

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Authorizing the City Manager to Execute an Interlocal Agreement Between the City of Shoreline and the State of Washington Department of Social and Health Services for the Respite in Community Settings Program
<b>DEPARTMENT:</b>	Parks, Recreation, and Cultural Services
<b>PRESENTED BY:</b>	Mary Reidy, PRCS Recreation Superintendent
<b>ACTION:</b>	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

**PROBLEM/ISSUE STATEMENT:**

Certain members of City's Specialized Recreation Program qualify for reimbursement of their program fees through the Washington State Department of Social and Health Services (DSHS) Community Settings Respite Care Program. In 2016 the City of Shoreline and DSHS entered into an Interlocal Agreement (#8652) that allowed the City to bill the DSHS for Program fee reimbursement. This Interlocal Agreement has changed names to Respite in Community Settings and is now due for renewal.

Renewing the Agreement allows for uninterrupted service delivery of Shoreline recreation programs for qualified Specialized Recreation participants. Outside of the title change, the terms of the new Respite in Community Settings Agreement are identical to the old agreement except for the dates. The new dates for the Respite in Community Settings Agreement would be October 1, 2019 through September 30, 2022.

**RESOURCE/FINANCIAL IMPACT:**

This Interlocal Agreement does not include any expense on the City's part.

**RECOMMENDATION**

Staff recommends that Council authorize the City Manager to enter into an Interlocal Agreement with the Washington State Department of Social and Health Services Respite in Community Settings Program.

Approved By:            City Manager **DT**    City Attorney **MK**

## **BACKGROUND**

Certain members of City's Specialized Recreation Program qualify for reimbursement of their program fees through the Washington State Department of Social and Health Services (DSHS) Community Settings Respite Care Program. In 2016, the City of Shoreline and the DSHS Community Settings Respite Care (#8652) entered into an Interlocal Agreement that allowed the City to bill DSHS for program fee reimbursement. This Interlocal Agreement has changed names to Respite in Community Settings and is now due for renewal.

In 2018, the City had 40 Specialized Recreation participants that qualified for reimbursement from the State. The total amount of state reimbursement equaled \$46,907. These reimbursed costs were reimbursed through the Community Settings Respite Care Program and another Interlocal Agreement the City has with DSHS for reimbursement. Shoreline has a variety of specialized recreation offerings including weekend trips, special events and adult day programs for individuals with developmental disabilities. This agreement provides specialized recreation participants improved access to these programs and facilities.

## **DISCUSSION**

Outside of the title change, the new Respite in Community Settings Interlocal Agreement (Attachment A) is identical to the old agreement except for the dates of the agreement. The new dates for the Respite in Community Settings Agreement would be October 1, 2019 through September 30, 2022. The Respite in Community Settings Agreement can be terminated by either party with 30 days of written notice.

The ability for participants to utilize DSHS funding is one factor that makes the City of Shoreline's specialized recreation program attractive to participants. In addition, it supports accessibility to participants who do not have the ability to manage the complicated billing process themselves.

### **RESOURCE/FINANCIAL IMPACT:**

This contract does not include any expense on the city's part.

## **RECOMMENDATION**

Staff recommends that Council authorize the City Manager to enter into an Interlocal Agreement with the Washington State Department of Social and Health Services Respite in Community Settings Program.

## **ATTACHMENTS**

Attachment A: October 1, 2019 – September 30, 2022 Interlocal Agreement Between the City of Shoreline and the Washington State Department of Social and Health Services for the Respite in Community Settings Program

 <p>Washington State Department of Social &amp; Health Services <i>Transforming Lives</i></p>		<h2>INTERLOCAL AGREEMENT</h2> <h3>Respite in Community Settings</h3>		DSHS Agreement Number: 1964-66677	
This Agreement is by and between the State of Washington Department of Social and Health Services (DSHS) and the Contractor identified below, and is issued pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.				Program Contract Number:  Contractor Contract Number: Provider One: 111961301	
CONTRACTOR NAME  City of Shoreline			CONTRACTOR doing business as (DBA)  Parks, Recreation & Cultural Service Dept - 01		
CONTRACTOR ADDRESS  17500 MIDVALE AVE N Seattle, WA 98133			WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI)  601-638-167	DSHS INDEX NUMBER  22380	
CONTRACTOR CONTACT  Debra Tarry		CONTRACTOR TELEPHONE  (206) 801-2211	CONTRACTOR FAX	CONTRACTOR E-MAIL ADDRESS  dtarry@shorelinewa.gov	
DSHS ADMINISTRATION  Developmental Disabilities Admin		DSHS DIVISION  Division of Developmental Disabilities		DSHS CONTRACT CODE  1803LP-64	
DSHS CONTACT NAME AND TITLE  Mayra Ledesma Contract Specialist		DSHS CONTACT ADDRESS  1700 E Cherry St STE 200  Seattle, WA 98122			
DSHS CONTACT TELEPHONE  (206)568-5685		DSHS CONTACT FAX  (206)720-3334		DSHS CONTACT E-MAIL ADDRESS  mayra.ledesma@dshs.wa.gov	
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT?  No			CFDA NUMBER(S)		
AGREEMENT START DATE  10/01/2019		AGREEMENT END DATE  09/30/2022		MAXIMUM AGREEMENT AMOUNT  Fee For Service	
<b>EXHIBITS. The following Exhibits are attached and are incorporated into this Agreement by reference:</b> <b>Exhibits (specify): A - DDA Policies &amp; Agreements</b> <input checked="" type="checkbox"/> <b>No Exhibits.</b>					
The terms and conditions of this Agreement are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise regarding the subject matter of this Agreement, between the parties. The parties signing below represent they have read and understand this Agreement, and have the authority to execute this Agreement. This Agreement shall be binding on DSHS only upon signature by DSHS.					
CONTRACTOR SIGNATURE		PRINTED NAME AND TITLE  Debra Tarry		DATE SIGNED	
DSHS SIGNATURE		PRINTED NAME AND TITLE  Joseph Carter- Regional Operations Manager, DDA		DATE SIGNED	

