

STATE OF NEBRASKA  
DEPARTMENT OF MOTOR VEHICLES

AGREEMENT

Between  
The Nebraska Department of Motor Vehicles  
and  
City of Lincoln

**THIS AGREEMENT** is made by and between the Nebraska Department of Motor Vehicles (hereinafter "Department") and City of Lincoln, a Nebraska corporation, (hereinafter "Third-Party Tester"), to authorize the named Third-Party Tester to administer commercial driver license skills examinations on behalf of the Department.

**WHEREAS**, the Department may permit persons other than employees of the Nebraska Department of Motor Vehicles to conduct the skills tests required of Commercial Driver's License applicants and **WHEREAS** authority to administer skills tests will be granted only to certified Third-Party Testers under agreement with the Department and utilizing Third-Party Examiners certified by the Department, **NOW, THEREOF** the parties agree as follows:

- I. **TERM.** The term of this Agreement shall be for a period of two years beginning on November 1, 2002 or upon termination as provided in Article III of this Agreement, whichever occurs first.
- II. **SCOPE OF AGREEMENT.**
  - A. THE THIRD-PARTY TESTER AGREES TO:
    1. Statutory. Conform with all applicable statutes, rules and regulations, of the Department, of the State of Nebraska, and of the Federal Highway Administration (FHWA).
    2. Certification. Be currently certified as a Third-Party Tester by the Department in accordance with 247 Nebraska Administrative Code, Chapter 8 and maintain such certification in good standing during the term of this Agreement.
    3. Records. Retain records as follows:
      - 1.

- 3.1 Third-Party Examiner Records. Retain, at each approved testing location, a record of each Third-Party Examiner in the employ of each Third-Party Tester at that location. Each record shall be maintained a minimum of two years after the date the Third-Party Examiner leaves the employment of the Third-Party Tester. Each record shall include:
- 3.1A A valid "Examiner Identification Card" (including name, residential address, and social security number) indicating that the Examiner has been certified by the Department;
  - 3.1B A copy of the Third-Party Examiner's current driving record, which must be updated annually;
  - 3.1C Evidence that the Third-Party Examiner is a full time payroll employee of the Third-Party Tester.
- 3.2 Driver Records. Retain, at each approved testing location, a record of each driver for whom the Third Party Tester conducts a skills test, whether or not the driver passes or fails the test. Each such record shall be retained for a minimum of two years from the date of the test and shall include:
- 3.2A The complete name and address of the driver;
  - 3.2B The driver's social security number, driver's license number and the name of the state or jurisdiction that issued the license held by the driver at the time of the test;
  - 3.2C The test score sheet(s) showing the results of the skills test;
  - 3.2D The name and identification number of the Third-Party Examiner conducting the skills test;
  - 3.2E The make, model and registration number of the commercial motor vehicle(s) used to conduct the testing and whether or not the vehicle was equipped with air brakes;
  - 3.2F A copy of the completed Certification of Completion of the Driving Skills exam (DMV Form 06-55) of which the original was given to the driver.

- 3.3 Driver List. Maintain a list of all drivers examined by the Third-Party Tester and their pass/fail results and make such list available to the Department upon request.
- 4. Inspections, Examinations and Audits.
  - 4.1 Allow the FHWA, or the representative(s) and the Department to conduct random examinations, inspections and audits without prior notice;
  - 4.2 At least annually, allow the Department to conduct on-site inspections;
  - 4.3 Make all records specified in paragraph II.A.3 of this Agreement available to the Department upon request.
- 5. Retests. Allow the Department to administer retests or take tests as follows:
  - 5.1 At least annually, allow representative(s) of the Department to take the tests actually administered by the Third-Party Tester as if the representative were a test applicant, or allow the Department to test a sample of drivers who were examined by the Third-Party to compare pass/fail results.
  - 5.2 The drivers to be tested in the sample shall be selected by the Department from the list of drivers required to be maintained by the Third-Party Tester in paragraph II.A.3.3 of this Agreement. The time and place of the sample examinations shall be mutually convenient to all parties.
  - 5.3 It shall be the responsibility of the Third-Party Tester to provide the appropriate vehicle for these tests.
  - 5.4 Simple failure of the sample test conducted by the Department representative shall not prejudice a CDL already issued to that driver.

