

**SERVICE AGREEMENT  
BETWEEN  
THE CITY OF LINCOLN, NEBRASKA AND  
THE 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) and the Board of Regents of the University of Nebraska-Lincoln and its Department of Food Science and Technology (hereinafter "UNL"), John Rupnow, PhD, and Harshavardhan Thippareddi, PhD, 143 Filly Hall, Lincoln, NE 68583, and (402)472-2832 for development of online food handler training programs.

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 AND LICENSES.**

UNL and the City enter this Agreement for UNL to:

1. Provide online food handler permit training modular programs for the "fbstNebraska" site to include the following curricula:
  - a. Serve/Clean Food Handlers;
  - b. Prep/Cook Food Handlers; and
  - c. Restricted/Shift Food Managers.
2. Maintain and update the online training programs described above in Paragraph 1 as federal, state, and local laws, rules, regulations, and guidelines change.
3. Provide the City the opportunity to review and approve all curricula content.

UNL and City enter into this Agreement for the City to:

1. Serve as training program content experts and reviewers, and approve all content.
2. Collect all food handler permit fees.

**III. TERM.**

The term of this Agreement shall be from January 1, 2015 and shall continue until completion of all the obligations of this Agreement, but in no event longer than

December 31, 2016. Upon expiration of the term prior to completion, City shall pay UNL for any services completed up to the date of expiration.

#### **IV. COMPENSATION.**

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

- A. \$20,000 due on or before March 1, 2015
- B. \$20,000 due on or before January 1, 2016.

#### **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 and the breaching party fails to correct the breach within thirty (30) days of such notice. Upon termination, the City shall pay UNL for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement. Further, if UNL exercises its right to terminate under this Section, UNL shall continue to provide the Services identified in Section II. 1. of this Agreement for a period of two years following the date of termination of this Agreement.

#### **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 UNL with thirty (30) days written notice of the termination. Upon termination, the City shall pay UNL for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

#### **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 UNL and this Agreement shall terminate without penalty or expense to City. Upon termination, the City shall pay UNL for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.

#### **VIII. DUTIES GENERALLY.**

UNL 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. UNL has sole and exclusive charge and control of the manner and means of performance. UNL shall perform as an independent contractor and it is expressly understood that neither UNL 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. UNL self insures and will provide a certificate, naming and protecting as part of its self insurance program UNL 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 UNL and UNL's employees, or those directly or indirectly employed by UNL. 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;
  - 7. Fire Damage (any one fire) - \$100,000.
- B. The following shall be provided and attached to this Agreement by the UNL:
  - 1. A Certificate of Insurance. The City of Lincoln shall be specifically named as an additional insured on the General Liability Insurance. UNL 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 UNL possessed General Liability Insurance.

2. Proof of Workers' Compensation Insurance, where appropriate.
- C. UNL 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.

#### **XI. INDEMNIFICATION.**

To the fullest extent permitted by law, UNL 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 reasonable 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 UNL, or anyone for whose acts any of them may be liable. This section will not require UNL 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**

UNL 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.**

UNL 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.**

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

#### **XV. COPYRIGHTS, ROYALTIES, & PATENTS**

Without exception, UNL represents the consideration for this Agreement includes UNL'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, UNL shall pay all royalties, license fees, use fees, or other similar fees for any such intangible rights. UNL shall defend all 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.

#### **XVI. COPYRIGHT & WARRANTY**

- A. UNL 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. UNL agrees to furnish the City, upon demand, written documentation of such license or authorization. If unable to do so, UNL agrees that the City may withhold a reasonable amount from UNL's compensation herein to defray any associated costs to secure such license or authorization. UNL shall defend any infringement claim arising out of UNL's performance of this Agreement. This section survives any termination of this Agreement.

#### **XVII. TRADE PRACTICES WARRANTY**

UNL warrants to the City that the services to be performed under this Agreement shall be in accordance with accepted and established practices and procedures recognized as such in the applicable trade in general and that UNL's services shall conform to the requirements of this Agreement.

#### **XVIII. E-VERIFY**

In accordance with Neb. Rev. Stat. §4-108 through §4-114, UNL agrees to register with and use a federal immigration verification system to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. §1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. UNL shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to requirements of state law and 8 U.S.C.A. §1324b. UNL shall require any subcontractor to comply with the provisions of this section.

#### **XIX. 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.

**XX. 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.

**XXI. SEVERABILITY & SAVINGS CLAUSE.**

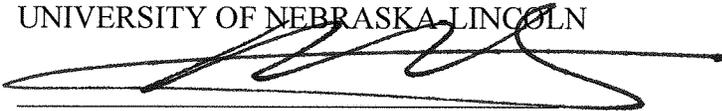
Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate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

**XXII. CAPACITY**

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

IN WITNESS WHEREOF, UNL and the City do hereby execute this Addendum to this Agreement.

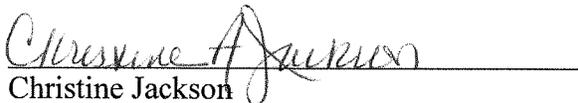
UNIVERSITY OF NEBRASKA-LINCOLN



Rolando A. Flores, Ph.D.  
Department Head  
Food Science & Technology Department  
University of Nebraska-Lincoln  
143 Food Industry Complex  
Lincoln, NE 68583-0919

02 / 26 / 2015

Date of Signature



Christine Jackson  
Vice Chancellor, Business and Finance  
For the Board of Regents of the University of Nebraska  
307 ADMS  
University of Nebraska-Lincoln  
Lincoln, NE 68588-0425

3 / 2 / 2015

Date of Signature

CITY OF LINCOLN, NEBRASKA  
On behalf of the Lincoln-Lancaster  
County Health Department

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Chris Beutler  
Mayor of the City of Lincoln  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

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Date of Execution

ATTEST:

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City Clerk