

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

561



FROM: Department of Environmental Health

SUBMITTAL DATE:
November 27, 2012

SUBJECT: APPROVAL OF OTHER THAN LOW BID AGREEMENT FOR WEB-BASED ONLINE FOOD HANDLER TRAINING WITH STATEFOODSAFETY.COM

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the agreement with StateFoodSafety.com for Web-based Online Food Handler Training and Assessment, with the option to renew for an additional four years, renewable annually, in accordance with Ordinance No. 459-4, and;
2. Authorize the County Purchasing Agent, in accordance with Ordinance No. 459, to exercise the renewal option for the same service for a maximum of four additional years, renewable annually, provided the cost increase does not exceed the Consumer Price Index (CPI).

(Continued)

Steve Van Stockum

Steve Van Stockum, Director
Department of Environmental Health

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 00.00	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 00.00	Budget Adjustment:	No
	Annual Net County Cost:	\$ 00.00	For Fiscal Year:	12/13

SOURCE OF FUNDS: StateFoodSafety.com will collect fees from public users and forward the County's portion to the Department of Environmental Health	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature

BY: *Michael R. Shetler*
Michael R. Shetler

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Ashley and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Stone, Benoit and Ashley
Nays: None
Absent: Tavaglione
Date: November 20, 2012
xc: Environmental Health, Purchasing

Kecia Harper-Ihem
Clerk of the Board

By: *[Signature]*
Deputy

Prev. Agn. Ref.:

District:

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.23

FORM APPROVED COUNTY COUNSEL DATE 11/16/12
 BY: NEAL R. KIPNIS
 Departmental Concurrence
 Purchasing: Mark Seiler, Assistant Director
 Policy Policy
 Consent Consent
 Dept's Recomm.: Per Exec. Ofc.:

BACKGROUND: Riverside County Department of Environmental Health has been requiring and successfully providing retail food handler training and testing for decades. Ordinance 567 which outlines the food handler training and testing was originally adopted in 1977. The Department continues to offer these services in all 8 County offices to serve the community and protect public health.

Justification: Last year, the California Department of Public Health and industry recognized the importance of retail food safety training/testing programs and the California Retail Food Code was amended to require such programs throughout the State. The new State code requires an on-line option although Riverside County's existing program has been exempted. Striving to meet the County's goals of being more efficient, more business-friendly, and promoting healthy communities, as well as match the state law, the Department of Environmental Health wishes to offer an on-line food handler training/testing option to the retail food workers in Riverside County.

Price Reasonableness: Purchasing released a Request for Proposal (RFP#HSARC-230), mailing solicitations to fifteen companies, and advertised on the County's Internet and publicpurchase.com; two bids were received in response to the RFP.

The proposals were reviewed by an evaluation team consisting of personnel from County of Riverside Department of Environmental Health. The evaluation team reviewed and scored each proposal based on the bidder's overall responsiveness and general understanding of requirements in regard to the scope of service, proposed system capabilities, the experience and ability to perform, financial status, references and the overall cost. To properly select the best and most responsive vendor, the evaluation was divided into two parts. The first part was based on the system technical capabilities and the second part was based on cost associated with the system capabilities. Of the two responses, StateFoodSafety.com scored higher in the technical part, with a higher cost for every food handler training session, at \$9.00 per test certification card. Premier Food Safety scored lower on the technical part but their fee for every training session and food handler test certification card issued is \$5.00. Through the negotiation and Best and Final Offer process, StateFoodSafety.com lowered their fee to \$8.00 and Premier Food Safety lowered their fee to \$4.00. This disparity will not result in any fees to Riverside County or the Department of Environmental Health.

