

11
B-1

**AGENDA ITEM
REQUEST/JUSTIFICATION FORM**
(To be completed by requesting Department)
Forward all requests to Sharon Bourke, LC2 Civic Center
DEADLINE SUBMITTAL IS 3:00 P.M. WEDNESDAY
Before the Tuesday meeting

Agenda item: CONSENT

Date to be on agenda: DECEMBER 8, 2015

Exact wording to be used for the agenda: ¹⁵

Resolution to Approve the Agreement with ConAgra Foods Foundation regarding nutrition education.

Action being requested by the County Board: APPROVAL

Amount requested: Not to exceed \$75,000.00 Grant Funded Object Code: N/A

Is item in current year's budget? Yes _____ No X

Does this item commit funds in future years? Yes _____ No X

If yes, explain: n/a

If an agreement or contract, has the County Attorney reviewed and approved?
Yes X No _____

Previous action taken on this item if any: Previously approved by Health Director

Recommendations and rationale for action: n/a

Will anyone speak on behalf of this item, if so who? Health Director or Designee

If this is a rush agenda item, please explain why: n/a

Submitted by (Name & Department): Adi M. Pour, Ph. D., Health Director Ext: 7471
Douglas County Health Department

Date Submitted: 12/2/2015

List Attachments: Resolution and 2 original contracts
(Attach resolution and all pertinent documentation, i.e., contract, agreement, memorandums, etc.)

*Certified Resolution can be obtained at the County Clerks' website:
<http://www.douglascountyclerk.org/county-board-records/search-for-resolutions>*

<i>Completed by receiving office</i>
Received in Administrative Office: Date: 12/2/15 Time:

**BOARD OF COUNTY COMMISSIONERS
DOUGLAS COUNTY, NEBRASKA**

Resolved

WHEREAS, the Douglas County Board of Health will meet on December 16, 2015 to review and consider contracts and Agreements submitted in furtherance of the objectives of the Douglas County Health Department (DCHD); and,

WHEREAS, at said meeting the Board of Health will vote to ratify the following:

Agreement with ConAgra Foods Foundation regarding nutrition education in retail food outlets and in a food pantry located in a food desert in order to increase access to healthy affordable foods; and,

WHEREAS, said Agreement has been executed by the Health Director of the Douglas County Health Department and is forwarded to this Board of Commissioners for review and consideration; and,

WHEREAS, this Board of Commissioners has reviewed and considered said Agreement as evidenced and desires to approve said Agreement.

NOW THEREFORE BE IT RESOLVED BY THIS BOARD OF DOUGLAS COUNTY COMMISSIONERS that the Agreement evidenced is hereby approved and the Chair of this Board is hereby authorized to sign the necessary documents to execute said Agreement.

Dated this 15th day of December, 2015.

AGREEMENT
between the
DOUGLAS COUNTY HEALTH DEPARTMENT
and
CONAGRA FOODS FOUNDATION

This Agreement is entered into between Douglas County, Nebraska, on behalf of the Douglas County Health Department (hereinafter "Department") and ConAgra Foods Foundation (hereinafter "Grantor") located at Five ConAgra Drive, 5-198, Omaha, NE 68102 for the purpose providing support to for the Healthy Neighborhood Store project in Douglas County, Nebraska.

SECTION ONE
PURPOSE

The Department has been contracted by the Grantor to increase access to healthy affordable foods in food deserts located in Douglas County, Nebraska through the use of an incentive program for SNAP participants at a local Healthy Neighborhood Store. The Department wishes to exercise its statutory authority to mobilize community partnerships to identify and solve health problems to assist Hunger Free Heartland, a program of the Grantor to improving healthy affordable foods and provide valuable nutrition education opportunities in a retail food outlet and pantry in one food desert in Omaha.