**DSHS General Terms and Conditions**

1. **Definitions.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
- a. "Central Contracts and Legal Services" means the DSHS central headquarters contracting office, or successor section or office.
  - b. "Confidential Information" or "Data" means information that is exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.
  - c. "Contract" or "Agreement" means the entire written agreement between DSHS and the Contractor, including any Exhibits, documents, or materials incorporated by reference. The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
  - d. "CCLS Chief" means the manager, or successor, of Central Contracts and Legal Services or successor section or office.
  - e. "Contractor" means the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, "Contractor" includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.
  - f. "Debarment" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.
  - g. "DSHS" or the "Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
  - h. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key," a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 256 bits for symmetric keys, or 2048 bits for asymmetric keys. When a symmetric key is used, the Advanced Encryption Standard (AES) must be used if available.
  - i. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.
  - j. "Physically Secure" means that access is restricted through physical means to authorized individuals only.
  - k. "Program Agreement" means an agreement between the Contractor and DSHS containing special terms and conditions, including a statement of work to be performed by the Contractor and payment to be made by DSHS.
  - l. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://apps.leg.wa.gov/rcw/>.

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- m. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
  - n. "Secured Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
  - o. "Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.
  - p. "Tracking" means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.
  - q. "Trusted Systems" include only the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.
  - r. "WAC" means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://apps.leg.wa.gov/wac/>.
2. **Amendment.** This Contract may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.
3. **Assignment.** The Contractor shall not assign this Contract or any Program Agreement to a third party without the prior written consent of DSHS.
4. **Billing Limitations.**
- a. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract.
  - b. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.
  - c. The Contractor shall not bill and DSHS shall not pay for services performed under this Contract, if the Contractor has charged or will charge another agency of the state of Washington or any other party for the same services.
5. **Compliance with Applicable Law.** At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.
6. **Confidentiality.**
- a. The Contractor shall not use, publish, transfer, sell or otherwise disclose any Confidential

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Information gained by reason of this Contract for any purpose that is not directly connected with Contractor's performance of the services contemplated hereunder, except:

- (1) as provided by law; or,
  - (2) in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.
- b. The Contractor shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:
- (1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
  - (2) Physically Securing any computers, documents, or other media containing the Confidential Information.
  - (3) Ensure the security of Confidential Information transmitted via fax (facsimile) by:
    - (a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
    - (b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
    - (c) Verifying after transmittal that the fax was received by the intended recipient.
  - (4) When transporting six (6) or more records containing Confidential Information, outside a Secured Area, do one or more of the following as appropriate:
    - (a) Use a Trusted System.
    - (b) Encrypt the Confidential Information, including:
      - i. Encrypting email and/or email attachments which contain the Confidential Information.
      - ii. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.
- Note: If the DSHS Data Security Requirements Exhibit is attached to this contract, this item, 6.b.(4), is superseded by the language contained in the Exhibit.**
- (5) Send paper documents containing Confidential Information via a Trusted System.
  - (6) Following the requirements of the DSHS Data Security Requirements Exhibit, if attached to this contract.
- c. Upon request by DSHS, at the end of the Contract term, or when no longer needed, Confidential Information shall be returned to DSHS or Contractor shall certify in writing that they employed a DSHS approved method to destroy the information. Contractor may obtain information regarding approved destruction methods from the DSHS contact identified on the cover page of this Contract.