- 5.5 If the driver fails the sample test, the examiner may require that the driver be recalled and reexamined at a Department CDL exam location. Failure of the skills test at the Department location shall result in the cancellation of the CDL and constitutes grounds for suspension or revocation of the Third-Party certificate.
6. Skills Test Procedure. Tests given by the Third-Party shall:
- 6.1 Be the same as those which would otherwise be given by the State;
- 6.2 Comply with State and Federal standards for the CDL testing program;
- 6.3 Comply with the test specifications and procedures prescribed in the Commercial Driver's License Examiner's Manual issued by the Department and current test instructions provided by the Department. Such instructions may include information on skills test content, route selection/revision, test forms, examiner procedures, and administrative procedures and/or changes;
- 6.4 Comply with and implement any updated testing procedure directives issued by the Department during the term of this Agreement;
- 6.5 Be conducted on test routes approved by the Department;
- 6.6 Be conducted in a vehicle that is representative of the class and type of vehicle for which the CDL applicant seeks to be licensed and for which the Third-Party Examiner is qualified to test;
- 6.7 Be conducted using Department-approved content, forms and scoring procedures;
- 6.8 Be conducted by Third-Party Examiners who are currently certified by the Department for that class of vehicle testing to administer the skills test;

7. Third-Party Examiners.

- 7.1 Employ at least one qualified and currently certified Third-Party Examiner at all times;
- 7.2 Allow only those Third-Party Examiners that have been certified by the Department to conduct skills test.

8. Release and Indemnity.

The State of Nebraska, the Department, its employees, agents, assignees, and legal representatives assume no legal liability for all liabilities, demands, claims, suits, losses, damages, causes of action, fines, or judgments and all expenses incident thereto, for injuries to persons and for loss of, damage to, or destruction of property arising out of or in connection with this Agreement except to the extent liable under the State Tort Claims Act (Neb. Rev. Stat. 81-8,209 et al.).

9. Proof of Insurance.

The Third-Party Tester shall maintain liability insurance on owned motor vehicles in the amounts required by state law. The Third-Party Tester shall also maintain worker's compensation insurance as statutorily required in Nebraska. Proof of above insurance is a condition precedent to this Agreement.

Evidence of such insurance coverage, in the form of both a certificate from the insurance carrier and a copy of the policy endorsement, shall be filed by the Third-Party Tester with the Department. The certificate shall stipulate the type of insurance, the name and address of the insurance carrier and the amount of insurance, and shall include the make, model, year and motor or serial number of every vehicle owned by the Third-Party Tester used for testing purposes or indicate coverage of all vehicles owned by the Third-Party Tester. The endorsement to the policy shall stipulate that the insurance carrier notify the Department of any cancellation of the policy or non-renewal of the policy.

In addition, during the term of this Agreement, Third-Party Tester shall give the Department not less than 30 days' notice before cancellation or alteration of required insurance, and shall provide notice within five days of any cancellation or alteration by an insurance company.

10. Notification. Notify the Department within the specified period of time of the following:
  - 10.1 Any change in the Third-Party Tester's name, legal status or address in writing within ten (10) days of its date of occurrence.
  - 10.2 Any change in the Third-Party Examiners employed by the Third-Party Tester or their driving status within ten (10) days of its date of occurrence.
  - 10.3 If the Third-Party Tester ceases business operations in Nebraska, the Third-Party Tester shall notify the Department at least ten (10) days prior to its date of occurrence.
  - 10.4 If the Third-Party Tester's insurance as required by the Third-Party Tester Agreement is canceled or altered by the insurance company, the Third-Party Tester shall notify the Department within five (5) days of its date of occurrence. In addition, the Third-Party Tester shall give the Department not less than 30 days' notice before cancellation or alteration of required insurance.
  - 10.5 Any proposed changes in skills tests route, test content, or examiner/administrative procedures at least thirty (30) days prior to its date of occurrence.
11. Display of Certificate. Upon issuance of the Third-Party certificate, display the certificate prominently in the office of the Third-Party Tester.