The evaluation committee, through purchasing, asked both bidders to provide website accounts and passwords so the committee could properly test the bidder's websites and make their decision for an award. After evaluating both websites, six of seven evaluators chose StateFoodSafety.com because they appear to be better equipped to provide timelier implementation of on-line testing services for our customers. Their content, presentation, graphics, and narration were superior and will require little to no upgrade by the Environmental Health Department to match the current test given "in house". Premier Food Safety by contrast will require extensive upgrade to content, appearance and narration and will take Environmental Health staff months of work to match the current "in house" test before it is ready for use or available to customers. The StateFoodSafety.com website is easier to navigate and provides more accurate training content that is easier to understand and in compliance with state law in preparation for the assessment.

In an effort to be customer friendly, expedient and provide options for services, not only can the public visit our offices and take the Food Worker Exam for the current \$20.00; they can now stay at home or work and save time and travel costs and take the exam on-line for \$28.00. Allowing both alternatives gives our customers a choice on which option works best for them. Additionally, *State Food Safety* has been providing their services to San Bernardino County for the past year and we are told that the service has been exemplary. The Department of Environmental Health would prefer to select a company that has locally demonstrated a good work ethic, excellent public service, and a quality product.

REVIEW/APPROVAL: Purchasing and County Counsel concur with this request.

PROFESSIONAL SERVICE AGREEMENT

for

Web-based Online Food Handler Training and Assessment

between

COUNTY OF RIVERSIDE

and

StateFoodSafety.com



TABLE OF CONTENTS

<u>SECTION HEADING</u>	<u>PAGE NUMBER</u>
1. Description of Services	3
2. Period of Performance.....	3
3. Compensation.....	3
4. Alteration or Changes to the Agreement	4
5. Termination	5
6. Ownership/Use of Contract Materials and Products	5
7. Conduct of Contractor.....	6
8. Inspection of Service: Quality Control/Assurance	6
9. Independent Contractor	7
10. Subcontract for Work or Services	8
11. Disputes	8
12. Licensing and Permits	8
13. Use by Other Political Entities	9
14. Non-Discrimination	9
15. Records and Documents	9
16. Confidentiality	9
17. Administration/Contract Liaison.....	10
18. Notices	10
19. Force Majeure	11
20. EDD Reporting Requirements.....	11
21. Hold Harmless/Indemnification	11
22. Insurance	13
23. General	15
Exhibit A-Scope of Service	18
Exhibit B- Payment Provisions.....	21

This Agreement, made and entered into this 27th day of November, 2012, by and between StateFoodSafety.com, (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of three pages at the prices stated in Exhibit B, Payment Provisions, consisting of one page.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. Period of Performance

2.1 This Agreement shall be effective from November 6, 2012 through November 5, 2013, with the option to renew for four additional years, renewable in one year increments, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter.

3. Compensation

3.1 The CONTRACTOR shall charge the user twenty (\$20.00) dollars for every Food Handler Card issued in the County of Riverside and reimburse this twenty (\$20.00) to the COUNTY. The CONTRACTOR shall not charge the user more than \$8.00 to use the CONTRACTOR's website for services provide by the CONTRACTOR as detailed in Exhibit A. The COUNTY is not responsible for any fees or costs incurred by the CONTRACTOR, and do not guarantee any specified amount of services. Unless otherwise specifically stated in this Agreement, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY and its constituents. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas for Web-based Online Food Handler Training and Assessment and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall submit payment to the COUNTY monthly for every Food Handler card issued in the County of Riverside. Payments shall be sent to:

County of Riverside
Department of Environmental Health
Attn: Fiscal Services
4065 County Circle Drive, Room 104
Riverside, CA 92503

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or shall have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1. COUNTY may terminate this Agreement without cause upon 90 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2. COUNTY may, upon thirty (30) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3. After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4. After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

5.5. CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6. The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. Ownership/Use of Contract Materials and Products

6.1. The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports or products without prior written authorization of the COUNTY.