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- d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping, or incineration.
- e. Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the DSHS Contact designated on the contract within one (1) business day of discovery. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.
7. **Debarment Certification.** The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify DSHS if, during the term of this Contract, Contractor becomes Debarred. DSHS may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term hereof.
8. **Governing Law and Venue.** This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.
9. **Independent Contractor.** The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Department. The Contractor, his or her employees, or agents performing under this Contract will not hold himself/herself out as, nor claim to be, an officer or employee of the Department by reason hereof, nor will the Contractor, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such officer or employee.
10. **Inspection.** The Contractor shall, at no cost, provide DSHS and the Office of the State Auditor with reasonable access to Contractor's place of business, Contractor's records, and DSHS client records, wherever located. These inspection rights are intended to allow DSHS and the Office of the State Auditor to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Contract terms. These inspection rights shall survive for six (6) years following this Contract's termination or expiration.
11. **Maintenance of Records.** The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.

Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

12. **Order of Precedence.** In the event of any inconsistency or conflict between the General Terms and Conditions and the Special Terms and Conditions of this Contract or any Program Agreement, the inconsistency or conflict shall be resolved by giving precedence to these General Terms and Conditions. Terms or conditions that are more restrictive, specific, or particular than those contained in the General Terms and Conditions shall not be construed as being inconsistent or in conflict.

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- 13. Severability.** If any term or condition of this Contract is held invalid by any court, the remainder of the Contract remains valid and in full force and effect.
- 14. Survivability.** The terms and conditions contained in this Contract or any Program Agreement which, by their sense and context, are intended to survive the expiration or termination of the particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination Procedure, and Treatment of Property.
- 15. Contract Renegotiation, Suspension, or Termination Due to Change in Funding.**
- If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this contract but prior to the normal completion of this Contract or Program Agreement:
- a. At DSHS's discretion, the Contract or Program Agreement may be renegotiated under the revised funding conditions.
  - b. At DSHS's discretion, DSHS may give notice to Contractor to suspend performance when DSHS determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.
    - (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 DSHS determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to DSHS informing DSHS whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
    - (3) If the Contractor's proposed resumption date is not acceptable to DSHS and an acceptable date cannot be negotiated, DSHS may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
  - c. DSHS may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice. DSHS shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to DSHS in the event the termination option in this section is exercised.
- 16. Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract. Only the CCLS Chief or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

**Additional General Terms and Conditions – Interlocal Agreements:**

- 17. Disputes.** Both DSHS and the Contractor ("Parties") agree to work in good faith to resolve all conflicts



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at the lowest level possible. However, if the Parties are not able to promptly and efficiently resolve, through direct informal contact, any dispute concerning the interpretation, application, or implementation of any section of this Agreement, either Party may reduce its description of the dispute in writing, and deliver it to the other Party for consideration. Once received, the assigned managers or designees of each Party will work to informally and amicably resolve the issue within five (5) business days. If managers or designees are unable to come to a mutually acceptable decision within five (5) business days, they may agree to issue an extension to allow for more time.

If the dispute cannot be resolved by the managers or designees, the issue will be referred through each Agency's respective operational protocols, to the Secretary of DSHS ("Secretary") and the Contractor's Agency Head ("Agency Head") or their deputies or designated delegates. Both Parties will be responsible for submitting all relevant documentation, along with a short statement as to how they believe the dispute should be settled, to the Secretary and Agency Head.

Upon receipt of the referral and relevant documentation, the Secretary and Agency Head will confer to consider the potential options of resolution, and to arrive at a decision within fifteen (15) business days. The Secretary and Agency Head may appoint a review team, a facilitator, or both, to assist in the resolution of the dispute. If the Secretary and Agency Head are unable to come to a mutually acceptable decision within fifteen (15) business days, they may agree to issue an extension to allow for more time.

The final decision will be put in writing, and will be signed by both the Secretary and Agency Head. If the Agreement is active at the time of resolution, the Parties will execute an amendment or change order to incorporate the final decision into the Agreement. The decision will be final and binding as to the matter reviewed and the dispute shall be settled in accordance with the terms of the decision.

If the Secretary and Agency Head are unable to come to a mutually acceptable decision, the Parties will request intervention by the Governor, per RCW 43.17.330, in which case the governor shall employ whatever dispute resolution methods that the governor deems appropriate in resolving the dispute.

Both Parties agree that, the existence of a dispute notwithstanding, the Parties will continue without delay to carry out all respective responsibilities under this Agreement that are not affected by the dispute.

**18. Hold Harmless.**

- a. The Contractor shall be responsible for and shall hold DSHS harmless from all claims, loss, liability, damages, or fines arising out of or relating to the Contractor's, or any Subcontractor's, performance or failure to perform this Agreement, or the acts or omissions of the Contractor or any Subcontractor. DSHS shall be responsible for and shall hold the Contractor harmless from all claims, loss, liability, damages, or fines arising out of or relating to DSHS' performance or failure to perform this Agreement.
- b. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.

