



Washington  
State Department of  
Agriculture

**Contract to**

«Contractor»

through

Washington State Department of Agriculture  
Food Assistance Programs  
for the  
EFAP Tribal Food Pantry Program

**Purpose**

To enable the distribution of food to persons in need by Washington Tribes.

**Start date:** July/01/2015

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### Emergency Food Assistance Program (EFAP) SPECIAL TERMS AND CONDITIONS

1. **EFAP PROGRAM REQUIREMENTS.** Throughout the Contract Period, Contractor shall comply fully with, and ensure any Subcontractor complies fully with, the following EFAP Program Requirements:

- All provisions of this Contract and future amendments.
- All provisions of the food bank and food pantry subcontracts and future amendments
- EFAP Manual
- All applicable federal and state laws.
- Chapter 16-740 WAC

2. **CONTRACTOR'S EFAP RESPONSIBILITIES.**

- 2.1 Contractor shall provide matching funding from other sources of not less than thirty-five (35) percent of its EFAP contract amount. Contractor shall not claim in-kind contributions ("soft money" such as donated labor, food, space, transportation, and the like) as more than fifty (50) percent of its matching funds.
- 2.2 Contractor shall deliver, and shall ensure its Subcontractors deliver, EFAP services in accordance with the EFAP Manual and consistent with Contractor's 2015-17 Emergency Food Assistance Program application, with amendments, if any.
- 2.3 Contractor shall ensure that Food Pantry services include distributing food to eligible families and individuals according to Emergency Food Assistance Program Policies and Procedures for Food Pantry Contractors and Subcontractors. Food Pantries shall be open a fixed number of hours and days each week or month, and such hours shall be publically posted.
- 2.4 Due to the finalization of the 2015-2017 state budget, a revised EFAP application including Attachment B – Face Sheet, and Attachment C – Budget Summary will be required by August 10, 2015. Reimbursements will not be paid until the revised sections of the EFAP application are received by WSDA.
- 2.5 Contractor shall ensure that Food Pantries receiving funds under this Contract provide the most nutritious food possible within their capabilities and resources and over the course of the year shall serve approximately «M\_2016\_\_New\_FP\_Clients» new food pantry clients for FY 2016. Contractor shall serve approximately «M\_2017\_\_New\_FP\_Clients» new food pantry clients for FY 2017.
- 2.6 Contractor shall ensure that Food Banks receiving funds under this Contract shall provide approximately «M\_2016\_\_Pounds\_of\_Food» pounds of the most nutritious food possible within its capabilities and resources to food pantries to distribute to Clients for FY 2016 and approximately «M\_2017\_\_Pounds\_of\_Food» pounds of food to food pantries to distribute to Clients for FY 2017.

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- 2.7 Contractor shall be responsible for carrying out the provisions of the Contract. This includes ensuring that Subcontractors carry out the activities as outlined in this Contract and Contractor's EFAP Application, providing Subcontractors the information and technical assistance to effectively carry out those activities and providing WSDA with all reports and information requested by WSDA.
- 2.8 When procuring food, Contractor shall first attempt to procure food by donation, then from food banks, then wholesale businesses, before purchasing from local retail companies.
3. **EFAP REPORTING.** Contractor shall timely submit reports in compliance with Paragraph 37, Recordkeeping and Reports, of the General Terms and Conditions, Attachment B, Schedule of Submittals, and the following:
- 3.1. The monthly expenditure report of EFAP general funds must include dollars spent under the categories of Administration, Food Pantry Operations, Equipment, Special Dietary Needs Food purchases, and Food Bank operations. Contractor shall break out and report amounts spent by all Subcontractors and Contractor on food purchases, including Special Dietary Needs Food, as a special subset of operational expenditures. Contractor shall include with each monthly expenditure report the EFAP Expanded General Ledger indicating the EFAP costs charged each month. Reports are due each month, whether or not any expense or activity occurred.
- 3.2. Monthly Client data including duplicate and unduplicate count of people served by age group, and households served; the number of Special Dietary Needs Clients served (optional); the number of Supplemental Clients served and supplemental pounds distributed (optional); pounds of food given to Clients; pounds of food delivered by the food bank to the food pantries. Reports are due each month, whether or not any expense or activity occurred.
- 3.3. A yearly close out report that includes total revenue and expenditures from all sources; total duplicate and unduplicated count of people served by age group; households served for the fiscal year; number of Special Dietary Needs Clients served (optional); the number of Supplemental Clients served and supplemental pounds distributed (optional); pounds of food distributed by the food pantries and food banks.
4. **COMPENSATION.** Contractor's compensation for services rendered shall be based on the following rates or in accordance with the following terms:
- 4.1. Reimbursement only for allowable administrative activities, which are limited to ten percent of the total yearly EFAP budget amounts and expenses and allowable operational activities and expenses as described in the EFAP Manual.
- 4.2. Compensation for services rendered in accordance with Attachment A, Budget; funding and therefore compensation is subject to final state budget.
- 4.3. Provided Contractor's total billings do not exceed the compensation amount specified for each fiscal year listed in #12 of the Face Sheet, Contractor may request reimbursement for travel and travel-related expenses for delivering EFAP services under this Contract, including attendance at food-bank related trainings and conferences. Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary

