

**CONTRACT TO ADMINISTER THE
RETAIL FOOD AND RECREATIONAL PROGRAMS
FOR THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION**

This Contract is made between the **Wisconsin Department of Agriculture, Trade and Consumer Protection** ("the Department") and **Madison and Dane County Public Health** ("the Agent"), pursuant to Wis. Stat. §§ 97.41 and 97.615 and Wis. Admin. Code ch. ATCP 74, authorizing the Department to enter into a written contract designating a local health department, defined in Wis. Stat. § 250.01 (4), to act as the Department's local agent to administer the retail food and recreational establishment program. The Department designates and authorizes **Madison and Dane County Public Health** to act as the Department's agent for the purpose of enforcing Wis. Stat. § 97.30 and Subchs. III and IV of ch. 97, and the applicable provisions of the Wisconsin Administrative Code.

The Agent's jurisdiction under this Contract includes the following geographic area(s): Dane County.

This Contract shall run from July 1, 2016 to June 30, 2019 and shall remain in effect, unless specifically terminated, revoked or suspended under Section XIV. The Department shall issue contracts, for future contract periods, to the Agent by January 1st of the last year of the current contract. The Agent shall commit to continue as the Department's Agent for the future contract period, by signing and returning the contract by March 1st of the last year of the current contract.

The Agent hereby agrees to protect public health and safety, as the agent of the Department under Wis. Stat. § 97.30 and Subchs. III and IV of ch. 97, and Wis. Admin. Code ch. ATCP 74, and the terms and conditions of this Contract. The Agent agrees to issue licenses to, inspect, and regulate retail food establishments (including restaurants), campgrounds, recreational and educational camps, public swimming pools and water attractions, hotels, motels, tourist rooming houses, and bed and breakfast establishments, as specified in this Contract, enforcing all applicable provisions of the Wisconsin Statutes and Administrative Code and associated Department policies including, but not necessarily limited to, Wis. Stat. § 97.30 and Subchs. III and IV of ch. 97, and Wis. Admin. Code chs. ATCP 72 (Hotel, Motel and Tourist Rooming Houses), 73 (Bed and Breakfast Establishments), 74 (Local Agents and Regulation), 75 (Retail Food Establishments) and Appendix (Wisconsin Food Code), 76 (Safety, Maintenance, and Operation of Public Pools and Water Attractions), 78 (Recreational and Educational Camps), and 79 (Campgrounds). If the Agent inspects individual vending machines, the Agent will receive reimbursement from the Department.

The Department agrees to fulfill its responsibilities to the Agent required by Wis. Stat. § 97.30 and Subchs. III and IV of ch. 97, Wis. Admin. Code ch. ATCP 74, and this Contract.

This Contract incorporates any amendments to the statutes or administrative rules cited in this Contract, as well as any additional statutes or rules, related to retail food and recreational establishment licensing that may be enacted or adopted during the term of this Contract. The

Agent agrees that all of its obligations under this Contract include any of these amendments, enactments or adoptions.

I. DEFINITIONS

- A. **The Agent** means the local public health department (LPHD) operating under the terms of this Contract, unless the context indicates it means any local public health department acting as the Department's agent under Wis. Stat. §§ 97.41 and 97.615.
- B. **Agent Program Plan** means the plan developed by the Agent for the administration of the agent program and enforcement of Wis. Stat. § 97.30 and Subchs. III and IV of ch. 97, related provisions of the Wisconsin Administrative Code, and any applicable local ordinances or regulations cited in its enforcement actions for the types of facilities for which the Agent has been delegated agent status.
- C. **Agent Standard** means a member of the Agent's inspection staff, responsible for leading standardization exercises for the environmental health inspection personnel in the Agent's jurisdiction, who has successfully completed the initial standardization process, is current in their inspection standardization maintenance exercises, and has received a letter of completion from the Department.
- D. **Complaint** means an allegation, presented to an Agent or the Department, of a possible public health hazard or violation of any provision of the Wisconsin Statutes and Administrative Code or a local public health ordinance or regulation.
- E. **Conflict of interest** means a conflict between the private interests and the official responsibilities of a person in a position of trust. As provided in Wis. Stat. § 19.59 (1), a conflict of interest occurs when the exercise of a person's official responsibilities gives the person the opportunity to obtain financial gain or anything of substantial value for the private benefit of himself or herself, his or her immediate family, or an organization with which he or she is associated.
- F. **The Department** means the Wisconsin Department of Agriculture, Trade and Consumer Protection.
- G. **Enforcement Action** means a statutorily-authorized action imposed on a licensee for non-compliance with a provision of the Wisconsin Statutes, Administrative Code, local public health ordinance or regulation. Enforcement actions include, but are not limited to, holding orders, citations, forfeitures, temporary orders, suspension or revocation of a license.
- H. **Establishment** or **Facility** means a retail food establishment, hotel, motel, tourist rooming house, bed and breakfast establishment, food vending machine, camping resort or other campground, recreational educational camp, public swimming pool or water attraction.
- I. **Fiscal Year** means the period from July 1 through June 30 of each year.