**19. Ownership of Material.** Material created by the Contractor and paid for by DSHS as a part of this Contract shall be owned by DSHS and shall be "work made for hire" as defined by Title 17 USCA; Section 101. 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 the Contractor uses to perform the Contract but is not created for or paid for by DSHS is owned by the Contractor and is not "work made for hire"; however, DSHS shall have a perpetual license to use

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this material for DSHS internal purposes at no charge to DSHS, provided that such license shall be limited to the extent which the Contractor has a right to grant such a license.

**20. Subrecipients.**

- a. General. If the Contractor is a subrecipient of federal awards as defined by 2 CFR Part 200 and this Agreement, the Contractor shall:
- (1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
  - (2) Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
  - (3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
  - (4) Incorporate 2 CFR Part 200, Subpart F audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
  - (5) Comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget (OMB) Circular or regulation; and
  - (6) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to <https://ojp.gov/about/offices/ocr.htm> for additional information and access to the aforementioned Federal laws and regulations.)
- b. Single Audit Act Compliance. If the Contractor is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:
- (1) Submit to the DSHS contact person the data collection form and reporting package specified in 2 CFR Part 200, Subpart F, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
  - (2) Follow-up and develop corrective action for all audit findings; in accordance with 2 CFR Part 200, Subpart F; prepare a "Summary Schedule of Prior Audit Findings" reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs.
- c. Overpayments. If it is determined by DSHS, or during the course of a required audit, that the Contractor has been paid unallowable costs under this or any Program Agreement, DSHS may require the Contractor to reimburse DSHS in accordance with 2 CFR Part 200.

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**21. Termination.**

- a. **Default.** If for any cause, either party fails to fulfill its obligations under this Agreement in a timely and proper manner, or if either party violates any of the terms and conditions contained in this Agreement, then the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given 15 working days to correct the violation or failure. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice from the aggrieved party to the other party.
- b. **Convenience.** Either party may terminate this Interlocal Agreement for any other reason by providing 30 calendar days' written notice to the other party.
- c. **Payment for Performance.** If this Interlocal Agreement is terminated for any reason, DSHS shall only pay for performance rendered or costs incurred in accordance with the terms of this Agreement and prior to the effective date of termination.

**22. Treatment of Client Property.** Unless otherwise provided, the Contractor shall ensure that any adult client receiving services from the Contractor has unrestricted access to the client's personal property. The Contractor shall not interfere with any adult client's ownership, possession, or use of the client's property. The Contractor shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination of the Contract, the Contractor shall immediately release to the client and/or the client's guardian or custodian all of the client's personal property.

**Special Terms and Conditions**

1. **Definitions Specific to Special Terms.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
  - a. "Assistance" means help provided to a Client for the purpose of aiding him/her in the performance of tasks.
  - b. "Authorized" means DDA Case Resource Manager, or Social Worker approval of funding for services as evidenced by a social service authorization in ProviderOne.
  - c. "Case Resource Manager (CRM)" means the DSHS or DDA worker assigned to a Client.
  - d. "Client" means an individual whom DSHS has determined eligible to receive DDA services.
  - e. "Culturally Appropriate" means responsive to a Client's cultural beliefs and values, ethnic norms, language needs, religion, and individual differences.
  - f. "DDA" means the Developmental Disabilities Administration within DSHS.
  - g. "Family" means a parent, child, sibling, aunt, uncle, cousin, grandparent, grandchild, grandniece, or grandnephew, including such relatives when related through adoption or marriage or registered domestic partnership.
  - h. "Nurse Delegation" means:
    - (1) Services in compliance with WAC 246-840-910 through 246-840-970 by a registered nurse to provide training and nursing management for nursing assistants who perform delegated nursing tasks.
    - (2) Delegated nursing tasks include, but are not limited to, administration of non-injectable medications, except for insulin, blood glucose testing, and tube feedings.
    - (3) Services include the initial visit, care planning, competency testing of the nursing assistant, consent of the Client, additional instruction, and supervisory visits.
    - (4) Clients who receive nurse delegation services must be considered "stable and predictable" by the delegated nurse.
  - i. "Personal care services" means those specific services under WAC 388-106 provided to DSHS Clients.
  - j. "Physical Assistance" means the provision of hands-on assistance for any task necessary.
  - k. "Positive Behavior Support Plan" means a written plan developed to implement strategies to relate to others and direct interventions to decrease challenging behaviors.
  - l. "Positive Behavior Support Principles" means addressing a challenging behavior that focuses on changing the physical and interpersonal environment and increasing a person's skills so that the person is able to get their needs met without having to resort to a challenging behavior.
  - m. "Primary Caregiver(s)" or "Caregiver" means the person who provides the majority of your care and supervision.
  - n. "Protective Supervision" means supervision to ensure the safety and well-being of a Client,

**Special Terms and Conditions**

exclusive of those responsibilities that should be assumed by a legal representative.

