

**AGREEMENT
BETWEEN
CITY OF LINCOLN AND
UNIVERSITY OF NEBRASKA-LINCOLN**

I. INTRODUCTION.

This Agreement is between the City of Lincoln, Nebraska (City), on behalf of the Lincoln-Lancaster County Health Department (LLCHD), for food handler training programs, and University of Nebraska-Lincoln (Program Provider), with a place of business at Department of Food Science and Technology, John Rupnow, PhD., 143 Filly Hall, Lincoln, NE, 68583, and (402) 472-2832.

The parties are authorized by the statutes of the State of Nebraska, including the Interlocal Cooperation Act, *Neb. Rev. Stat.* §13-801, et. seq., as amended, to enter into cooperative agreement for the mutual benefit of the parties and to provide services in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities. Each party shall remain separate entities with separate rights and authorities. Each party retains its own administrator and no separate board shall be created to fulfill the obligations of the Agreement.

II. SERVICES & LICENSES.

The Program Provider and City enter this Agreement for the Program Provider to:

For Online Training Programs:

1. Provide online training programs for:
 - a. Serve/Clean Food Handlers;
 - b. Prep/Cook Food Handlers; and
 - c. Restricted/Shift Food Managers.
2. Maintain and update the online training programs as federal, state, and local guidelines change.
3. Provide programming code to City, should Program Provider be unable to maintain or update the online training program to the satisfaction of City.
4. The City shall review and approve all curricula content.
5. Provide the City with an unlimited license to use the online training program consistent with the terms and conditions of this Agreement.

For Food Protection Manager Classes:

1. Provide Food Protection Manager renewal classes taught by Program Provider professors, as approved by the City.
2. The City shall review and approve all curricula content.

The Program Provider and City enter into this Agreement for the City to:

1. Provide City staff to serve as training program content experts and reviewers and approve content.
2. Provide City staff to collect all food-handler permit fees.

III. TERM.

The term of this Agreement shall be from December 1, 2009 and shall continue until completion of all the obligations of this Agreement, but in no event longer than November 30, 2013. Upon expiration of the term prior to completion, City shall pay the Program Provider for any services completed up to the date of expiration.

IV. COMPENSATION.

The City agrees to pay the Provider for the online training services as follows:

- A. \$25,000 due on or before December 1, 2009.
- B. \$15,000 due on or before December 1, 2010; December 1, 2011; and December 1, 2012.

In addition to the above payments, the City shall pay \$20.00 per Food Protection Manager, not to exceed \$20,000 per contract year, for each person who attends the Food Protection Manager renewal training class. The Program Provider shall provide the City with sufficient documentation for each class and participant.

V. TERMINATION FOR BREACH.

Either party has the right to terminate this Agreement if the other party fails to perform as required in this Agreement. Termination rights under this section may be exercised only after the non-breaching party notifies the breaching party of the failure to perform in writing upon giving the other party thirty (30) days written notice. Upon termination, the prepaid payment made by the City should be prorated to pay for the amount of approved and documented services provided by the Program Provider, the Program Provider shall return the remaining amount to the City within fifteen (15) days.

VI. TERMINATION FOR CONVENIENCE.

City has the right to terminate this Agreement for any reason for its own convenience. If City terminates this Agreement for convenience, City shall provide Program Provider with ninety (90) days written notice of the termination. Upon termination, the prepaid payment made by the City should be prorated to pay for the amount of approved and documented services provided by the Program Provider, the Program Provider shall return the remaining amount to the City within fifteen (15) days.

VII. TERMINATION FOR LACK OF FUNDING.

The City may terminate this Agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of City. In the event of unavailability of funds to pay any amounts due under this Agreement, City shall immediately notify the Program Provider and this Agreement shall terminate without penalty or expense to City. Upon termination, the prepaid payment made by the City should be prorated to pay for the amount of approved and documented services provided by the Program Provider, the Program Provider shall return the remaining amount to the City within fifteen (15) days.

VIII. DUTIES GENERALLY.

The Program Provider agrees as follows:

- A. To timely and professionally complete the services as described above, and to furnish their labor and pay all their own costs, including any taxes, required to complete their services.
- B. To furnish everything reasonably necessary to complete the services unless specifically provided otherwise in this Agreement.
- C. To apply for and obtain any and all necessary permits, certifications, licenses, variances, and approvals required by any applicable law or regulations that relate to the services.
- D. To conduct all activities related to the services in a lawful manner.
- E. Provide and perform all necessary labor in a professional and workmanlike manner and in accordance with the provisions of this Agreement.

IX. INDEPENDENT CONTRACTOR.

City is interested only in the results produced by this Agreement. The Program Provider has sole and exclusive charge and control of the manner and means of performance. The Program Provider shall perform as an independent contractor and it is expressly understood that neither the Program Provider nor any of its staff are employees of City and, thus they are not entitled to any City benefits including, but not limited to, overtime, retirement benefits, workers' compensation, sick leave, or injury leave.