1. Grantor agrees to:
 - a. Provide the Department the financial and intervention specific reporting forms, and grant materials necessary.
 - b. Pay the Department for project development and implementation as provided in Section Two B, below, subject to the restrictions set forth in Section Two C, below

2. The Department Agrees to:
 - a. Identify key partners to assist in the development of an incentive based model for the purchase of healthy foods by SNAP participants
 - b. Convene key partners on a regular basis to assess program fidelity and necessary modifications.
 - c. Identify one (1) healthy neighborhood store and update proposal.
 - d. Identify one (1) pantry for program participation.
 - e. Provide monthly technical assistance to the participating healthy neighborhood store location.
 - f. Assist in the evaluation of the program.
 - g. Provide the Grantor interim and final narrative reports and financial reports and such other information as Grantor may reasonably request.

SECTION TWO
TERM, COMPENSATION, AND TERMINATION

1. **Duration.** This Agreement shall become effective January 1, 2016 and shall remain in effect until December 31, 2016. This Agreement may be terminated upon mutual written consent of the parties or by either of the parties given thirty (30) days written notice to the other of its intention to terminate the Agreement. Upon expiration, this Agreement may be extended or renewed for an additional period by written agreement of the parties..
2. **Compensation.** Grantor shall pay the Department a maximum of seventy five thousand dollars (\$75,000) over the term of this Agreement for services rendered. Payment will be made upon execution of the Agreement.
3. **Restrictions.**
 - a. No part of the funds shall be used to carry on propaganda or otherwise attempt to influence legislation within the meaning of Section 4945(d)(1) of the Internal Revenue Code.
 - b. No part of the funds shall be used to attempt to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive within the meaning of Section 4945(d)(2) of the Internal Revenue Code.
 - c. No part of the funds shall be used to provide a grant to an individual for travel, study or similar purpose within the meaning of Section (4945(d)(3) of the Internal Revenue Code, without prior written approval of the Foundation. Payments of salaries, other compensation or expense reimbursement to Department employees within the scope of their employment do on constitute grants for these purposes and are not subject to these restrictions.
 - d. No part of the funds shall be used for a grant to another organization without complying with the requirements of Section 4945(d)(4) and, if applicable, Section 4945(h) of the Internal Revenue Code.
 - e. No part of the funds shall be used for purposes other than public purposes within the meaning of Section 170(c)(1) of the Internal Revenue Code. If any portion of the grant is used for purposes other than those described in Section 170(c)(1) of the Internal Revenue Code. Department shall repay the Foundation that portion of the grant and any additional amount in excess of such portion necessary to effect a correction under Section 4945 of the Internal Revenue Code.

SECTION THREE GENERAL PROVISIONS

1. **Independent Contractors.** None of the provisions of this Agreement are intended to create any relationship between the parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither of the parties, nor any of their respective officers, directors, employees or agents, shall have the authority to bind the other or shall be deemed or construed to be the agent, employee or representative of the other except as many be specifically provided herein. Neither party, nor any of their employees or agents, shall have any claim under this Agreement or otherwise against the other party for Social Security benefits, workers' compensation, disability benefits, unemployment insurance, vacation, sick pay or any other employee benefits of any kind. All acts and contracts of each shall be in its own name and not in the name of the other, unless otherwise provided herein.

2. **Nondiscrimination.** Both parties shall comply with all applicable local, state and federal statutes and regulations regarding civil rights and equal opportunity employment, including Title VI of the Civil Rights Act of 1964; the Rehabilitation Act of 1973, Public Law 93-112; the Americans with Disabilities Act of 1990, Public Law 101-336; and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§ 48-1101 to 48-1125 in the performance of this Agreement. Violation of said statutes and regulations will constitute a material breach of this Agreement.

3. **Captions.** Captions used in this Agreement are for convenience and are not used in the construction of this Agreement.

4. **Applicable Law and Venue.** Parties to this Agreement shall conform to all existing and applicable city ordinances, resolutions, state and local laws, federal laws, and all existing and applicable rules and regulations. The laws of the State of Nebraska shall govern this Agreement. All legal proceedings arising out of this agreement shall be brought forth in the appropriate state or federal court located within Douglas County, Nebraska.

