PROFESSIONAL SERVICES AGREEMENT BETWEEN
DLZ MICHIGAN, INC.
AND THE ANN ARBOR DDA
FOR ENGINEERING & INSPECTION SERVICES

This agreement ("Agreement") is between the Ann Arbor Downtown Development Authority, a Michigan municipal corporation, having its offices at 150 South 5th Ave #301, Ann Arbor MI 48104 ("DDA"), and DLZ Michigan ("Contractor"), a Michigan Corporation with its address at 4041 Martel St, Melvindale, Michigan 48122. DDA and Contractor are referred to collectively herein as the "Parties." The Parties agree as follows:

I. DEFINITIONS

Contract Administrator means Amber Miller, acting personally or through any appropriate DDA staff members.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to DDA by Contractor under this Agreement.

Project means Catherine Miller Bikeway - Material Testing Services.

II. DURATION

Contractor shall commence performance on July 20, 2022 ("Commencement Date"). This Agreement shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in this Agreement. The terms and conditions of this Agreement shall apply to the earlier of the Effective Date or Commencement Date.

III. SERVICES

A. The Contractor agrees to provide material testing services ("Services") in connection with the Project as described in Exhibit A. The DDA retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the compensation shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.
B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.

C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement. The Contractor shall also comply with and be subject to the City of Ann Arbor policies applicable to independent contractors.

D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the DDA (if any) except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. INDEPENDENT CONTRACTOR

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party’s relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

Contractor does not have any authority to execute any contract or agreement on behalf of the DDA, and is not granted any authority to assume or create any obligation or liability on the DDA’s behalf, or to bind the DDA in any way.

V. COMPENSATION OF CONTRACTOR

A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator.

B. The Contractor will be compensated for Services performed in addition to the Services described in Article III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.

C. The Contractor shall keep complete records of work performed (e.g. tasks performed, hours allocated, etc.) so that the DDA may verify invoices submitted by the Contractor. Such records shall be made available to the DDA upon request and submitted in summary form with each invoice.

VI. INSURANCE/INDEMNIFICATION
A. The Contractor shall procure and maintain from the Effective Date or Commencement Date of this Agreement (whichever is earlier) through the conclusion of this Agreement, such insurance policies, including those set forth in Exhibit C, as will protect itself, the DDA, and the City of Ann Arbor from all claims for bodily injuries, death or property damage that may arise under this Agreement; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor, or anyone employed by them directly or indirectly. Prior to commencement of work under this Agreement, Contractor shall provide to the DDA documentation satisfactory to the DDA, through DDA-approved means, demonstrating it has obtained the policies and endorsements required by Exhibit C. When requested, Contractor shall provide the same documentation for its subcontractor(s) (if any).

B. Any insurance provider of Contractor shall be authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company’s Key Rating Guide of “A-” Overall and a minimum Financial Size Category of “V”. Insurance policies and certificates issued by non-authorized insurance companies are not acceptable unless approved in writing by the DDA.

C. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold the DDA, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney’s fees, resulting or alleged to result, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the DDA’s negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

VII. COMPLIANCE REQUIREMENTS

A. Nondiscrimination. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.
B. **Living Wage.** If the Contractor is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the DDA under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the DDA of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the DDA, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

### VIII. WARRANTIES BY THE CONTRACTOR

A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.

B. The Contractor warrants that it has all the skills, experience, and professional licenses (if applicable) necessary to perform the Services pursuant to this Agreement.

C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services pursuant to this Agreement.

D. The Contractor warrants that it has no personal or financial interest in the Project other than the fee it is to receive under this Agreement. The Contractor further certifies that it shall not acquire any such interest, direct or indirect, which would conflict in any manner with the performance of the Services it is to provide pursuant to this Agreement. Further Contractor agrees and certifies that it does not and will not employ or engage any person with a personal or financial interest in this Agreement.

E. The Contractor warrants that it is not, and shall not become overdue or in default to the DDA for any contract, debt, or any other obligation to the DDA including real and personal property taxes. Further Contractor agrees that the DDA shall have the right to set off any such debt against compensation awarded for Services under this Agreement.

F. The Contractor warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the Contractor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
G. The person signing this Agreement on behalf of Contractor represents and warrants that she/he has express authority to sign this Agreement for Contractor and agrees to hold the DDA harmless for any costs or consequences of the absence of actual authority to sign.