6.2. The Software Products represent licensed works of the CONTRACTOR and its suppliers and are provided for use to the COUNTY under the following software licensing terms. The COUNTY shall not

make any reproductions, copies, or electronic transmittals of any portion of the Software Products, including but not limited to any program files, configuration files, system files, instruction manuals, screen captures, user's manuals, on-line help files, or any other materials, without the prior written consent of the CONTRACTOR; except that the COUNTY, solely for its internal archival or backup purposes, may make network system backups of the installed system, and a single backup copy of the installation disks provided by the CONTRACTOR. The COUNTY shall install the Software Products in a fashion as provided and allowed by the CONTRACTOR based on the components acquired. The COUNTY may not distribute, rent, sub-license, relicense, resell, or lease the Software Products, including translating, decompiling, disassembling, or creating derivative works. The COUNTY may not reverse-engineer any part of the Software Products. The COUNTY shall not remove or alter any copyright notices or other proprietary notices of the CONTRACTOR or its suppliers contained in any part of the Software Products. The provisions of this section shall survive the termination of this Agreement.

7. Conduct of Contractor

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. Inspection of Service; Quality Control/Assurance

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the

CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

8.3 WARRANTY. While the Maintenance Services of this Agreement are in effect, the CONTRACTOR warrants to the COUNTY that all Software Products and maintenance updates provided by the CONTRACTOR to the COUNTY under this Agreement will perform substantially in accordance with their written materials and other documentation provided by the CONTRACTOR to the COUNTY. To the maximum extent permitted by applicable law, the CONTRACTOR disclaims all other warranties either express or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose, with respect to any services performed or any goods including but not limited to Software Products.

9. Independent Contractor

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed

by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

13. Use By Other Political Entities

The CONTRACTOR agrees to extend the same pricing, terms and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

14. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

15. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

16. Confidentiality

16.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

16.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

16.3 The CONTRACTOR and the COUNTY each recognize that each has and will have information including, but not limited to data and products (collectively "Information"), which are valuable, special and unique assets of their respective organizations. The CONTRACTOR and the COUNTY agree that neither party will at any time or in any manner, either directly or indirectly, divulge, disclose, or communicate in any manner any Information of the other party, to any third party, without the prior written consent of the other party. Both the CONTRACTOR and the COUNTY shall protect the Information of the other party and treat it as strictly confidential.

17. Administration/Contract Liaison

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

18. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

Purchasing and Fleet Services
2980 Washington Street
Riverside, CA 92504
Attn: Rick Hai

CONTRACTOR

StateFoodSafety.com
507 E. Technology Ave., C
Orem, UT 84097
Attn: Christie H. Lewis

19. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR shall also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification

21.1 CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of CONTRACTOR, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. CONTRACTOR shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

21.2 With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein. CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

21.3 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

21.4 In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.

21.5 CONTRACTOR'S indemnification obligations shall also apply to any action or claim regarding actual or alleged intellectual property infringement related to any material or product provided to COUNTY pursuant to this Agreement. In the event of any such action or claim, CONTRACTOR shall provide immediate notice to COUNTY of the action or claim. CONTRACTOR may defend or settle the action or claim as CONTRACTOR deems appropriate; however, CONTRACTOR shall be required to obtain for COUNTY the right to continue to use the material or product (or a similar non-infringing material or product with the same function) on terms identical to those stated in this Agreement.

21.6 In no event shall either party be liable to the other party for any indirect, special or consequential damages, including loss of data, lost profits, cost of cover, arising from this Agreement, the use of the Software Products, or any of the services performed hereunder, however caused and on any theory of liability. This limitation will apply even if such party has been advised of the possibility of such damage. The COUNTY agrees that the CONTRACTOR'S liability arising from acts under this Agreement, regardless of the form of action and irrespective of fault or negligence, shall not under any circumstances exceed the aggregate amount of payments made to the CONTRACTOR by the COUNTY under this Agreement. The provisions of this section will survive the termination of this Agreement. CONTRACTOR shall make every effort to safeguard and back up the data at multiple sites within industry standard.

