

0511-11-OSPI

**INTERLOCAL AGREEMENT
Agreement No. 20110276**

between

OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION
Old Capitol Building, P. O. Box 47200
Olympia, WA 98504-7200

and

**CLALLAM COUNTY BOARD OF HEALTH, BY & THROUGH
CLALLAM DEPARTMENT OF HEALTH & HUMAN SERVICES**
(hereinafter referred to as Health District)
223 E. 4th Street, Suite 14
Port Angeles, WA 98362

Federal Identification #91-6001298

THIS AGREEMENT is made and entered into by and between Clallam County Board of Health, by and through its lawful designee, Clallam Department of Health and Human Services, hereinafter referred to as "Health District", and the 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 2011 as required by 7 CFR Part 225 as a condition to the allocation and expenditure of USDA SFSP funding.

STATEMENT OF WORK

The Health District 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:

Health District agrees to perform, at the rate(s) set forth below, periodic health and sanitation evaluations, as determined by the Health District in said Health District's jurisdiction. The Health District shall furnish all labor and materials necessary to perform the evaluations, which shall be conducted in accordance with the applicable local Health District rules and regulations.

Sponsors will contact the Health District if they intend to operate the program this year. The Office of Superintendent of Public Instruction (OSPI) shall provide the Health District with a list of approved sponsors. The Health District shall contact the sponsor(s) for feeding site and preparation locations prior to inspection. OSPI shall report to the Health District any health-related problems discovered on routine visits conducted by site monitors for Health District follow-up, if necessary. The Health District shall report the results of the inspections to both the sponsor and OSPI.

Time is of the essence in connection with Health District's performance of the foregoing duties.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on **June 15, 2011**, or date of execution, whichever is later, and be completed on **August 31, 2011**, 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 seven hundred dollars (\$700). Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount.

Compensation for services shall be based on the following rates:

- Two (2) central kitchen preparation facilities at a rate of one hundred forty dollars (\$140) per inspection/evaluation.
- Six (6) feeding sites other than the meal preparation site (satellite sites and vended sites) at a rate of seventy dollars (\$70) per inspection/evaluation.

BILLING PROCEDURE

The Health District shall submit invoices to Donna Parsons no later than **September 28, 2011**, for those inspections/evaluations actually performed for the SFSP. Invoices received after **September 30, 2011** WILL NOT BE PAID. All reports generated as a result of Health District's SFSP inspections/evaluations shall be submitted to OSPI.

The invoice shall include an original signature, the contract number, and document to the Superintendent's designee's satisfaction a description of the work performed and payment requested. Within approximately thirty (30) working days of the Superintendent's designee receiving and approving the invoice, payment will be mailed or electronically transferred to the Health District by Agency Financial Services, OSPI. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

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.

CONTRACT MANAGEMENT

The program manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Program Manager for OSPI is: Donna Parsons at 360-725-6220 or donna.parsons@k12.wa.us.

The Program Manager for Health District is: Kim Yacklin at 360-417-2347 or kyacklin@co.clallam.wa.us.

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. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process shall control.

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:

- a. Applicable state and federal statutes and rules;
- b. Statement of work; and
- c. 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 contract 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 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 Health District and paid for by OSPI as part of this Agreement shall be the property of the State of Washington. Both OSPI and Health District 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 Health District provides and uses to perform this Agreement but which is not created for or paid for by OSPI shall be owned by Health District or such other party as determined by Copyright Law and/or Health District's internal policies; however, for any such materials, Health District 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.

TERMINATION

Either party may terminate this Agreement upon 30 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

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, the Superintendent may, without advance notice and without liability for damages, terminate this Agreement by providing written notice to Health District. The termination shall be effective on the date specified in the termination notice.

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, the Superintendent, in addition to other rights provided in this Agreement, may require Health District to deliver to the Superintendent any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

The Superintendent shall pay to Health District the agreed upon price, if separately stated, for completed work and services accepted by the Superintendent and the amount agreed upon by Health District and the Superintendent 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 the Superintendent, and (d) the protection and preservation of the property, unless the termination is for cause, in which case the Superintendent 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. The Superintendent may withhold from any amounts due to [acronym] such sum as the Superintendent determines to be necessary to protect the Superintendent against potential loss or liability.

The rights and remedies of the Superintendent 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 the Superintendent, Health District 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 the Superintendent, in the manner, at the times, and to the extent directed by the Superintendent, all rights, title, and interest of Health District under the orders and subcontracts in which case the Superintendent 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 the Superintendent to the extent the Superintendent may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Superintendent and deliver, in the manner, at the times and to the extent as directed by the Superintendent, any property which, if the Agreement had been completed, would have been required to be furnished to the Superintendent;
- f. Complete performance of such part of the work not terminated by the Superintendent; and
- g. Take such action as may be necessary, or as the Superintendent may direct, for the protection and preservation of the property related to this Agreement which, in is in the possession of Health District and in which the Superintendent 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.

Clallam County Board of Health, by and through
its designee, Clallam Department of
Health and Human Services

Superintendent of Public Instruction
State of Washington

Ira K. Burks, HHS Director
Signature Title

Sheryl Turner
Sheryl Turner, Contracts Administrator

Ira K. Burks 7/21/11
Print Name Date

July 25, 2011
Date

Approved as to form only by:

Douglas E. Jensen
Chief Civil Deputy Prosecuting Attorney
Clallam County

Approved as to FORM ONLY
by the Assistant Attorney General