IX. OBLIGATIONS OF THE DDA

A. The DDA agrees to give the Contractor access to the Project area and other DDA-owned properties as required to perform the necessary Services under this Agreement.

B. The DDA shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the DDA. Notwithstanding any consent by the DDA to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the DDA.

B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. TERMINATION OF AGREEMENT

A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.

B. The DDA may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.

C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the DDA to effect continued payment under this Agreement are not appropriated or otherwise made available, the DDA shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The Contract Administrator shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives
notice of such non-appropriation.

D. The provisions of Articles VI and VIII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already accrued and Contractor’s obligation to deliver all Deliverables due as of the date of termination of the Agreement.

XII. REMEDIES

A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.

B. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the parties or otherwise.

C. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

XIII. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated below or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

DLZ Michigan, Inc.
4041 Martel St
Melvindale, Michigan 48122
If Notice is sent to the DDA, it shall be addressed and sent to:

Ann Arbor DDA
150 S. Fifth Ave, Suite 301
Ann Arbor, Michigan 48104

XIV. CHOICE OF LAW AND FORUM

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XV. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the DDA. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the DDA without restriction or limitation on their use. The DDA acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the DDA shall have a recognized proprietary interest in the work product of the Contractor.

XVI. CONFLICTS OF INTEREST OR REPRESENTATION

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

Contractor agrees to advise the DDA if Contractor has been or is retained to handle any matter in which its representation is adverse to the DDA. The DDA's prospective consent to the Contractor's representation of a client in matters adverse to the DDA, as identified above, will not apply in any instance where, as the result of Contractor's representation, the Contractor has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to another client of the Contractor, could be used in any such other matter by the other client to the material disadvantage of the DDA. Each matter will be reviewed on a case by case basis.
XVII. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

XVIII. EXTENT OF AGREEMENT

This Agreement, together Exhibits A, B, and C, constitutes the entire understanding between the DDA and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. No terms or conditions of either party’s invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party’s failure to object to such form. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Contractor and the DDA. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

XIX. ELECTRONIC TRANSACTION

The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement. This Agreement may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

XX. EFFECTIVE DATE

This Agreement will become effective when all parties have signed it. The Effective Date of this Agreement will be the date this Agreement is signed by the last party to sign it.

[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE FOLLOWS]
FOR  DLZ Michigan, Inc.

Contractor Name

By

Name: Manoj Sethi, P.E.

Title: President

Date: 8/11/2022

FOR THE ANN ARBOR DDA

Amber Miller, Capital Projects Manager

Date: 8/17/2022
EXHIBIT A
SCOPE OF SERVICES

The Consultant shall provide as-needed material testing services as outlined in DLZ's proposal dated June 27, 2022 at attached herein.
June 27, 2022

EXHIBIT A

Ms. Elizabeth Rolla, P.E
City of Ann Arbor DDA
150 S. Fifth Ave.,
Ann Arbor, MI 48104
Phone 734-323-7156
Email erolla@a2dda.org

RE: Proposal for Material Testing Services for the Catherine Miller Bikeway Project

Ms. Rolla,

DLZ Michigan, Inc. (DLZ) is pleased to submit this Proposal for Materials Testing Services for the Catherine Miller Bikeway Project to align with the Construction Testing Services City of Ann Arbor Engineering Unit 2022 & 2023 Construction Projects RFP #22-03 dated February 14, 2022. The project length is 0.73 miles located on Miller/Catherine St from First St to Division St in downtown Ann Arbor. The proposed project includes water main installation and roadway, sidewalk, & bikeway construction related work; with construction expected to span from early-July through November 2022.

SCOPE OF SERVICES
Perform field and laboratory material testing services in general accordance with project plans and specifications which may include the following tasks to align with the existing contract with the City of Ann Arbor:

1. Provide a qualified individual to perform field material testing of concrete at the time of placement in the field, when required the individual will be concrete certified. Testing will include slump, temperature, air content, and casting of concrete cylinders per the frequency requested by the Client. The invoice will reflect the number of cylinder molds used, which will be provided by DLZ and the number of cylinders broken at DLZ’s laboratory.
2. Provide a qualified individual to perform material testing on-site for soils compaction, using a Troxler nuclear density gauge. Density tests will be compacted to standard proctors performed in DLZ’s material testing laboratory.
3. Provide a qualified individual to perform material testing on-site for hot mix asphalt (HMA) compaction testing at the time of placement with the use of Troxler nuclear density gauge.