B. THE DEPARTMENT AGREES TO:

1. Testing. Permit the Third-Party Tester to administer skills test in accordance with the provisions of this Agreement. Tests given by the Third-Party are to be the same as those which would otherwise be given by the state.
2. Third-Party Examiners. Require that all Third-Party Examiners meet the same qualifications and training standards as State examiners, to the extent necessary to conduct skills tests in compliance with 49 CFR Part 383, subparts G and H.
3. Inspections, Examinations and Audit. Conduct the following inspections, examinations and audits of the Third-Party Tester:
  - 3.1 Conduct random examinations, inspections and audits of the Third-Party Tester without prior notice;
  - 3.2 At least annually, conduct on-site inspections of the Third-Party Tester.
4. Retests. At least annually, have state employees take the tests actually administered by the Third-Party Tester as if the representative were a test applicant or allow the Department to test a sample of drivers who were examined by the Third-Party to compare pass/fail results.
5. Enforcement.
  - 5.1 Administer and enforce the provisions of this Agreement.
  - 5.2 Reserve the right to take prompt and remedial action against the Third-Party Tester in the event that the Third-Party Tester fails to comply with state or federal standards for the CDL testing program, or with any other terms of the Agreement.

III. **TERMINATION OF THIS AGREEMENT.**

- A. BY THE THIRD-PARTY TESTER. This Agreement may be terminated at any time by the Third-Party Tester upon written notice to the Department not less than thirty (30) days prior to the date of termination. Upon termination, the Third-Party Tester shall relinquish its certification within ten (10) days of the date of termination.
- B. BY THE DEPARTMENT. The Department reserves the right to take prompt and remedial action against the Third-Party Tester in the event the Third-Party Tester fails to comply with the State or Federal standards for the CDL testing program or with any other terms of this Agreement. Termination shall be effected by furnishing the Third-Party Tester with notice and the Third-Party Tester may, upon receipt of the notice, request a formal hearing

IV. **COMMUNICATIONS.**

Notices and communications in writing required or desired to be given pursuant to this Agreement shall be mailed to the following address:

If to the Third-Party Tester:  
City of Lincoln  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

If to the Department:  
Beverly Neth  
Director  
Department of Motor Vehicles  
P. O. Box 94789  
Lincoln, Nebraska 68509

V. **Term.**

This Agreement is effective as of the date set forth above and shall continue in force for a period of two (2) years if not sooner terminated as provided in ARTICLE III of this Agreement.

VI. ENTIRE AGREEMENT.

This document constitutes the sole and entire Agreement between the Department and the Third-Party Tester relating to the authority to administer the Commercial Driver License Skills Tests. No other terms or conditions shall form a part hereof, and this Agreement shall not be modified except by subsequent agreement in writing and attached as an addendum, duly signed by the authorized representatives of both parties.

VII. NONDISCRIMINATION CLAUSE.

In accordance with the Nebraska Fair Employment Practice Act, Neb.Rev.Stat. 48-1122, the Third-Party Tester agrees that neither it nor any of its sub-contractors shall discriminate against any employee, or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment because of the race, color, religion, sex, disability, or national origin of the employee or applicant.

VIII. INDEPENDENT CONTRACTOR.

The Third-Party Tester is an independent contractor and neither it nor any of its employees shall be deemed employees of the Department for any purposes. The Third-Party Tester shall employ and direct such personnel as it requires to perform its obligations under this Agreement, shall exercise full authority over its personnel, and shall comply with all worker's compensation, employer's liability, and other federal, state, county, and municipal laws, ordinances, rules, and regulations required of an employer providing services as contemplated by this Agreement.

EXECUTED by the parties or their duly authorized representatives on the dates indicated below.