22. Insurance

22.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

22.2 Workers' Compensation: If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

22.3 Commercial General Liability: Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

22.4 Vehicle Liability: If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

22.5 Professional Liability: Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage

with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

22.6 General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

23. General

23.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

23.2 Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

23.3 In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

23.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

23.5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The

CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims or encumbrances.

23.6 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

23.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

23.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

23.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

23.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

23.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

COUNTY:

Signature: [Handwritten Signature]
Print Name: John F. Tavaglione
Title: Chairman, Board of Supervisors
Dated: NOV 20 2012

CONTRACTOR:

Signature: [Handwritten Signature]
Print Name: Christie H. Lewis
Title: President
Dated: 10.31.12

FORM APPROVED COUNTY COUNSEL
BY: [Handwritten Signature]
NEAL R. KIPNIS DATE 11/6/12

ATTEST:
KECIA HARPER-JHEM, Clerk
By: [Handwritten Signature]
DEPUTY

**EXHIBIT A
SCOPE OF SERVICE**

1. CONTRACTOR shall provide a complete web-based online Food Handler Training and Assessment system as detailed in the scope of services and in the response to RFP#HSARC-230 by StateFoodSafety.com:

2. Customize a web-based on-line course for Food Handler Training and Assessment to meet the specific needs of the County, including topics such as:
 - 2.1 Information as based on California Retail Food Code;
 - 2.2 Food handler training requirements for Riverside County;
 - 2.3 Introduction to training specific to Riverside County;
 - 2.4 Environmental Health Specialist inspection process and need for demonstration of knowledge
 - 2.5 Most common agents of foodborne illness, control, routes of transmission, signs and symptoms, and incubation times;
 - 2.6 Employee health and hygiene including communicable disease reporting and exclusions, where eating and tasting may occur, no use of tobacco, proper hand washing, glove usage, supplies at hand wash stations;
 - 2.7 Personal cleanliness; hair restraints; personal storage;
 - 2.8 Potentially hazardous foods definition, description, examples, pH and water activity;
 - 2.9 Safe food handling including cross contamination, cooling methods, cooking times and temperatures, reheating, thawing, return and re-service of food, adulterated foods, protection of foods, washing fruits and vegetables;
 - 2.10 Proper temperature control; time as a public health control; record keeping;
 - 2.11 Thermometer usage, monitoring, and record keeping;
 - 2.12 Food storage, receiving and preparation; self service of foods;
 - 2.13 Proper cleaning and sanitizing of utensils and food contact surfaces;
 - 2.14 Approved food sources; proper labeling;
 - 2.15 Consumer advisory for undercooked foods;
 - 2.16 When variances, special processes, and HACCP plans are required and maintaining records and compliance;
 - 2.17 Trans fat and menu labeling;
 - 2.18 Potable water and proper water temperatures;
 - 2.19 Plumbing cross connections, backflow prevention; solid and liquid waste disposal;
 - 2.20 Equipment and facility cleaning and sanitation;
 - 2.21 Vector and pest control; air curtains; self-closing doors;
 - 2.22 Housekeeping and maintenance;
 - 2.23 Toxic substances properly stored, identified, used and separated;
 - 2.24 Food facility construction and plan review;
 - 2.25 Riverside County ABC grade card requirements;
 - 2.26 Proper ventilation and lighting;
 - 2.27 Use and storage of linens and wiping cloths;
 - 2.28 No living or sleeping quarters;

