

## CLARK COUNTY STAFF REPORT

**DEPARTMENT:** Public Health

**CCPH SR2020-1193**

**DATE:** 6/16/2020

**REQUESTED ACTION:**

Clark County Council's approval to enter into an interlocal agreement with the Office of Superintendent of Public Instruction (OSPI). Further requesting authorization for Public Health Director to sign any resulting agreements or amendments. It is anticipated that CCPH staff will conduct 20 inspections with compensation amounting to \$724 per inspection to cover staffing costs. Total remuneration \$14,480 per year with the anticipated start date of June 17<sup>th</sup>, 2020.

Consent     
  Hearing     
  County Manager

**BACKGROUND**

For the last several years, Clark County Public Health (CCPH), has contracted with the Office of Superintendent and Public Instruction, (OSPI) to conduct inspections of sites preparing and serving food to kids through a summer lunch program. The summer lunch program serves a critical need within Clark County better ensuring children have access to healthy food that might otherwise go hungry. CCPH partners with OSPI to ensure those preparing and serving food do so in a sanitary manner to prevent foodborne illness.

**COUNCIL POLICY IMPLICATIONS**

**ADMINISTRATIVE POLICY IMPLICATIONS**

N/A

**COMMUNITY OUTREACH**

N/A

**BUDGET IMPLICATIONS**

YES	NO	
X		Action falls within existing budget capacity.
		Action falls within existing budget capacity but requires a change of purpose within existing appropriation
		Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

**BUDGET DETAILS**

Local Fund Dollar Amount	
Grant Fund Dollar Amount	
Account	
Company Name	

**DISTRIBUTION:**

Council staff will post all staff reports to The Web. <https://www.clark.wa.gov/council-meetings>

*Joelle Loescher*

6/4/2020

\_\_\_\_\_  
Joelle Loescher  
Management Analyst

*Alan Melnick*

6/4/2020

\_\_\_\_\_  
Dr. Alan Melnick  
Public Health Director

Primary Staff Contact: Joelle Loescher Ext# 8126

APPROVED: *[Signature]*  
CLARK COUNTY, WASHINGTON  
CLARK COUNTY COUNCIL

DATE: June 16, 2020

SR# 081-20



APPROVED: \_\_\_\_\_  
Kathleen Otto, Interim County Manager

DATE: \_\_\_\_\_

**INTERLOCAL AGREEMENT  
Agreement No. 20200398**

between

**OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION**

Old Capitol Building, P.O. Box 47200  
Olympia, WA 98504-7200

and

**CLARK COUNTY PUBLIC HEALTH**

PO BOX 9825  
Vancouver, WA 98666-8825

Federal Identification #91-6001299

**THIS AGREEMENT** is made and entered into by and between the Clark County Public Health, hereinafter referred to as "Clark County Public Health," and the Office of Superintendent of Public Instruction, hereinafter referred to as "OSPI."

**PURPOSE OF THIS AGREEMENT**

This Agreement is necessary for the successful implementation and operation of health and sanitation evaluations of food service management companies (vendors), sponsor food preparation facilities, and feeding sites operating under the U.S. Department of Agriculture (USDA) Summer Food Service Program (SFSP) during the summer of 2020 as required by 7 CFR Part 225 as a condition to the allocation and expenditure of USDA SFSP funding.

**THEREFORE, IT IS MUTUALLY AGREED THAT:**

**STATEMENT OF WORK**

The Clark County Public Health shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work set forth below:

In accordance with the applicable local Clark County Public Health rules and regulations, the Clark County Public Health agrees to perform periodic health and sanitation evaluations, as determined by the Clark County Public Health in said Clark County Public Health's jurisdiction. This shall include twenty (20) health inspections.

Entities participating in the Summer Food Service Program will contact the Clark County Public Health if they intend to operate the program this year. OSPI will provide the Clark County Public Health with a list of approved sponsors no later than June 22, 2020. The Clark County Public Health shall contact the sponsor(s) for feeding site and preparation locations prior to inspection. OSPI will report to the Clark County Public Health any health-related problems discovered on routine visits conducted by site monitors for Clark County Public Health follow-up, if necessary.

The Clark County Public Health shall submit copies of the inspection(s) to both the sponsor and OSPI along with the invoice to OSPI by September 30, 2020.

### **PERIOD OF PERFORMANCE**

Subject to its other provisions, the period of performance of this Agreement shall commence on June 1, 2020, or date of execution, whichever is later, and be completed on September 30, 2020, unless terminated sooner as provided herein.