- J. **Follow up Inspection** means a non-mandatory inspection by the Agent to ensure non-critical violations, cited in a routine inspection, have been corrected by a licensee.
- K. **Foodborne Outbreak** means the occurrence of two or more cases of a similar illness of persons, resulting from the ingestion of a common food.
- L. **Inspection Fee** means a fee charged by the Department or the Agent, for inspection services required under a Memorandum of Understanding (MOU), or a fee charged by the Agent for inspecting a mobile food establishment or temporary food establishment that has a valid license from another jurisdiction or the Department.
- M. **License** means an annual written authorization issued by the Department or the Agent, required to operate an establishment.
- N. **Licensee** means the person or entity licensed to operate the establishment.
- O. **Local Public Health Ordinance or Regulation** means an ordinance adopted by a village, city or county, or a regulation adopted by a local board of health, as the Department's agent, pursuant to Wis. Stat. § 97.41 (7) or 97.615 (2) (g).
- P. **Memorandum of Understanding (MOU)** means an agreement between the Department and another state agency for designating each agency's responsibilities in shared governance.
- Q. **Person** means an individual, married couple, legal entity of a partnership, corporation, or limited liability corporation, municipality, county, town, or state or local agency.
- R. **Pre-licensing Inspection** means an inspection that must be completed before a license is granted and the licensee may begin operating.
- S. **Program Evaluation** means an assessment by the Department of the Agent's adherence to the provisions of this Contract.
- T. **REHS / RS** means the National Environmental Health Association (NEHA) Registered Environmental Health Specialist/Registered Sanitarian or the Wisconsin Registered Sanitarian credential.
- U. **Reimbursement** means the portion of the license fee, collected by the Agent, that is remitted to the Department, pursuant to Wis. Stat. § 97.41 (5) or 97.615 (2) (e).
- V. **Reinspection** means a mandatory inspection to ensure that priority, critical or recurring violations have been corrected, including:

- a. An observed violation of immediate danger to public health (priority or critical) that is not corrected during the inspection;
 - b. Six or more priority (critical) violations observed and noted,
 - c. Repeat violations noted during two previous inspections (3 consecutive times); or
 - d. With consultation from a supervisor, an excessive number of violations that show a lack of managerial control observed during an inspection.
- W. **Routine inspection** means the annual evaluation of a licensee's operation of its establishment.
- X. **Standardization (initial)** means an environmental health inspection staff person's first successful completion of required field exercises by using risk based inspection methods.
- Y. **Standardization (maintenance)** means an environmental health inspection staff person's successful completion of field exercises by using risk based inspection methods, required every three years to maintain standardization certification.
- Z. **State Fees** means the Department's fees in Wis. Stat. §§ 97.41 (5) and 97.615 (2) (e), levied to recoup Department costs related to setting standards and for monitoring and evaluating the activities of, and providing education and training to, agent local health departments.
- AA. **State License Fees** means the license fees set by the Department, pursuant to Wis. Stat. §§ 97.30 (3) and (3m), 97.613, and 97.67 (4).
- BB. **Waterborne Outbreak** means the occurrence of two or more cases of a similar illness of persons after the ingestion of drinking water from the same source, or after exposure to water from the same source used for recreational purposes, and for which epidemiologic evidence implicates water as the probable source of the illness.

II. ISSUING LICENSES

- A. The Agent shall issue licenses to all facilities designated in this contract within its jurisdiction except:
 - 1. Mobile retail food establishments that cross geographical boundaries, in conducting their business, shall be licensed by the Department under Wis. Stat. § 97.30 (2) (a).
 - a. If the mobile retail food establishment has a service base, as defined in Wis. Admin. Code ch. ATCP 75 Appendix Part 1-201.10 (B), located within their jurisdictional boundary, the Agent shall issue the service base license.