- 2.29 Keeping inspection reports and permit available for inspections; posting of food handler cards and Manager's certification;
 - 2.30 Emergency procedures;
 - 2.31 Required signs for Riverside County;
 - 2.32 Employees FIRST information specific to Riverside County;
 - 2.33 Information pertaining to foodborne illness in United States; examples of foodborne illness outbreaks;
 - 2.34 Center for Disease Control risk factors;
 - 2.35 Any other topics as agreed upon by both parties.
3. Ensure training and assessment contains at least 50 multiple choice questions relating to the topics and shall be available in full text and audio in English, Spanish, Chinese (Mandarin), Vietnamese, and Korean, with the ability to add additional languages as necessary. All test questions will need to coordinate fully with the existing Riverside County exam which will still be administered in local area offices. A passing score shall be 70%.
 4. The assessment test should be at approximately 6th grade reading level. Upon failing the test, clients must be able to retake the test up to two times within a two week timeframe. If not successfully passed during those three attempts they must study and pay a new fee prior to attempting the test again.
 5. Provide all resources required for course delivery, administration and support of the on-line program.
 6. Provide an e-signature component when the client signs in to take the exam to help ensure honesty and discourage fraud.
 7. Work with Riverside County representatives to set up a direct link to the training portal from the COUNTY website.
 8. Assist in advertising of new on-line food handler's testing by providing printed signs for offices and hand outs to be delivered during inspections, at provider's expense.
 9. Provide a training and assessment that is designed to be completed in approximately 90-120 minutes. Training and assessment must be accessible 24 hours a day 7 days a week.
 10. Work with Riverside County representatives to develop a compatible tracking system with the existing tracking system utilized by Riverside County; including all access and log in capabilities.
 11. Provide a mechanism where a Food Handler Certification Card can be immediately printed upon successful completion of the course, but limit the number of cards or the timeframe in which the cards can be printed.
 12. Provide multiple security measures to detect and prevent fraudulent activities pertaining to the training and assessment.

13. Provide technical support to customers and County via toll-free telephone, email, or on-line request between the hours of 7:00 am and 5:30 pm PST, Monday through Friday; emergency, weekend, and holiday phone support to be available, after 5:30 pm PST.
14. Provide real time on-line access to all user data, training and assessment data, reports and tracking, and customer records.
15. Provide reports bimonthly and access to a database which can generate reports at any time including but not limited to web site tracking, location of customers, facility/facilities customer listed where they work, customer records, customers who passed the assessment and customers that did not pass the assessment, financial reports, and statistical reports.
16. Allow and assist COUNTY in updating testing questions and content of training, design of cards, etc. as needed to remain in compliance with COUNTY, State and local regulations.
17. Prior to making any changes to the program CONTRACTOR must receive approval from the COUNTY. All upgrades and modifications will be at no cost to the COUNTY.
18. Provide secure on-line payment processing. CONTRACTOR shall directly collect fees as agreed upon by both provider and COUNTY for the on-line training and assessment program. Acceptable forms of payment shall include credit/debit payments from all major credit card providers. Prepaid credit and debit cards shall also be acceptable. CONTRACTOR shall be responsible for all fees related to use of credit and debit card transactions.
19. Fees collected on behalf of COUNTY shall be disbursed twice per month; provide reconciliation statements and 24/7 access to database for fee disbursement information and statistical information. All credit card processing and web hosting fees are to be absorbed by CONTRACTOR.
20. Provide the ability to purchase prepaid vouchers or access codes with no expiration date, to use for group training and/or Governmental agencies that cover the cost of training and certification for their clientele.
21. Provide a 6 month pilot program with the ability to extend the contract for up to 5 years.
22. Work in conjunction with departmental and/or County IT representatives as needed to successfully implement all aspects of the on-line training and assessment.
23. The food handler's certification card will be valid for 2 years. The information needed for identification should include full name, gender, test ID number, date of completion and expiration date, date of birth, employer(s), location of workplace, and score on test. The cost will be determined by representatives of Riverside County.

EXHIBIT B
PAYMENT PROVISIONS

1. CONTRACTOR shall collect twenty eight (\$28.00) dollars from public users and forward the COUNTY's portion of twenty (\$20.00) dollars to the Department of Environmental Health; twice per month to the following address:

County of Riverside
Department of Environmental Health
Attn: Fiscal Services
4065 County Circle Drive, Room 104
Riverside, CA 92503