

**CONTRACT FOR SERVICES BETWEEN
CORNHUSKER PLACE OF LINCOLN-LANCASTER COUNTY, INC.
AND
THE CITY OF LINCOLN, NEBRASKA**

THIS CONTRACT is entered into on this _____ day of June, 2003, by and between Cornhusker Place of Lincoln-Lancaster County, Inc., hereinafter referred to as "Contractor" and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the City is desirous of obtaining the services of chemical testing of breath samples for the determination of alcohol content as authorized by the laws of the State of Nebraska and the ordinances of the City of Lincoln, Nebraska; and

WHEREAS, Contractor possesses the location and personnel necessary to perform these services on behalf of the City, and the City desires to engage Contractor in a multi-year contract for such services upon the terms provided herein.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto, the parties do hereby agree as follows:

I.

DUTIES OF THE CONTRACTOR

The Contractor agrees to provide the following services and perform the following duties:

1. To be primarily responsible for the chemical testing of the alcohol content of the breath of all non-combative persons arrested by the Lincoln Police Department for driving under the influence of alcohol or drugs, or for any offense related to driving with alcohol or drugs in one's system (collectively, DWI), by following all laws of the State of Nebraska and rules and regulations promulgated by the Nebraska State Department of Health and Human Services relating to testing of alcohol content of breath, Title 177;

2. To maintain, calibrate, certify the testing equipment located at Cornhusker Place, 721 "K" Street, Lincoln, Lancaster County, Nebraska, and at the Lancaster County Department of Corrections at 605 South 10th Street, Lincoln, Nebraska, as required by the Nebraska State Department of Health rules and regulations;
3. The Contractor agrees to make every effort to have on staff two maintenance personnel qualified and licensed to operate the Intoxilyzer 5000 or other testing device authorized by the Nebraska State Department of Health for testing of the alcohol content of breath samples as specified by the City in order to meet the obligations of this contract.
4. To provide an adequate number of testing individuals, certified by the Nebraska State Department of Health, to conduct tests of the alcohol content of breath samples as required by the Nebraska State Department of Health rules and regulations;
5. To ensure that those certified testers and other personnel under the direction or control of contractor respond and testify in all court cases upon proper notification;
6. To accept into Contractor's program any person released following an arrest for DWI whose needs do not exceed the capabilities of the Contractor;
7. To assist in the release, where practicable, of any person arrested for DWI to a responsible party. A responsible party shall be defined as a person 19 years of age or older, a person who is not under the influence of any mood altering chemical including alcohol, a licensed driver or one who is capable of and does make arrangements for transportation, and a person who accepts responsibility for the arrested person by signing the release and advisement form provided by Contractor;
8. To contact the Lincoln Police Department if a person who has been released to Contractor's custody or care requests to be booked into jail for the purposes of bonding out as opposed to being released to a responsible party;
9. To provide to the Lincoln Police Department any changes in policies imposed by Contractor upon its personnel which may effect this contract.
10. The Contractor will be required to establish a standing schedule for the maintenance checks required by Title 177. The Contractor's qualified and licensed maintenance personnel will be required to be present at these times as well. The Contractor is required to provide the City and County Attorney's Office with a schedule of the dates and times of these required maintenance checks for the purpose of advising these departments that the personnel are not available for court appearances.

11. To use reasonable efforts to facilitate telephone contact with a physician named by an arrestee, in the event such arrestee specifically makes such request. "Reasonable efforts" will include attempting to call the physician named by the arrestee.

II. PAYMENT OF CONTRACTOR

The City will pay the Contractor the amount of Eighty-three Dollars (\$83.00) for every chemical breath test for which a fee is awarded by the court pursuant to Lincoln Municipal Code Section 10.16.080 or other applicable law, or for which a fee for chemical testing is paid as part of any plea bargain arrangement. Contractor shall inform the Lincoln Police Department, in writing, upon request of the names of each individual tested pursuant to this contract. City shall pay Contractor on a monthly basis for those individuals tested who have paid a fee for chemical testing. Payments will be made on or about the 15th day of each succeeding month.

Regardless of the number of arrests made giving rise to tests under this contract, the City guarantees that Contractor will receive not less than Eighty-five Thousand Dollars (\$85,000.00) during each contract year.