- b. The Agent may charge an inspection fee for any inspection of a Department-licensed mobile retail food establishment.
 2. Temporary retail food establishments that cross jurisdictional boundaries, in conducting their business, shall be licensed by the Department under Wis. Stat. § 97.30 (2) (a).
 - a. The Department shall provide a guidance document for the Agent to use to determine which temporary retail food establishment license applies.
 - b. The Agent may charge an inspection fee for any inspection of a Department-licensed temporary retail food establishment.
 3. Any establishment exempt from the requirement to hold a retail food establishment license, pursuant to Wis. Stat. § 97.30 (2) (b), are under the regulatory authority of the Department and may not be licensed or inspected, in any manner related to food, dairy or meat processing, wholesale or retail operations, by the Agent.
- B. The Agent shall require a person who applies for, or a licensee who requests renewal of, a license to include, at a minimum, the following information:
 1. Individual, Married Couple or Legal Entity who will hold the license and complete address.
 2. Doing Business As (DBA) Name and complete address of the establishment.
 3. License number and expiration date of any current license.
 4. Type of Establishment, for licensing purposes
 5. Numbers of units, rooms, or sites and complexity, if applicable.
- C. A license issued by the Agent shall expire on June 30 of each year, except that a new license issued during the period beginning on April 1 and ending on June 30 shall expire on June 30 of the following year (15-month license), except as follows: The Agent of a city of the 1st class that has entered into a Contract with the Department may issue a required license for a retail food establishment or bed and breakfast establishment at any time during the year, which shall expire one year from the date of its issuance.
- D. The Agent shall transfer any license held for a hotel, tourist rooming house, bed and breakfast establishment, or vending machine commissary, as required in Wis. Stat. § 97.605 (4).

- E. The Agent shall transfer any license held for a campground, camping ground, recreational or educational camp, or public swimming pool, as required in Wis. Stat. § 97.67 (2).

III. INSPECTIONS

- A. Each fiscal year the Agent shall conduct one routine inspection of each license holder's facility under its jurisdiction, except for vending machines, to determine if the facility is in compliance with the requirements of the applicable provisions of the Wisconsin Statutes and Administrative Code and any local public health ordinances and regulations adopted under Wis. Stat. § 97.41 (7) or 97.615 (2) (g).
 - 1. The Agent may propose a different inspection frequency to the Department that may only be implemented if approved by the Department, in writing.
 - 2. The Agent shall conduct an investigation if there is a complaint concerning an exempt retail food establishment, as defined in Wis. Admin. Code § ATCP 75.03 (9), within its jurisdiction, or upon Department request.
- B. Agent may elect, in writing to the Department, to inspect vending machines.
- C. Agent shall give priority to pre-licensing inspections, inspections involving emergency complaints, food or waterborne illness investigations, and re-inspections.
- D. A routine inspection shall be unannounced except when it is necessary that the owner or operator be present for the inspection, or when the Agent is conducting a follow-up inspection, reinspection or other activity where having the owner or operator present is important for continued compliance.
- E. If a routine inspection is performed in conjunction with another investigation, a separate inspection report shall be completed for the investigation and the routine inspection. Each report shall be signed by the environmental health inspection staff person and the operator.
- F. The Agent shall perform inspection duties required by, and in compliance with, the Department's MOU's. The Department will provide the Agent a copy of each MOU it executes.
- G. The Agent may, with written approval from the Department, enter into written contracts with other units of government or other persons to perform inspection activities related to enforcement responsibilities under this Contract. The Agent assumes ultimate responsibility for the performance and quality of the inspections and for the enforcement of all applicable provisions of the Wisconsin Statutes and Administrative Code under this Contract.

- H. Other than inspections involving foodborne or waterborne outbreaks, which require an immediate response, the Agent shall conduct inspections due to any complaints against an establishment in a timely and adequate manner. Each complaint, and documentation of its investigation, shall be physically or electronically linked with the establishment licensing and inspection information.
- I. When the Agent receives information that indicates a foodborne or waterborne outbreak has occurred, the Agent shall conduct an investigation. In conducting the investigation, the Agent shall follow the criteria in the Wisconsin's Foodborne and Waterborne Disease Outbreak Investigation Manual. The Agent shall conduct an investigation of the facility, in which the outbreak occurred, as soon as epidemiological evidence links that facility with the outbreak. In addition:
 - 1. The Agent shall notify the Department and the Department of Health Services' (DHS) Communicable Disease Epidemiology Section (CDES.)
 - 2. Upon the Agent's request, the Department shall assist in the investigation.
 - 3. In the event the outbreak becomes cross-jurisdictional, the Department, in coordination with DHS CDES, will coordinate the activities of the Agent and other governmental agencies in order to most quickly and effectively end the outbreak.
- J. The Agent shall include in its inspection report the following information for each violation observed during an inspection:
 - 1. Violation Observation – A factual description, including location, of the observed violation.
 - 2. Code Reference – Citation and a brief description of the statute, administrative rule, or local ordinance for the observed violation.
 - 3. Corrective Action – A statement indicating what action the licensee has taken, or shall take, to regain compliance with the administrative rule, statute or local ordinance.
- K. The Agent shall perform an exit interview with the licensee's designated person in charge and obtain a signature. A copy of the inspection report shall be left with the person in charge at the completion of the inspection or e-mailed or otherwise presented shortly thereafter. If the person in charge refuses to sign the inspection report, an indication shall be made on the inspection report of the refusal to provide a signature.
- L. If the Agent became the Department's agent on or after April 1, 2009, the Agent shall use the Department's electronic software program for conducting and documenting inspections. If the Agent has been the Department's agent before April 1, 2009, the Agent may use the Department's electronic software program or the Department-