- o. "Respite Care" means short-term, intermittent relief for persons who live with and provide care for individuals with developmental and intellectual disabilities on either an emergency or a planned basis.
- p. "Service Plan" means the Person-Centered Service Plan or Individual Support Plan, which is a written plan for long-term care service delivery, which identifies ways to meet the Client's needs with the most appropriate services or supports as, described under chapter WAC 388-828.
- q. "Transportation Services" means the process of transporting and accompanying a Client from one location to another in accordance with the client's needs.
- r. "Unsupervised access" means:
  - (1) An individual will or may have the opportunity to be alone with a child, juvenile, or a vulnerable adult; and
  - (2) Neither a qualified employee, contract employee, volunteer, nor student intern of the agency, or entity nor a relative or guardian of the child, juvenile or vulnerable adult is present.

**2. Purpose.** The purpose of this Contract is to provide short-term intermittent respite care in order to provide relief for primary caregivers as described under chapter 388-845 WAC. Respite Care can be provided in Community Centers, Senior Centers, Parks and Recreation Departments, and Summer Programs.

**3. Licenses, Registrations, and Certifications.**

- a. The Contractor is required to follow all laws, rules, and policies applicable to their license, registration, and/or certification.
- b. The Contractor shall meet the training requirements associated with their license, registration, and/or certification.
- c. When licensing, certification, and contract requirements differ, the Contractor shall meet the highest standard.
- d. In the event that any required license of the Contractor is revoked or expired, this Contract shall be suspended, without the necessity of written notice by DSHS, as of the effective date of revocation or the actual date of expiration. In the case of license revocation, this Contract shall then be terminated in accordance with the terms of this Contract, and such termination shall be effective on the effective date of the license revocation.
- e. The provision of Respite Care services cannot result in the licensed provider exceeding their licensed capacity.

**4. General Requirements.**

- a. DSHS shall request services from the Contractor on an as needed basis. This Contract does not obligate DSHS to authorize services to the Contractor.
- b. Respite Care provided under the terms of this Contract must be pre-approved in writing by DSHS in accordance with the Client's Service Plan, and shall be provided in a manner that is culturally

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appropriate for the Client and the Client's family.

- c. All services shall be provided in a manner consistent with the published rules and policies of DSHS and within the scope of acceptable practice as determined by DSHS.
- d. The Contractor must emphasize Positive Behavior Support Principles in the provision of all services to Clients. Positive Behavior Support is based on respect, dignity, and personal choice.

**5. Contractor Qualifications.** The Contractor must:

- a. Be licensed by the State of Washington as a business under chapter 19.02 RCW and shall meet or exceed the minimum licensing requirements under chapter 458-02 WAC.
- b. Contractors shall hold all appropriate endorsements, licenses and certifications in addition to Washington State Business license as applicable to their business operation.
- c. Contractors outside of Washington State must maintain equivalent licensure or certification requirements as paragraph a. and b. above according to their states' requirements for business operation.
- d. Publish on a publically accessible website the services offered by the contractor and make publically accessible the services offered by the contractor. The contractor's website must include:
  - (1) The identified number of service hours being provided in the program/class/event including days/date and start and end time;
  - (2) Activities that will occur during program/class/event; and
  - (3) The rate schedule for the program/class/event.
- e. The Contractor shall ensure that they or their employees possess the following minimum qualifications:
  - (1) Meet minimum age requirements as required by license, certification or rule;
  - (2) Possess the following minimum standards of knowledge and experience:
    - (a) General knowledge of acceptable standards of performance, including the necessity to perform dependably, report punctually, maintain flexibility, and to demonstrate kindness and caring to the Client;
    - (b) Knowledge of when and how to contact the Client's legal representative and the Client's CRM;
    - (c) Adequate skills to read, either directly or through an interpreter, understand, and implement the services authorized in the plan;
    - (d) Adequate communication skills to convey and understand, either directly or through an interpreter, information required to implement the Client's written Service Plan(s) and verbal instructions; and
    - (e) Adequate skills to maintain provider records of services performed and payments received.

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- f. The Contractor shall ensure that employees and volunteers:
  - (1) Understand specific directions for providing the care that an individual Client requires;
  - (2) Meet the need of the client as identified in the Service Plan;
  - (3) Provide services within the scope of practice for their profession/skill level;
  - (4) Observe the Client for change in health status, including weakness, confusion, and loss of appetite;
  - (5) Identify problem situations and take appropriate action;
  - (6) Respond to emergencies without direct supervision; and
  - (7) Respect and consider the Client's individual differences and preferences when performing routine tasks in a culturally appropriate manner, as described in the DDA Guiding Values.
- g. The Contractor shall cooperate with DSHS in the evaluation of the Contractor's performance under the terms of this Contract including the following:
  - (1) Follow-up contact with Clients, their families, legal representatives or primary caregivers regarding their satisfaction with the services provided;
  - (2) Investigation and documentation of all complaints about the service provided; and
  - (3) Periodic monitoring of service documentation records, verification of provider qualifications, and of billing and payment data in ProviderOne.