5. **Amendments and Integration.** This Agreement contains the entire agreement of the parties. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or prior course of dealings. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms hereof except as provided herein. This Agreement supersedes and replaces any and all previous agreements between the parties.
 - A. This Agreement may be modified only by written amendment, duly executed by authorized officials of the parties. No alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and

signed by the parties hereto. Every amendment shall specify the date on which its provisions shall be effective.

6. **Assignment.** None of the Parties may assign its rights under this Agreement without the express prior written consent of the other party.
7. **Successors and Assigns Bound by Covenants.** All covenants, stipulations, and agreements in this Agreement shall inure to the benefit of the parties hereto, and extend to and bind the legal representatives, successors, and assigns of the respective Parties hereto.
8. **Waiver.** Failure or delay by any Party to exercise any right of power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving Party. An effective waiver of a right or power shall not be construed as a future or continuing waiver of that same right or power, or the waiver of any other right or power. In addition, any act by either Party, which it is not obligated to do hereunder, shall not be deemed to impose any obligation upon that Party to do any similar act in the future or in any way change or alter any of the provisions of this Agreement.
9. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect.
10. **Right to Audit.** Department shall establish a reasonable accounting system, which enables ready identification of Department's cost of goods and use of funds and shall allow the Grantor reasonable access to reports created using said accounting system.
11. **Indemnification.** Each party will indemnify, defend, and hold harmless the other from any and all liability, expense, cost, attorney's fees, claim, judgment, suit and/ or cause of action (whether or not meritorious), settlement or demand for personal injury, death, or damage to tangible property which may accrue against the other party to the extent it is caused by the negligent acts or omissions of the other party, its officers, employees, agents, or sub-grantors while performing their duties under this Agreement, provided that the other party gives prompt, written notice of any such claim, suit, demand, or cause of action. These Indemnification provisions are not intended to waive a party's sovereign immunity.
 - A. Department's liability is governed by and limited to the extent provided by the Nebraska Political Subdivision Tort Claims Act or other applicable provisions of law. The provisions of this section shall survive expiration or termination of this Agreement.
12. **No Third Party Rights.** This Agreement is not intended to, nor shall it provide third parties, excluding any assignment as provided herein, with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege; except that this

Agreement's indemnification provision shall also inure to the benefit of a Party's employees, officers, agents, and servants.

13. **Drug Free Policy.** Both parties assure that they have established and maintain a drug-free workplace policy.
14. **Publicity.** Neither party will use the name, trademarks, service marks or logos of the other party for any marketing or promotional purposes without the prior written consent of the other party. The provisions of this section shall survive the termination of this Agreement.
15. **Conflict of Interest.** In the performance of this Agreement, both parties will avoid all conflicts of interest and appearances of it and report any conflict of interest immediately to the other party.
16. **Authorized Representatives and Notice.** In further consideration of the mutual covenants herein contained, the Parties hereto expressly agree that for purposes of notice, during the term of this Agreement and for the period of any applicable statute of limitations thereafter, the following named individuals shall be the authorized representative of the Parties:

For the ConAgra Foods Foundation:
Candy Becker
ConAgra Foods Foundation
Five ConAgra Drive, 5-198
Omaha, NE 68102
402.240.4215 - phone
402.997.8891 - fax

For the Department:
Adi Pour, Ph.D.
Douglas County Health Director
1111 S. 41st St., Suite 205
Omaha, NE 68105
(402)444-7471 - phone
(402)444-6267 - fax

Notice shall be in writing and shall be effective upon receipt. Delivery may be by hand, in which case signed receipt shall be obtained, or by United States mail, registered or certified, return receipt requested or by facsimile with a signed return facsimile acknowledging receipt.

IN WITNESS THEREOF, the parties have executed this Agreement on the latest date signed below.

Douglas County Board of Health

ConAgra Foods Foundation

Board President Date

Candy Becker Date

Douglas County Health Department

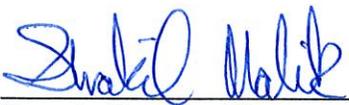
 12/9/15

Adi M. Pour, Ph.D. Date
Health Director

Douglas County Board of Commissioners

Board Chair Date

Approved as to form:

 12/9/15

Deputy County Attorney Date
Douglas County Attorney's Office