approved paper forms for conducting inspections. The Department will provide, maintain and support this software. The Agent may be responsible for additional user licenses or development costs specific to the Agent's program.

- M. The Department may conduct an inspection of any establishment in the Agent's jurisdiction in response to any emergency, for the purpose of monitoring and evaluating the Agent's activities pursuant to this Contract, for the purpose of training or education, or at the Agent's request. The Department shall make a reasonable effort to notify the Agent before conducting an inspection. Agent may accompany the Department during such inspections.
- N. The Agent, if requested by the Department, shall conduct effectiveness checks pertaining to product recalls or other situations in which food must be removed from sale or service.

IV. ENFORCEMENT

- A. The Agent shall take necessary and reasonable action to enforce Wis. Stat. § 97.30 and Subchs. III and IV of ch. 97, Wis. Admin. Code chs. ATCP 72, 73, 75 & Appendix, 76, 78 and 79, and any local ordinances or regulations adopted pursuant to Wis. Stat. §§ 97.41 (7) and 97.615 (2) (g), for the establishments for which Agent has been delegated authority under this Contract including, but not limited to, the following:
 - 1. An immediate danger to public health as required in Wis. Stat. §§ 97.12 and 97.65.
 - 2. Noncompliance with written orders.
 - 3. Continued repeat violations noted on inspection reports.
 - 4. Operating without a required establishment license.
- B. The Agent shall cover the costs of these actions.
- C. The Department shall provide technical assistance to the Agent for enforcement activities upon the Agent's request.
- D. The Agent shall notify the Department, in writing, within 10 days after taking any enforcement action to suspend or revoke a license or initiating a court action against a license-holder.
- E. The Agent shall implement and distribute to all its inspection staff, the Agent Program Plan required by Wis. Admin. Code ch. ATCP 74. The Department shall review the plan, and any changes to it, during the Department's periodic evaluations of the Agent's performance.

- F. If the Agent has been notified by the Department of any deficiency on the part of a facility under its jurisdiction, in complying with the applicable statutory, administrative code or local ordinance requirements, and if Agent has had reasonable opportunity to take enforcement action but has failed to act expeditiously in taking appropriate enforcement action, the Department may act under Wis. Stat. §§ 97.12 and 97.65 to enforce compliance.
- G. If the Department makes a request, the Agent shall conduct food or environmental sampling from any establishment in the Agent's jurisdiction for laboratory analysis.
 - 1. The Agent may conduct the analysis if its laboratory is capable of performing the required analytical procedures.
 - a) The Agent shall assume all costs involved in collecting the samples and running the analysis.
 - b) The Agent shall inform the department of the analysis results.
 - 2. If the Agent does not have the laboratory capability to perform the required analyses, or who choose not to perform the analyses, the Agent shall submit the samples to the Department's Bureau of Laboratory Services (BLS) or the State Lab of Hygiene (LOH).
 - a) The Agent shall fund the cost of acquiring any samples and shipping the samples to the laboratory.
 - b) The Department shall fund the cost of the laboratory analysis of the samples.

V. STAFFING

- A. The Agent shall employ at least one Wisconsin Registered Sanitarian (WI-RS) or Registered Environmental Health Specialist / Registered Sanitarian (REHS/RS) to conduct inspections or supervise other non-RS sanitarians who conduct inspections. The agent's inspection staff shall meet the educational or experience requirements established for sanitarian registration under chs. SPS 174 to 177 or the National Environmental Health Assn. REHS/RS. The expectation is that all inspection work completed under this contract is accomplished by a RS/REHS credentialed staff.
- B. If the Agent loses its only WI-RS or REHS/RS, Agent shall hire a RS/REHS replacement within 120 days; or upon the Agent's written request, the Department, in its sole discretion, may allow the Agent additional time to hire a qualified replacement. A replacement that does not hold the WI-RS or REHS/RS credential may be hired, if approved by the Department, and if a Contract has been executed to ensure that a person holding the credential provides oversight. The replacement hire shall attain the WI-RS or REHS/RS credential within six months of being hired. A copy of the oversight Contract shall be provided to the Department and shall include

the amount of time allotted for oversight activities and what specific duties the supervising REHS/RS will provide.