6. **Statement of Work.** The Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:
- a. Obtain information about the Client's identified needs and care requirements, and ensure that the Client's needs are met while providing services. This includes following the guidance of any written plans for Client support such as the Service Plan, Nurse Delegation assessment or Positive Behavior Support Plan.
  - b. Contact the Client's CRM if the Contractor has not heard from the Client or the Client's primary caregiver within seven (7) days of the Contractor's receipt of the service authorization.
  - c. Make arrangements with the primary caregiver for emergency medical treatment should this become a necessity.
  - d. Deliver Respite Care in a manner consistent with WAC 388-845-1600 through 1620 and DDA Policies. See **Exhibit A, DDA Policies & Agreements.**
  - e. Provide all support needs as identified in the Service Plan including personal care, physical assistance, support and protective supervision to the Client in daily routine activities and to prevent injury to him or herself and to others.
  - f. Maintain transportation records to document the dates, times, destinations, and distances of each Client's transportation services. Upon request, the Contractor shall make the records available to DSHS or DSHS/designee for review and audit.

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- g. Maintain sufficient vehicle and passenger insurance coverage and current driver's license in accordance with chapter 308-104 and 308-106 WAC.
- h. Operate and maintain the transportation vehicle(s) in a manner consistent with protecting and promoting the Client's health and welfare.
- i. Contractor shall not require client, client's guardian and/or client's legal representative to enter into any agreement releasing or limiting Contractor's legal liability for injuries arising out of premises operation, acts of independent contractors, products completion, or personal injuries sustained due to contractor's negligence in connection with providing services under this contract unless contractor, at the same time, requires client, client's guardian and/or client's legal representative to release the State of Washington and all of its agencies, agents, contractors, servants and employees from liability for any acts of contractor causing injuries arising out of premises operation, acts of independent contractors, products completion, or personal injuries sustained due to contractor's negligence in connection with providing services under this Contract.

**7. Parks and Recreation Department.** Parks and Recreation Department contractors are required to comply with the following additional terms:

- a. Parks and Recreation Departments are city, county or other publically operated parks and recreation department for the purpose of providing leisure time activities and facilities and recreational facilities, of a nonprofit nature as a public service as defined under RCW 36.69.010.
- b. Meet the definition of a park and recreation district under RCW 36.68 and RCW 36.69.
- c. Obtain all required licenses, permits or certifications applicable to the program operated by the Parks and Recreation Department.

**8. Additional Client Rights:**

- a. In compliance with Title VI of the Civil Rights Act of 1964, and under RCW 2.42.010, RCW 2.43.010, and RCW 49.60.010, the Contractor shall ensure that Limited English Proficient (LEP) Clients have access to a certified, or, if non-certifiable language, to an otherwise qualified language interpreter, who has successfully passed the DSHS language test. The Contractor shall also ensure that DSHS Clients have access to documents translated into the Client's primary language. To request a qualified interpreter, you must register at <https://hcauniversal.com/new-reg1.a.uester-registration/> or email [scheduling@ulsonline.net](mailto:scheduling@ulsonline.net). For additional information, visit their [Provider FAQs](#) page.
- b. In compliance with the Americans with Disabilities Act (ADA) of 1990, under RCW 2.42.010 and RCW 49.60.010, the Contractor shall ensure that deaf, deaf-blind, or hard of hearing Clients have access to the services of an interpreter certified by the National Association of the Deaf (NAD) as a Sign Language Interpreter, or a qualified interpreter having a Registry of Interpreters for the Deaf (RID).

**9. Duty to Report Suspected Abuse, Abandonment, Neglect or Financial Exploitation.** The Contractor and its employees must immediately report all instances of suspected abandonment, abuse, financial exploitation or neglect of a vulnerable adult under RCW 74.34.035 or a child under RCW 26.44.030. The report shall be made to the Department's current state abuse hotline, 1-866-363-4276 (END-HARM). The Contractor must also report all suspected instances to the Client's case manager. If



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the notice to the Client's case manager was verbal then it must be followed up by written notification within one business day. Further, when required by RCW 74.34.035, the Contractor and the Contractor's employees must immediately make a report to the appropriate law enforcement agency.