### **PAYMENT**

Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34. The parties have determined that the cost of accomplishing the work herein will not exceed a total of fourteen thousand four hundred eighty dollars (\$14,480) unless the parties mutually agree to a higher amount. Compensation for services shall be based on the following rates:

- Twenty (20) health inspections at a rate of seven hundred twenty-four dollars (\$724) per inspection/evaluation.

Funds for the payment of this Contract are provided by federal program Summer Food Service Program (SFSP), Catalog of Federal Domestic Assistance, (CFDA) #10.559.

### **BILLING PROCEDURE**

The Clark County Public Health shall submit invoices to the Superintendent's designee, Arianne McConchie, no later than September 30, 2020, for those inspections/evaluations actually performed for the SFSP. Invoices received after September 30, 2020 WILL NOT BE PAID. The invoice shall include the Agreement number and document to the Contract Manager's satisfaction a description of the work performed, and payment requested. Within approximately thirty (30) calendar days of the Contract Manager receiving and approving the invoice, payment will be mailed or electronically transferred to the Clark County Public Health by Agency Financial Services, OSPI.

### **AGREEMENT ALTERATIONS AND AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **ASSIGNMENT**

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

## CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Clark County Public Health certifies that neither it nor its principals are debarred, suspended, proposed for debarment, or voluntarily excluded from participation in transactions by any federal department or agency. The Clark County Public Health further certifies that they will ensure that potential subcontractors or subrecipients or any of their principals are not debarred, suspended, proposed for debarment, or voluntarily excluded from participation in covered transactions by any federal department or agency. The Clark County Public Health may do so by obtaining a certification statement from the potential subcontractor or subrecipient or by checking the "List of Parties Excluded from Federal Procurement and Non-Procurement Programs" provided on-line by the General Services Administration, and Washington State vendor debarment list.

## CONTRACT MANAGEMENT

The following shall be the contact person for all communications and billings regarding the performance of this Agreement.

Clark County Public Health	OSPI
Brian Schlottman Contract Manager PO BOX 9825, 1601 E. Fourth Plain Blvd. Vancouver, WA 98666 Phone: (564) 397-7388 Fax: Email: Brian.Schlottman@clark.wa.gov	Arianne McConchie Community Nutrition Programs - Lead Old Capitol Building, P.O. Box 47200 Olympia, WA 98504-7200 Phone: (360) 725-6201 Fax: (360) 664-9397 Email: arianne.mcconchie@k12.wa.us

## CREATIVE COMMONS ATTRIBUTION LICENSE

Clark County Public Health understands that, except where otherwise agreed to in writing or approved by OSPI or the Contract Manager, all original works of authorship produced under this Agreement shall carry a **Creative Commons Attribution License**, version 4.0 or later.

All Materials Clark County Public Health has adapted from others' existing openly licensed resources must be licensed with the least restrictive open license possible that is not in conflict with existing licenses.

For Materials that are delivered under this Agreement, but that incorporate pre-existing materials not produced under this Agreement, Clark County Public Health will license the materials to allow others to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. If Clark County Public Health would like to limit these pre-existing portions of the work to non-commercial use, the **Creative Commons Attribution-NonCommercial-ShareAlike** license, version 4.0 or later, is acceptable for these specific sections.

Clark County Public Health warrants and represents that Clark County Public Health has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to apply such a license.

## **DISPUTES**

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

## **GOVERNANCE**

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable state and federal statutes and rules
- Statement of work
- Attachments – Attachment A Local Health Jurisdiction Intent to Contract
- Any other provisions of the Agreement, including materials incorporated by reference.

## **INDEPENDENT CAPACITY**

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

## **RECORDS MAINTENANCE**

The parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six (6) years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

## **RESPONSIBILITIES OF THE PARTIES**

Each party to this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, its officers, and its agents. Neither party assumes any responsibility to the other party for the consequences of any claim, act or omission of any person, agency, firm, or corporation not a party to this Agreement.

## **RIGHTS IN DATA**

Copyright in all material created by Clark County Public Health and paid for by OSPI as part of this Agreement shall be the property of the State of Washington. Both OSPI and Clark County Public Health may use these materials, and permit others to use them, for any purpose consistent with their respective missions as agencies of the State of Washington. This material includes, but is not limited to: books, computer programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, and/or training materials. Material which Clark County Public Health provides and uses to perform this Agreement but which is not created for or paid for by OSPI shall be owned by Clark County Public Health or such other party as determined by Copyright Law and/or Clark County Public Health's internal policies; however, for any such materials, Clark County Public Health hereby grants (or, if necessary and to the extent reasonably possible, shall obtain and grant) a perpetual, unrestricted, royalty free, non-exclusive license to OSPI to use the material for OSPI internal purposes.