- C. The Agent shall designate at least one environmental health inspection staff person, as required by the Department, to undergo the standardization process in the retail food program. The initial standardization process involves the number of establishment exercises in the Wisconsin Standardization Manual. After successfully completing the exercises, the staff person shall be designated as the Agent Standard. The Agent Standard shall perform the Department-required maintenance exercises, as described in the Wisconsin Standardization Manual, every three years to maintain certification. The Agent shall have at least one Agent Standard who shall standardize the other members of the Agent's environmental health inspection personnel, using the standardization process described above. As the Department develops standardization processes for programs other than the retail food program, the Agent will comply with the standardization process in those programs.
- D. The Agent's staff shall participate on Department rule making and policy advisory committees when requested.
- E. The Agent shall make written environmental health inspection staffing arrangements to assure adequate coverage during the absence of regular inspection and enforcement staff. These arrangements shall be made a part of the Agent's Program Plan, approved by the Department before implementation, and available for the Department's review during periodic evaluations.
- F. The Agent shall not permit an employee to conduct an inspection in a situation in which the employee may have a conflict of interest.
- G. Upon the Agent's request, DATCP will provide technical assistance and training to staff.
- H. The Agent is required to send at least one environmental health inspection staff person to the Department's annual training meetings and conferences.

VI. EDUCATIONAL OUTREACH

The Agent will cooperate with the Department in conducting training programs for licensees and employees of establishments located in its jurisdiction.

VII. REPORTS AND RECORDS

- A. The Agent shall maintain a file of the current records for each licensed facility within its jurisdiction. Records shall include the name, address, ID number and type of establishment or facility. A file shall contain at least the latest three (3) years of inspection reports, follow-up investigation reports, reports of enforcement actions,

confirmed complaint follow-ups and summaries, foodborne disease outbreak information, and approvals of variance requests, HACCP plans and waivers.

- B. If the Agent is not using the Department's electronic inspection and licensing software, the Agent shall use inspection report forms approved by the Department for all pre-licensing inspections, routine inspections, re-inspections, and follow-up inspections.
- C. The Agent shall submit reports as requested by the Department. The Department may review or request a copy of any inspection report, correspondence, or order served on any licensee within Agent's jurisdiction; annual program budget reports, projections, and any other report the Department determines it needs to monitor the Agent's performance, including, but not limited to, CDC risk factor reports, self- assessments, or any other required reports, pursuant to Wis. Stat. § 97.41 (7) or 97.615 (2) (g) or Wis. Admin. Code ch. ATCP 74.
- D. By the 10th of the month immediately following the month in which the Agent issues a license, or receives notification from a licensee of a change affecting its license, the Agent shall provide a report of all such license issuances and changes to the Department. This requirement applies to temporary restaurants, as defined in Wis. Admin. Code ch. ATCP 75. This reporting requirement is satisfied by the Agent's use of the Department's electronic licensing and inspection software.
- E. By September 1 of each year, the Agent shall give the Department a complete list of the names and addresses of the licensees to whom licenses were issued by the Agent during the previous fiscal year. This reporting requirement is satisfied by the Agent's use of the Department's electronic licensing and inspection software.
- F. The Agent shall maintain records documenting the cost of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to licensees, and the cost of enforcing applicable state statutes and rules and local ordinances. Upon request, the Agent shall provide copies of these records to the Department.
- G. Within ten (10) days after the date on which it takes place, Agent shall report to the Department, in writing, any change in the assignment of a supervisor of the environmental health inspection personnel who are not currently Wisconsin registered sanitarians and any change in the organization of the inspection staff, including authority line changes. If the Agent employs only one or two sanitarians, the Agent shall report any change in assignment of environmental health inspection personnel that are providing services under this Contract.
- H. The Agent shall submit the CDC Risk Factor Tracking Sheet annually to the Department for the purpose of enabling the Department to determine the types of violations found in facilities throughout the State of Wisconsin. This reporting

requirement is satisfied by the Agent's use of the Department's electronic licensing and inspection software.