10. **Significant Change in Client's Condition.** The Contractor agrees to report any significant change in the Client's condition within twenty-four (24) hours to the Client's Case Manager.
11. **Death of Clients.** The Contractor shall report all deaths of DSHS Clients receiving services under this Contract to the Client's case manager within one hour upon notification of the death. The Contractor shall follow up with written notification of the Client's death to the Client's case manager within one business day.
12. **Provider Screenings.**
  - a. The State must ensure the Department does not pay federal funds to excluded persons or entities. States are also required to check for the death of an individual provider, agency owner or authorized official prior to contracting. The required ownership and control information for individuals with ownership interest of five percent (5%) or more, officers and managing employees will be obtained from the Medicaid Provider Disclosure Statement and checked against all required federal exclusion lists, and the Social Security Death Master List, prior to finalizing a contract.
  - b. The Contractor will report any change in ownership, managing employees, and/or those with a controlling interest to the Department within thirty-five (35) days of such a change so that these individuals can be screened against the required federal exclusion lists as well as the Social Security Death Master List. For detailed instructions, please refer to the Medicaid Provider Disclosure Statement.
13. **Duty to Disclose Business Transactions.**
  - a. Under 42 CFR 455.104, the Contractor is required to provide disclosures from individuals with ownership interest, managing employees, and those with a controlling interest. The State must obtain certain disclosures from providers and complete screenings to ensure the State does not pay federal funds to excluded person or entities. Contractor must complete and submit a Medicaid Provider Disclosure Statement, DSHS Form 27-094. According to 42 CFR 455.104(c) (1), disclosures must be provided:
    - (1) When the prospective Contractor submits their initial application;
    - (2) When the prospective Contractor signs the contract;
    - (3) Upon request of the Department at contract revalidation/renewal;
    - (4) Within thirty-five (35) days after any change in ownership of the Contractor entity.
  - b. Failure to submit the requested information may cause the Department to refuse to enter into an agreement or contract with the Contractor or to terminate existing agreements. The State will recover any payments made to a disclosing entity that fails to disclose ownership or control information, as required by 42 CFR 455.104.
  - c. Under 42 CFR 455.105(b), within thirty-five (35) days of the date of a request by the Secretary of the U.S. Department of Health and Human Services or DSHS, the Contractor must submit full and complete information related to Contractor's business transactions that include:

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- (1) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the twelve (12) month period ending on the date of the request; and
- (2) Any significant business transactions between the Contractor and any wholly owned supplier, or between the Contractor and any subcontractor, during the five (5) year period ending on the date of the request.

d. Failure to comply with requests made under this term may result in denial of payments until the requested information is disclosed. See 42 CFR 455.105(c).

14. **Background Check.** The signatory for this contract agrees to undergo and successfully complete a DSHS criminal history background check conducted by DSHS every three years or more often as required by program rule or as otherwise stated in the contract, and as required under RCW 43.20A.710, RCW 43.43.830 through 43.43.842. If the Contractor has owners, administrators, subcontractors, employees or volunteers who may have unsupervised access to Clients in the course of performing the work under this Contract, the Contractor shall require those owners, administrators, subcontractors, employees or volunteers to successfully complete a criminal history background check prior to any unsupervised access and at least every three years thereafter or more often if required by program rule or as otherwise stated in the contract. The Contractor must maintain documentation of successful completion of required background checks.
15. **False Claims Act Education Compliance.** Federal law requires any entity receiving annual Medicaid payments of five (5) million or more to provide education regarding federal and state false claims laws for all of its employees, contractors and/or agents. If Contractor receives at least five (5) million or more in annual Medicaid payments under one or more provider identification number(s), the Contractor is required to establish and adopt written policies for all employees, including management, and any contractor or agent of the entity, including detailed information about both the federal and state False Claims Acts and other applicable provisions of Section 1902(a)(68) of the Social Security Act. The law requires the following:  
  
Contractor must establish written policies to include detailed information about the False Claims Act, including references to the Washington State False Claims Act;
  - a. Policies regarding the handling and protection of whistleblowers;
  - b. Policies and procedures for detecting and preventing fraud, waste, and abuse;
  - c. Policies and procedures must be included in an existing employee handbook or policy manual, but there is no requirement to create an employee handbook if none already exists.
16. **Bribes and Kickbacks.** Federal law stipulates that Medicaid participants be offered free choice among qualified providers, therefore any exclusive relationship between the Contractor and any other Medicaid service is prohibited.
17. **State or Federal Audit Requests.** The Contractor is required to respond to State or Federal audit requests for records or documentation, within the timeframe provided by the requestor. The Contractor must provide all records requested to either State or Federal agency staff or their designees.
18. **Drug-Free Workplace.** The Contractor agrees he or she and all employees or volunteers shall not use or be under the influence of alcohol, marijuana, illegal drugs, and/or any substances that impact the Contractor's ability to perform duties under this Contract.

