

TERMS OF AGREEMENT TO ADMINISTER A RETAIL FOOD PROGRAM
FOR THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

The parties to this Agreement are the Wisconsin Department of Agriculture, Trade and Consumer Protection ("department"), and **City of Menasha Health Department** ("local agent"). This Agreement is made under s. 97.41, Stats., which authorizes the department to enter into a written agreement designating a local health department defined under Wis. Stat. s. 250.01(4) to act as the department's local agent to administer a retail food establishment licensing program ("retail food program"). This Agreement is subject to the requirements of s. 97.41, Stats. and ch. ATCP 75, Wis. Adm. Code.

- I. The department agrees to provide the following services:
 - A. Coordinate the designation of local agents with the Department of Health Services to ensure similarity with the inspection program administered under s. 254.69, Stats.
 - B. Develop standards and approve all forms for administration of the local agent's retail food program.
 - C. Evaluate the local agent's retail food program on an annual basis, under s. ATCP 75.12(1), Wis. Adm. Code.
 - D. Provide education and training to the local agent.
 - E. Inspect retail food establishments licensed by the local agent only under the conditions set forth in s. 97.41(8), Stats.

- II. The local agent agrees to provide the following services to **the City of Menasha**
 - A. Administer a retail food program under Subchapter III of Ch. ATCP 75, Wis. Adm. Code, within the local agent's jurisdiction, which includes:
 1. Licensing and inspection of all retail food establishments as defined in ss. ATCP 75.01(7) and 75.02(1), Wis. Adm. Code, except:

- a) Retail food establishments that are mobile and requiring licensure under s. 97.30(2)(a), Stats., unless all retail sales are conducted within the local agent's jurisdiction; or
 - b) Food processing plants licensed under s. 97.29, Stats.
2. Inspection of unlicensed retail food sales operations, as defined in s. ATCP 75.06(1)(a)1. and 2., Wis. Adm. Code.
 3. Investigation of food-related consumer complaints involving retail food establishments and retail food sales operations.
 4. Enforcement of ch. 97, Stats., ch. ATCP 75, Wis. Adm. Code, and other relevant administrative regulations, including food sampling from retail food establishments as requested by the department for laboratory analysis.
 - a) The local agent may conduct the analysis if its laboratory is capable of performing the required test procedures.
 - (1) The local agent shall assume all costs involved in collecting the samples and running the analysis.
 - (2) The local agent shall inform the department of the analysis results.
 - b) Those local agents who do not have the laboratory capability of performing the analysis or who choose not to perform the analysis shall submit the samples to the Department Bureau of Laboratory Services.
 - (1) The local agent shall fund the cost of acquiring the food samples and the shipping of the samples to the state laboratory.
 - (2) The department shall fund the cost of the laboratory analysis of the food samples.

- B. Establish and collect reasonable license fees. Under s. ATCP 75.06(4)(c), Wis. Adm. Code., retail food establishment license fees charged by a local agent may exceed the amounts specified in s. ATCP 75.03(3), Wis. Adm. Code, but the amount of license fees collected less the amount paid to the department under s. ATCP 75.11(2), Wis. Adm. Code may not exceed an amount reasonably required to reasonably cover the local agent's program costs under s. ATCP 75.10(2), Wis. Adm. Code.
 - C. Reimburse the department for license fees, as required by s. ATCP 75.11, Wis. Adm. Code.
 - D. Maintain adequate staffing and equip staff with appropriate equipment, as required by s. ATCP 75.07(1), Wis. Adm. Code.
 - E. Review plans for the construction or remodeling of food establishments, to the extent provided under s. ATCP 75.03(8), Wis. Adm. Code.
 - F. Maintain records documenting the cost of administering the program, as required by s. ATCP 75.10(2), Wis. Adm. Code.
 - G. Report to the department on a monthly basis, as required by s. ATCP 75.10(3)(b), Wis. Adm. Code.
 - H. Maintain all records relating to the administration of the program, as required by s. ATCP 75.10, Wis. Adm. Code.
- III. The local agent agrees to comply with all applicable statutes and regulations relating to the licensing of retail food establishments, including but not limited to s. 97.30(2), Stats., and s. ATCP 75.03(1), Wis. Adm. Code, which require that retail food establishment licenses may be issued for periods of no longer than one year and expire on June 30 annually.

- IV. This Agreement incorporates any changes to the statutes or administrative rules cited in this Agreement plus any additional statutes or rules related to retail food establishment licensing that may be enacted or adopted during the term of this Agreement. The local agent agrees that all of its obligations under this Agreement include conformance to any changes to the statutes or administrative rules cited in this Agreement plus any additional statutes or rules related to retail food establishment licensing that may be enacted or adopted during the term of this Agreement.
- V. The department assumes no liability for the job safety or welfare of local agent employees, or for the actions or omissions of local agent employees relating to the administration of the retail food establishment licensing program, except as otherwise provided by law.
- VI. In connection with the performance of work under this Contract, the local 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 local agent shall take affirmative action to ensure equal employment opportunities. The local agent shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the DATCP setting forth the provisions of the nondiscrimination clause.

VII. PRIVACY AND CONFIDENTIAL INFORMATION

A Definitions

- 1 “*Confidential Information*” means all tangible and intangible information and materials, including all Personally Identifiable Information, being disclosed in connection with this Agreement, 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;
 - b) Information not subject to disclosure under subch. II, Chapter 19, Wis. Stats., Public Records and Property, 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 numbers, 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 Plan of Action" means a plan developed by the local agent and approved by the department that the local agent must follow in the event of any threatened or actual use or disclosure of any Confidential Information not specifically authorized by this Agreement, or in the event that any Confidential Information is lost or cannot be accounted for by the local agent.

B Duty of Non-Disclosure and Security Precautions

- 1 The local agent shall not use Confidential Information for any purpose other than the limited purposes set forth in the Agreement, and all related and necessary actions taken in fulfillment of the obligations thereunder. The local agent shall not disclose such Confidential Information to any persons other than those local agent Representatives who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Agreement and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Agreement. The local agent shall be responsible for the breach of this Agreement by any said Representatives.
- 2 The local 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, whether physically or electronically.
- 3 The local agent shall insure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by the local agent on any reproduction, modification, or translation of such confidential

Information. If requested by the department, the local 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 local agent shall return to the department all Personally Identifiable Information it maintains, possesses or controls, collected on behalf of this Agreement, upon termination of this Agreement and destroy all copies.

C Legal Disclosure. If the local 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 local 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, the local 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.

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 the Agreement, or of any Confidential Information being lost or unaccounted for, the local 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 local agent shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure or loss. The local agent shall cooperate with the department's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its Confidential Information, including complying with a Corrective Action Plan.

VIII. This Agreement shall remain in force from the last date of signature of either party or until terminated by either the department or the local agent. Either party may terminate this Agreement in accordance with the procedures set forth in s. 97.41(2), Stats., and s. ATCP 75.06(7) and (8), Wis. Adm. Code, as applicable.

**DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION**

Signature _____
Rodney J. Nilsestuen
Secretary

Date _____

City of Menasha Health Department
316 Racine Street
Menasha, WI 54952

Approved:

Mayor Don Merkes

Date