- I. As required by Wis. Admin. Code ch. ATCP 74, the Agent shall maintain and keep readily available for use by inspection staff and review by the Department, a copy of its Agent Program Plan. The plan shall include, at a minimum, all the components identified in Wis. Admin. Code ch. ATCP 74 and any other information the Department requests in writing that it determines is necessary or relevant for its review of the plan. The minimum components include:
 1. Identification of any employee that will issue licenses or conduct investigations and inspections.
 2. A description of the staffing and budget for issuing licenses, making investigations and inspections, providing technical assistance, and enforcing applicable state statutes and rules, and local ordinances.
 3. A list of the fees to be charged by the Agent to licensees under this Contract.
 4. A description of the Agent's license issuance and recordkeeping system maintained under this Contract.
 5. A declaration that Agent will contract with the Department, as permitted by Wis. Stat. §§ 97.41 and 97.615, if the Agent wants the Department to collect fees and issue licenses.
 6. A description of the inspection and enforcement program implemented by the Agent, with a copy of any applicable city or county ordinance or regulation.
 7. A plan of action to ensure that there will be cooperation between the Agent and appropriate federal, state and local agencies, in the event of a natural disaster or other emergency.
 8. Procedures for the investigation and follow-up of complaints concerning licensees under this Contract and unlicensed activity that may require licensing and inspection.
 9. Procedures for notifying the Department when the Agent receives information or a complaint concerning an establishment, within the Agent's geographical area but under the Department's jurisdiction, that may need to be licensed or inspected.
 10. Procedures for the investigation and follow-up of reports of suspected foodborne illness, including cooperation with the Department's Rapid Response Team.

11. Procedures to ensure the time period, within which the Agent will make a determination on an application for a license, does not exceed 30 days following receipt of a complete application.
12. An assurance of continued support by the city or county for carrying out this Contract.
13. Any other information which the Department considers necessary or relevant for its review of Agent's Program Plan.

VIII. REIMBURSEMENT BY THE DEPARTMENT FOR VENDING INSPECTIONS

- A. The Agent shall submit a list of vending machine inspections it conducted during the previous fiscal year to the Department, no later than August 30 unless the Department in its sole discretion extends the deadline for submission, to receive reimbursement from the Department for performing the inspections.
- B. No later than September 30 of the next fiscal year, the Department shall reimburse the Agent for inspections of vending machines during the previous fiscal year, as required in Wis. Stat. § 97.615 (1). If the Department extends the deadline for submitting inspection information, the Department may reimburse the Agent up to 30 days after receiving this information. The reimbursement amount for vending machine inspections is the portion that remains after deducting the Department's clerical and automated licensing processing costs from the license fee.
- C. Fee reimbursements for the inspection of vending machines moved from one Agent's jurisdiction to another Agent's jurisdiction will be credited to the Agent making the first inspection during the fiscal year.

IX. REIMBURSEMENT TO THE DEPARTMENT FOR STATE FEES COLLECTED BY AGENT

- A. The Agent shall reimburse the Department for the state fees from the license fees the Agent collects, as provided under sub. B.
- B. The state fees shall not exceed 20% of the state license fees the Department sets by administrative rule for the types of facilities for which the Agent issues licenses. The calculation of the state fees is based on state license fees only, not preinspection and reinspection fees.
- C. As of the date of this Contract, the state fees are 10% of the state license fees. The department may increase the state fees up to 20% of the state license fees by announcing a change in the percentage one year prior to the licensing year for which the change applies. Retail food and recreational establishment license fee reimbursement shall be:

1. A fee equal to 10% of the applicable state license fee, regardless of the license fee actually charged by the local agent, if the local agent prepares and submits to the Department, by September 30 of that year, an annual self-assessment as required by Wis. Stat. §§ 97.41 and 97.615.
 2. A fee equal to 20% of the applicable state license, regardless of the license fee actually charged by the local agent, if the local agent fails to submit the annual self-assessment in par. 1. to the Department, by September 30 of that year. A fee payment under this paragraph does not exempt the Agent from the duty to prepare and submit an annual self-assessment.
- D. The Department shall provide the Agent with a reimbursement summary form to be used by the Agent to identify all the facilities for which the Agent has issued licenses during the licensing year. The summary shall be formatted by the Agent to include the complexity assessment rating assigned to each retail food establishment licensed during the licensing year.
- E. State fees for each licensee shall be based on the state license fee, determined by the license category as follows:
1. Retail Food Establishments - Restaurants -are determined using the table in Wis. Admin. Code Subch. III of ch. ATCP 75 for restaurant license category. The Agent may use the restaurant license category assignment formula in that subchapter or a complexity tool approved in writing by the Department.
 2. Retail Food Establishments – Values, listed in Wis. Admin. Code § ATCP 75.03, shall be used in determining the license category.
 3. Recreation Facilities – Values, listed in Wis. Admin. Code chs. ATCP 72, 73, 76, 78 and 79, shall be used in determining the license category.
- F. No later than September 30 of each year, the Agent shall return the completed summary form and reimburse the Department for the state fees.