X. INSURANCE.

- A. Program Provider shall maintain General Liability Insurance at its own expense during the life of this Agreement, naming and protecting Program Provider and the City of Lincoln, its officials, employees and volunteers as insured, against claims for damages resulting from (a) all acts or omissions, (b) bodily injury, including wrongful death, (c) personal injury liability, and (d) property damage which may arise from operations under this Agreement whether such operations by Program Provider and Program Provider's employees, or those directly or indirectly employed by Program Provider. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

1. All Acts or Omissions - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
 2. Bodily Injury/Property Damage - \$1,000,000 each Occurrence; \$2,000,000 Aggregate; and
 3. Personal Injury Damage - \$1,000,000 each Occurrence; and
 4. Contractual Liability - \$1,000,000 each Occurrence; and
 5. Products Liability and Completed Operations - \$1,000,000 each Occurrence; and
 6. Medical Expenses (any one person) - \$10,000.
- B. The following shall be provided and attached to this Agreement by the Program Provider:
1. A Certificate of Insurance for its General Liability Insurance. The City of Lincoln shall be specifically named as an additional insured on the General Liability Insurance. The Program Provider may present evidence of equivalent self insurance in place of a certificate of insurance for General Liability Insurance. The City shall be treated as an additional insured as if the Program Provider possessed General Liability Insurance.
 2. Proof of Workers' Compensation Insurance, where appropriate.
- C. Program Provider is required to provide the City with thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance as required by this Agreement. If Program Provider obtains General Liability Insurance during the term of this Agreement, it shall add the City as an additional insured and provide a copy of the Certificate of Insurance naming the City as an additional insured.

XI. INDEMNIFICATION.

To the fullest extent permitted by law, Program Provider shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Program Provider, or anyone for whose acts any of them may be liable. This section will not require Program Provider to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

XII. AUDIT PROVISION.

The Program Provider shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

XIII. FAIR EMPLOYMENT.

The Program Provider shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and *Neb. Rev. Stat.* § 48-1122, as amended.

XIV. FAIR LABOR STANDARDS.

The Program Provider shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

XV. NEBRASKA LAW.

This Agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

XVI. INTEGRATION, AMENDMENTS, ASSIGNMENT.

This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party.

XVII. SEVERABILITY & SAVINGS CLAUSE.

Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate any other section or subdivision of a section thereof.

XVIII. COPYRIGHTS, ROYALTIES & PATENTS

Without exception, the Program Provider represents the consideration for this Agreement includes the Program Provider's payment for any and all royalties or costs arising from patents, trademarks, copyrights, and other similar intangible rights in any way involved with or related to this Agreement. Further, the Program Provider shall pay all related royalties, license fees, use fees, or other similar fees for any such intangible rights. The Program Provider shall defend suits or claims for infringement of any patent, copyright, trademark, or other intangible rights in any way related to this Agreement. This section survives any termination of this Agreement.

XIX. COPYRIGHT, WARRANTY & LICENSE

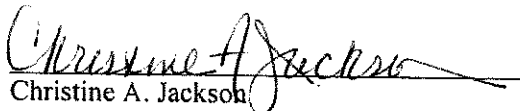
A. The Program Provider warrants that all materials, processes, or other protected rights to be used in the services have been duly licensed or authorized by the appropriate parties for such use. This section survives any termination of this Agreement.

- B. The Program Provider agrees to furnish the City upon demand written documentation of such license or authorization. If unable to do so, the Program Provider agrees that the City may withhold a reasonable amount from the Program Provider's compensation herein to defray any associated costs to secure such license or authorization. The Program Provider shall defend any infringement claim arising out of the Program Provider's performance of this Agreement.
- C. The Program Provider hereby grants the City a limited, non-exclusive right to use, copy, distribute and display the Online Training Programs for the purposes of this Agreement. Upon any termination of this Agreement pursuant to section V, VI or VII hereof, the City shall retain a limited, non-exclusive license to use, copy, distribute and display the Online Training Programs for a period of twelve (12) months from the effective date of the termination. At the end of this twelve (12) month term, the City's right to use, copy, distribute and display the Online Training Programs shall terminate and all rights to the Online Training Programs shall revert to the Program Provider.
- D. The copyright, warranty & license provisions of this section shall survive any termination of this Agreement.

XX. CAPACITY.

The undersigned person representing the Program Provider does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind the Program Provider to this Agreement.

IN WITNESS WHEREOF, the Program Provider and City do hereby execute this Agreement.



Christine A. Jackson
 Vice Chancellor for Business & Finance
 302 Canfield Administration Building
 Lincoln, NE 68588-0425

10/9/2009
 Date of Signature

 Chris Beutler
 Mayor of Lincoln
 555 South 10th Street
 Lincoln, Nebraska 68508



Alan R. Moeller
 Assistant Vice Chancellor, Institute of
 Agriculture & Natural Resources
 202 Agricultural Hall
 Lincoln, NE 68583

10-12-09
 Date of Signature

 Date of Execution