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19. **Execution and Waiver.** This Contract shall be binding on DSHS only upon signature by DSHS with an Authorized Countersignature. Only the Contracting Officer or the Contracting Officer's designee has authority to waive any provision of this Contract on behalf of DSHS.
20. **Consideration.** Total consideration payable to Contractor for satisfactory performance of the work under this Contract shall be based on the following:
- a. DSHS shall pay the Contractor at the published rate, for services provided under this contract. The Contractor hereby waives written notice of subsequent rate changes. Subsequent rate changes will not require a revised Contract and are not disputable. Current rates are published at: <https://www.dshs.wa.gov/altsa/management-services-division/office-rates-management>.
  - b. DSHS will only reimburse the Contractor for the number of hours authorized and provided per client. DSHS will pay the contractor at an established rate in 15-minute intervals. The Contractor will be reimbursed up to the Contractor's published rate for services provided unless that rate exceeds the equivalent of 15 minute intervals of service the client received.
  - c. Transportation services must be written in the client's Service Plan. Mileage shall be paid at current State of Washington rates, as published by the Office of Financial Management, for miles driven while transporting one Client to a waiver service. Transportation is to and from the respite service and must be provided in accordance with WAC chapter 388-845.
  - d. Transportation as a component of the Respite in Community Settings service must be included in the total published rate.
  - e. Administrative functions, such as record keeping, travel to work site, billing, and report development are not billable as separate services but are included in the established rate schedule
  - f. DSHS shall not pay the Contractor separately for the cost of other expenses such as equipment rental, meals and snacks for all day activities this must be rolled into the cost of the service.
21. **Billing and Payment.**
- a. The Contractor shall bill for authorized services using the ProviderOne Payment system, which is the state of Washington's Medicaid management system.
  - b. Billing instructions are located at <https://www.hca.wa.gov/billers-providers-partners/providerone/providerone-billing-and-resource-guide>
  - c. The Contractor agrees to accept this payment as total and complete remuneration for services provided under this Contract to DSHS Clients. DSHS clients cannot be billed fees beyond the hourly contracted rate for the service Respite in Community Settings.
  - d. DSHS shall not pay the Contractor for cancelled or missed appointments, nor for scheduled hours of service when Clients are not seen or served by the Contractor.
  - e. Only DSHS shall have the authority to authorize services under this Contract.
  - f. Respite care is a service authorized in 15 minute increments. DSHS shall not pay for more respite units than is received by the client. Client can pay for services provided that exceed waiver allotment as long as it does not surpass the contracted rate.

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- g. DSHS shall only reimburse or pay for services which are authorized and within the scope of respite services.
- h. The contractor shall provide invoices or documentation of the dates of service, duration of time and total cost prior to service being provided. The CRM will create an authorization in CARE in "reviewing" status. After confirmation that the service is completed appropriately, the CRM will change the status of the authorization to "approved" which will allow the authorization to be claimed.
- i. The contractor shall provide invoices after service provided, as requested by DSHS
- j. If DSHS pays the Contractor for services authorized but not provided by the Contractor, the amount paid shall be considered an overpayment.
- k. If this Contract is terminated for any reason, DSHS shall pay for only those services authorized and provided through the date of termination.
- l. Payment shall be considered timely if made by DSHS within thirty (30) days Payment shall be sent to the address designated by Contractor. DSHS may, at its discretion, terminate the Contract or withhold payments claimed by Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this Contract.

**22. Insurance.**

- a. DSHS certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable.
- b. The Contractor certifies, by checking the appropriate box below, initialing to the left of the box selected, and signing this Agreement, that:

- \_\_\_\_\_  The Contractor is self-insured or insured through a risk pool and shall pay for losses for which it is found liable; or
- \_\_\_\_\_  The Contractor maintains the types and amounts of insurance identified below and shall, prior to the execution of this Agreement by DSHS, provide certificates of insurance to that effect to the DSHS contact on page one of this Agreement.

Commercial General Liability Insurance (CGL) – to include coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, DSHS, its elected and appointed officials, agents, and employees shall be named as additional insureds.

**Exhibit A**

**DDA Policies & Agreements**

**Policies**

The following DDA Policies are hereby incorporated as Contractor Requirements.

5.06	Client Rights
5.13	Protection from Abuse: Mandatory Reporting
5.14	Positive Behavior Support Principles
5.19	Positive Behavior Support for Children & Youth
6.15	Nurse Delegation Services

Policies can be located at <https://www.dshs.wa.gov/dda/policies-and-rules/policy-manual>. In the event DSHS updates or changes these policies, the revised policy/policies will be incorporated into this Contract without the requirement of an amendment.

**DDA Guiding Values:**

The DDA Guiding Values can be located at:

<https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/DDA%20Guiding%20Values%20Booklet.pdf>

**Disability Rights of Washington (DRW) Agreement:**

The following access agreement is regarding "Disability Rights of Washington (DRW) rights and responsibilities. The agreement can be located at:

<https://www.dshs.wa.gov/sites/default/files/DDA/dda/documents/WPAS.pdf>.

*\*Note: WPAS has changed its name to "Disability Rights of Washington (DRW)" and DDD has changed its name to "Developmental Disabilities Administration (DDA)"*