III. EQUAL EMPLOYMENT AND NON-DISCRIMINATION

Contractor agrees in connection with the performance of this Contract that Contractor shall fully comply with the requirements of Title 11 of the Lincoln Municipal Code, and Nebraska Revised Statutes Section 48-1122, and shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, or marital status. In the employment of persons, Contractor shall fully comply with all

provisions of applicable federal, state, and local law and shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, national origin, age, or marital status.

IV.

ASSIGNABILITY

The Contractor shall not assign any interest in this Contract, delegate any duties or work required under this Contract, or transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City.

V.

INDEPENDENT CONTRACTOR

It is agreed that the Contractor shall perform all the duties required herein as an independent contractor. Contractor is, for all purposes arising out of this Contract, an independent contractor, and shall not be deemed to be an employee of the City. It is expressly understood and agreed that the Contractor and its employees shall in no event be entitled to any benefits to which City employees are entitled, including but not limited to overtime, retirement benefits, workers' compensation benefits, injury leave, other leave benefits, or any other benefit or remuneration other than those expressly provided herein.

VI.

DUTIES AND RESPONSIBILITIES OF THE CITY

Pursuant to this Contract, the City agrees to perform the following duties and responsibilities:

1. To bring persons arrested by the Lincoln Police Department for DWI who are non-combative in the arresting officer's judgment to Contractor for testing when a chemical analysis of a sample of such person's breath is requested by the arresting officer;
2. To ensure that the arresting officer remains at Contractor's location until the person arrested for DWI has provided a sample for a chemical breath test, or refused to do so;
3. To process combative persons arrested for DWI by the Lincoln Police Department at the testing facility located at the Lancaster County Corrections Complex at 605 South 10th Street, Lincoln, Lancaster County, Nebraska, or other appropriate facility.
4. To respond to Contractor when a request is made by Contractor to transport arrested persons to jail for the purposes of bonding out rather than being released to a responsible person;
5. To provide technical assistance to Contractor, when necessary, through an employee or employees who are familiar with the maintenance of all equipment used by Contractor in fulfilling this Contract;
6. To supply the Court with documentation, when necessary, substantiating the \$100.00 testing fee currently authorized by the Court, or such documentation as will substantiate a testing fee as may hereafter be approved by the Court.
7. The City will provide the Contractor with a calendar of events at least 21 days prior to the Special Event occurring.

Additionally, the City shall:

1. Retain \$17.00 from every fee assessed under Lincoln Municipal Code Section 10.16.080 or other applicable law, or as further authorized by state statute, for the reimbursement of the City's cost directly related to the testing of persons arrested for DWI as authorized by state statute;

2. Retain ownership of all testing equipment located at Contractor's location, including any parts or equipment purchased pursuant to this Contract;
3. In appropriate cases, the City Attorney's Office will attempt to have a \$100.00 testing fee, or such fee as may hereafter be approved by the Court, be paid by any person charged with DWI, as part of any plea bargaining involving that charge;
4. Through the Lincoln Police Department, request the City Attorney's Office to attempt to have the amount of the current witness fee paid by the person whose case requires an operator or maintenance person employed by Contractor to testify in court.

**VII.
DURATION OF CONTRACT**

The term of this Contract shall be for a period of three years commencing on July 1, 2003 through June 30, 2006.

Either party may terminate the Contract sooner by giving the other 30 days prior written notice. Either party, for breach of any portion or section herein, may terminate the contract with five days prior written notice. Written notice of termination shall be effective if sent by certified United States mail, postage prepaid, to:

Director
Cornhusker Place
721 "K" Street
Lincoln, NE 68508

Chief of Police
Lincoln Police Department
575 South 10th Street
Lincoln, NE 68508

IN WITNESS WHEREOF, the City and Contractor have executed this Contract as of the date first above written.

ATTEST:

CITY OF LINCOLN, NEBRASKA
a municipal corporation

City Clerk

By: _____
Coleen J. Seng, Mayor

CORNHUSKER PLACE OF LINCOLN-
LANCASTER COUNTY, INC.

Bridget Blain
Witness

By:

James E. Davis
Title: President

[law\coun\agr\CornhuskerPlace Breath 2003 - FINAL]