ESTIMATED COSTS AND SCHEDULE
We propose to accomplish the work on a unit-rate basis in accordance with our attached fee schedule and unit costs. Our total fee will be determined by the actual amount of time spent and tests performed as requested by City of Ann Arbor DDA. The attached fee schedule contained herein is good for 90 days, from the date of this proposal. All invoicing shall be done monthly and shall be based on the actual quantity of work performed in accordance with the unit prices quoted on the attached fee schedule.
EXHIBIT B
COMPENSATION

General

Contractor shall be paid for those Services performed pursuant to this Agreement inclusive of all reimbursable expenses (if applicable), in accordance with the terms and conditions herein. The Total compensation payable for all Services performed during the term of this Agreement shall not exceed $35,000. The Compensation Schedule attached states nature and amount of compensation the Contractor may charge the DDA.
Additional costs incurred (shipping, materials, etc.) will be billed at direct cost plus 12%. All prices listed in the available 2022-2023 Construction Season Standard Rates are subject to an escalation of 5% beginning January 1, 2024.

Perform field and laboratory material testing services in general accordance with project plans and specifications which may include the following task on the Catherine Miller Bikeway Project:

<table>
<thead>
<tr>
<th>Description of Service Item</th>
<th>Unit</th>
<th>Unit Price</th>
<th>2022 and 2023 Construction Season</th>
<th>2022 Catherine Miller Bikeway Project</th>
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</thead>
<tbody>
<tr>
<td>Technician Including Nuclear Densometer – Straight Time</td>
<td>Hour</td>
<td>$60.00</td>
<td>400</td>
<td>$24,000.00</td>
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<tr>
<td>Technician Including Nuclear Densometer – Overtime (1) (2)</td>
<td>Day</td>
<td>$75.00</td>
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<td>Technician Daily Mobilization (includes travel time to and from the project site)</td>
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<td>$30.00</td>
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<td>Additional Professional Engineering Services, as Requested by the City (5)</td>
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<td>$100.00</td>
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<td>$1,000.00</td>
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<td>Concrete Cylinder Mold, Cure, Pickup, and Compressive Strength Test (6)</td>
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<td>Concrete Beam Mold, Cure, Pickup, and Flexural Strength Test (6)</td>
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<td>Sieve Analysis</td>
<td>Each</td>
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<td>Modified Proctor Test</td>
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<td>HMA Volumetric Test (3)</td>
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<td>Review Concrete or Asphalt Mix Design</td>
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<td><strong>Total Price</strong></td>
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<td><strong>$34,800.00</strong></td>
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EXHIBIT C
INSURANCE REQUIREMENTS

From the earlier of the Effective Date or the Commencement Date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Contractor to have or provide the required coverage.

A. The Contractor shall have insurance that meets the following minimum requirements:

1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than $1,000,000.

2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:
   - Bodily Injury by Accident - $500,000 each accident
   - Bodily Injury by Disease - $500,000 each employee
   - Bodily Injury by Disease - $500,000 each policy limit

3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 04 13 or current equivalent. The DDA and City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements that diminish the DDA’s and City’s protections as an additional insured under the policy. Further, the following minimum limits of liability are required:
   - $1,000,000 Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
   - $2,000,000 Per Project General Aggregate
   - $1,000,000 Personal and Advertising Injury

4. Motor Vehicle Liability Insurance equivalent to, as a minimum, Insurance Services Office form CA 00 01 10 13 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. The DDA and City shall be an additional insured. There shall be no added exclusions or limiting endorsements that diminish the DDA’s and City’s protections as an additional insured under the policy. Further, the limits of liability shall be $1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of $1,000,000.
B. Insurance required under A.3 and A.4 above shall be considered primary as respects any other valid or collectible insurance that the DDA may possess, including any self-insured retentions the DDA may have; and any other insurance the DDA does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the DDA for any insurance listed herein.

C. Insurance companies and policy forms are subject to approval of the DDA Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional and unqualified 30-day written notice of cancellation in favor of the DDA and City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number(s); name of insurance company; name(s), email address(es), and address(es) of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions, which may be approved by the DDA in its sole discretion; (c) that the policy conforms to the requirements specified. Contractor shall furnish the DDA with satisfactory certificates of insurance and endorsements prior to commencement of any work. If any of the above coverages expire by their terms during the term of this Agreement, the Contractor shall deliver proof of renewal and/or new policies and endorsements to the Administering Service Area/Unit at least ten days prior to the expiration date.