X. COSTS

The total fees the Agent collects may not exceed the Agent's reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to licensed establishments, plus the state fees.

XI. EVALUATION

- A. The Department shall perform an evaluation of the Agent's licensing, investigation and inspection program to determine whether the Agent meets the program standards set by the Department and applicable administrative rules, as required under Wis. Stat.

§§ 97.41 (2) and 97.615 (2) (b) and this Contract. The evaluation will consist of the following:

1. The Agent shall submit an annual self-assessment report to the Department, no later than September 30, which the Department shall use as part of its onsite evaluation of the Agent's performance.
 2. The Department shall conduct an onsite evaluation, at least once every three years, to assess the Agent's compliance with the provisions of this Contract, program standards set by the Department and applicable statutes and administrative rules. The Department may conduct the onsite evaluation process at any reasonable time and shall give the Agent reasonable advance notice. The onsite evaluation process shall include an office component and a field component. The office component shall include, but is not limited to, review of ordinances, regulations, inspection reports, budget information, and other required documentation. The field component shall include the Department personnel performing maintenance standardization with the Sanitarian who is the Agent - Standard, as well as evaluating other sanitarians, if applicable.
- B. In addition to the required evaluation, the Department may perform additional evaluations of the Agent's performance at any reasonable time with reasonable advance notice.
- C. As part of the Department's onsite evaluation report, the Department shall notify the Agent of any deficiencies in standards set by the Department, the Agent's inspection, permit issuance or enforcement program and establish a deadline for correction of the deficiencies.
- D. In response to the Department's report, if needed, the Agent shall submit to the Department a draft Corrective Action Plan, detailing how the Agent will meet contract requirements and the recommendations based on the Department's program standards and conformance to Wisconsin Statutes and Administrative Rules and this Contract.
- E. The Department, after receiving the draft Corrective Action Plan, shall review, make additional comments, and approve the Corrective Action Plan when it is deemed acceptable.
- F. The Agent shall include the approved Corrective Action Plan in its Agent Program Plan and distribute it to its staff as required in Section IV. E.
- G. The Agent shall document progress on the approved Corrective Action Plan on their next one or two yearly self-assessments as necessary.
- H. The Department may, at its discretion, increase the frequency of evaluation for the Agent as deems necessary.

- I If the Agent fails to meet the conditions of the Corrective Action Plan in the Agent Program Plan, the Department shall do the following:
1. In writing, the Department shall notify the Agent of the deficiency and the agent contract shall be placed in a conditional status, with a deadline set for the Agent to meet the conditions and return to full compliance.
 2. If deficiencies are corrected within the conditional time period, the contract is returned to active status.
 3. If deficiencies remain uncorrected after a conditional deadline has passed, the Department shall notify the Agent of its intent to terminate the contract and revoke agent status, as provided under XIV (B) of this Contract.

XII. NONDISCRIMINATION

- A. In connection with the performance of work under this Contract, the Agent agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Stats., sexual orientation as defined in s. 111.32(13m), Stats., or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Agent shall take affirmative action to ensure equal employment opportunities. The Agent shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.
- B. The Department assumes no liability for the job safety or welfare of the Agent employees, or for the actions or omissions of the Agent employees relating to the administration of the retail food and recreational program, except as otherwise provided by law.

XIII. PRIVACY AND CONFIDENTIAL INFORMATION

- A. Definitions: The following definitions apply to this section.
- 1 “*Confidential Information*” : means all tangible and intangible information and materials, including all Personally Identifiable Information, being disclosed in connection with this Contract, in any form or medium (and without regard to whether the information is owned by the State or by a third party), that satisfy at least one of the following criteria
 - a) Personally Identifiable Information as defined in 2;

- b) Information not subject to disclosure under Wis. Stat. ch. 19, subch. II, Public Records and Property, that is related to the Department's employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or
 - c) Information expressly designated as confidential in writing by the Department.
- 2 "Personally Identifiable Information" means an individual's last name and the individual's first name or first initial, in combination with, and linked to, any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable:
- a) The individual's Social Security number;
 - b) The individual's driver's license number or state identification number;
 - c) The number of the individual's financial account, including a credit or debit card account number or any security code, access code, or password that would permit access to the individual's financial account;
 - d) The individual's DNA profile; or
 - e) The individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.
- 3 "Corrective Action Plan" means a plan, developed by the Agent and approved by the Department, that the Agent must follow in the event of any threatened or actual use or disclosure of any Confidential Information not specifically authorized by this Contract, or in the event that any Confidential Information is lost or cannot be accounted for by the Agent.