## **SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

## **SUBCONTRACTING**

Neither Clark County Public Health nor any subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of OSPI. Clark County Public Health is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Agreement are included in any and all subcontracts. In no event shall the existence of the subcontract operate to release or reduce liability of Clark County Public Health to OSPI for any breach in the performance of Clark County Public Health duties. This clause does not include contracts of employment between Clark County Public Health and personnel assigned to work under this Agreement.

If, at any time during the progress of the work, OSPI determines in its sole judgment that any subcontractor is incompetent, OSPI shall notify Clark County Public Health, and Clark County Public Health shall take immediate steps to terminate the subcontractor's involvement in the work. The rejection or approval by OSPI of any subcontractor or the termination of a subcontractor shall not relieve Clark County Public Health of any of its responsibilities under the Agreement, nor be the basis for additional charges to OSPI.

## **TERMINATION**

Either party may terminate this Agreement upon thirty (30) calendar days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

## **TERMINATION DUE TO FUNDING LIMITATIONS OR CONTRACT RENEGOTIATION, SUSPENSION**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion of this Agreement, with the notice specified below and without liability for damages:

- a. At OSPI's discretion, OSPI may give written notice of intent to renegotiate the Agreement under the revised funding conditions.
- b. At OSPI's discretion, OSPI may give written notice to Clark County Public Health to suspend performance when OSPI determines there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Clark County Public Health's performance to be resumed.
  - 1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
  - 2) When OSPI determines that the funding insufficiency is resolved, it will give Clark County Public Health written notice to resume performance, and Clark County Public Health shall resume performance.
  - 3) Upon the receipt of notice under b. (2), if Clark County Public Health is unable to resume performance of this Agreement or if Clark County Public Health's proposed resumption date is not acceptable to OSPI and an acceptable date cannot be negotiated, OSPI may terminate the Agreement by giving written notice to Clark County Public Health. The parties agree that the Agreement will be terminated retroactive to the date of the notice of suspension. OSPI shall be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the retroactive date of termination.
- c. OSPI may immediately terminate this Agreement by providing written notice to Clark County Public Health. The termination shall be effective on the date specified in the termination notice. OSPI shall be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination. No penalty shall accrue to OSPI in the event the termination option in this section is exercised.
- d. For purposes of this section, "written notice" may include email.

## **TERMINATION FOR CAUSE**

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

## **TERMINATION PROCEDURE**

Upon termination of this Agreement, OSPI, in addition to other rights provided in this Agreement, may require Clark County Public Health to deliver to OSPI any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

OSPI shall pay to Clark County Public Health the agreed upon price, if separately stated, for completed work and services accepted by OSPI and the amount agreed upon by Clark County Public Health and OSPI for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services which are accepted by OSPI, and (d) the protection and preservation of the property, unless the termination is for cause, in which case OSPI shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause for this Agreement. OSPI may withhold from any amounts due to Clark County Public Health such sum as OSPI determines to be necessary to protect OSPI against potential loss or liability.

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

After receipt of a notice of termination, and except as otherwise directed by OSPI, Clark County Public Health shall:

- a. Stop work under this Agreement on the date and to the extent specified, in the notice;
- b. Place no further orders or subcontractors for materials, services or facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;
- c. Assign to OSPI, in the manner, at the times, and to the extent directed by OSPI, all rights, title, and interest of Clark County Public Health under the orders and subcontracts in which case OSPI has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of OSPI to the extent OSPI may require, which approval or ratification shall be final for all the purposes of this clause;

- e. Transfer title to OSPI and deliver, in the manner, at the times and to the extent as directed by OSPI, any property which, if the Agreement had been completed, would have been required to be furnished to OSPI;
- f. Complete performance of such part of the work not terminated by OSPI; and
- g. Take such action as may be necessary, or as OSPI may direct, for the protection and preservation of the property related to this Agreement which, in is in the possession of Clark County Public Health and in which OSPI has or may acquire an interest.

**WAIVER**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

**ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

**IN WITNESS WHEREOF, the parties have executed this Agreement.**

Clark County Public Health

Superintendent of Public Instruction  
State of Washington

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Kyla L. Moore, Contracts Administrator

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Who certifies that he/she is the entity identified herein, OR a person duly qualified and authorized to bind the entity so identified to the foregoing Agreement.

Approved as to FORM ONLY  
by the Assistant Attorney General