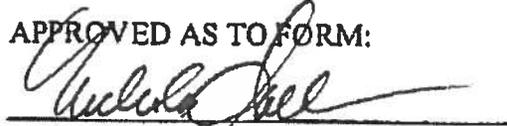
Daniel Goodman, AAA Director  
Area Agency on Aging

By



Robin Lynes  
Purchasing Manager

APPROVED AS TO FORM:



Nicholas Saldan

Assistant County Counselor

## **EXHIBIT A**

### **Hy-Vee Grocery Stores**

- Store #1464, Olathe Hy-Vee - 18101 W 119th St., Olathe, KS 66061**
- Store #1508, Overland Park Hy-Vee - 8501 W 95<sup>th</sup> St., Overland Park, KS 66212**
- Store #1422, Mission Hy-Vee - 6655 Martway Ave., Mission, KS 66202**
- Store #1383, Lenexa Hy-Vee - 13400 W. 87th St. Pkwy., Lenexa, KS 66215**
- Store #1532, Prairie Village Hy-Vee - 7620 Stateline Rd., Prairie Village, KS 66208**
- Store #1560, Shawnee Hy-Vee - 13550 West 63rd St., Shawnee, KS 66216**

**Exhibit 1**

**Exhibit 1. CHAMPSS Swipe Card (Size of Credit Card)**