B. Duty of Non-Disclosure and Security Precautions

1. The Agent shall not use Confidential Information for any purpose other than the limited purposes set forth in this Contract and all related and necessary actions taken in fulfillment of the obligations thereunder. The Agent shall not disclose such Confidential Information to any persons other than those Agent Representatives who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract. The Agent shall be responsible for the breach of this Contract by any said Representatives.

2. The Agent shall institute and maintain such security procedures as are reasonable to maintain the confidentiality of the Confidential Information while in its possession or control including transportation or transmission, whether physically or electronically.
 3. The Agent shall insure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by the Agent on any reproduction, modification, or translation of such Confidential Information. If requested by the department, Agent shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the department, as directed.
 4. The Agent shall return to the department all Personally Identifiable Information it maintains possesses or controls, collected on behalf of this Contract, upon termination of this Contract and shall destroy all copies.
- C. Legal Disclosure. If Agent or any of its Representatives shall be under a legal obligation in any administrative, regulatory or judicial circumstance to disclose any Confidential Information, the Agent shall give the Department's Office of Legal Counsel prompt notice thereof (unless it has a legal obligation to the contrary) to allow the department to inspect the Confidential Information and seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, Agent and its Representatives shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature. Agent or its representatives shall not be obligated to wait on any action or inaction by the Department, under this section, at any time when Agent is required to release information under other authority of law.
- D. Unauthorized Use, Disclosure or Loss
1. Immediately upon becoming aware of any threatened or actual use or disclosure of any Confidential Information that is not specifically authorized by this Contract, or that any Confidential Information has been lost or is unaccounted for, the Agent shall notify the Department's Office of Legal Counsel of the problem. Such notice shall include, to the best of the local agent's knowledge at that time, the persons affected, their identities and the Confidential Information disclosed.
 2. The Agent shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure or loss. The Agent shall cooperate with the Department's efforts to seek appropriate injunctive relief or to otherwise prevent or curtail such threatened or actual breach, or to recover the Confidential Information, including complying with a Corrective Action Plan.

XIV. TERMINATION, REVOCATION OR SUSPENSION OF AGENT CONTRACT

- A. **TERMINATION.** The Agent may terminate this Contract upon 90 days written notice to the Department. The notice shall specify the reasons for termination and the last day the Agent will have agent status.
- B. **REVOCAION.** If the Department finds that the Agent has failed to comply with the requirements for agent status under Wis. Stat. § 97.41(2) or 97.615 (2) (b), Wis. Admin. Code ch. ATCP 74, or the terms and conditions of this Contract, the Department may revoke agent status, as provided by statute, upon 90 days written notice to the Agent. The notice shall specify the reasons for revocation and the last day that the Agent will have agent status.
- C. **SUSPENSION.** If the Department finds that suspension of this Contract is necessary to protect the public’s health or safety, the Department may immediately suspend this Contract upon notice to the Agent. The Agent may request a hearing on the suspension in writing, as provided in Wis. Admin. Code § 1.03 (3), including the information required in Wis. Admin. Code § ATCP 1.06. The Department shall hold a hearing, if requested by Agent, within 15 days after the Department receives the request, unless the Agent agrees to a different date. The suspension shall remain in effect until the final hearing decision is issued.
- D. **Reimbursement upon Termination or Revocation:**
 - 1) **Vending:** If this Contract is terminated or revoked, the Agent shall receive reimbursement for inspections of vending machines and vending machine commissaries performed under the Contract up to and including the date of termination or revocation.
 - 2) **Other Licenses:** If this Contract is terminated or revoked, the Agent shall reimburse the Department for the prorated amount, for the remainder of the fiscal year, of all license fees received by the Agent. The reimbursement shall be based on this formula: Days left in fiscal year/365 times the state license fees for all the establishments the Agent has licensed.
- E. Upon termination or revocation of this Contract, the Agent shall transfer all inspection and enforcement records to the Department.

Signed this _____ day of _____, 2016.

For Madison and Dane County Public Health:

Signature

Print Name

Print Title

Signed this _____ day of _____, 2016.

For the Department of Agriculture, Trade and Consumer Protection:

Steven C. Ingham, Administrator
Division of Food and Recreational Safety