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during periods of required travel. Contractor shall receive compensation for travel expenses at current state of Washington travel reimbursement rates.

5. **CONTRACT MANAGEMENT.** The WSDA Representative identified on the Contract Face Sheet shall be the contact for all communications about this Contract. The Contractor's EFAP Representative identified on the Contract Face Sheet shall be the contact for all communications about this Contract. The Contractor shall notify WSDA in writing within two (2) business days of any changes in personnel serving as the Contractor's Representative.
6. **CULTURALLY RELEVANT SERVICES.** In performing work pursuant to any Agreement, the Contractor may develop and operate programs and deliver goods, services, and/or benefits in a manner that is culturally relevant and particularly suited to and/or particularly located for access by members of the Contractor's Nation or other tribes, in accordance with tribal laws and policies.
7. **HIRING AND EMPLOYMENT PRACTICES.** The Contractor may give preference in its hiring and employment practices to members of the Contractor's Nation or other Tribes per Tribal Preference laws, who have met all requirements for that position, including, state requirements, and as may be provided by tribal laws and policies.
8. **SOVEREIGN IMMUNITY.** Nothing whatsoever in this Contract constitutes or shall be construed as a waiver of the Contractor's sovereign immunity.
9. **WRITTEN POLICIES AND PROCEDURES.** Contractor shall prepare and maintain written policies and procedures governing its general and EFAP services under this Contract. Contractor's policies and procedures shall be consistent with federal and state regulations, as applicable, and include the elements identified below:
  - 9.1. Personnel
  - 9.2. Job Descriptions
  - 9.3. Organization Chart
  - 9.4. Travel
  - 9.5. Fiscal Management
  - 9.6. Affirmative Action Policy and Plan, including:
    - Location of facilities and accessibility to target populations; and
    - Provision for bilingual public contact employees as appropriate.

Contractor must comply with Contractor's policies and procedures and WSDA will monitor such compliance. Contractor's failure to comply with its policies and procedures may be a basis for suspension or termination if the noncompliance affects an essential element of providing EFAP services.

**State Emergency Food Assistance Program (EFAP)  
GENERAL TERMS AND CONDITIONS**

**1. DEFINITIONS.**

As used throughout this Contract, the following terms shall have the meaning set forth below:

**“Administrative Expenses”** - Management and general expenses, including membership dues that cannot be readily identified with a particular program.

**“Applicant”** - A public or private nonprofit organization, tribe, or tribal organization that applies for Emergency Food Assistance Program funding.

**“Authorized Representative”** – Means the WSDA Director and/or the designee authorized in writing to act on the Director’s behalf.

**“Authorized Signature”** - Signature of the board president, tribal chairperson, agency director or other official authorized to sign.

**“Client”** - A person who is in need of emergency food because of economic circumstances and hunger; the term means the same as “Needy Persons” under 7 CFR 250.3 and includes all such persons regardless of whether the person is currently obtaining services from any Emergency Food Provider.

**“Contract”** – Means this agreement.

**“Contractor”** - An applicant that has been awarded state Emergency Food Assistance Program funds, and has entered into this Contract with the WSDA to provide emergency food assistance to individuals within a county, multi-county region, a tribe or tribes.

**“EFAP Manual”** - means the Emergency Food Assistance Program Policies and Procedures Manual for Food Pantry contractors and Subcontractors and the Emergency Food Assistance Program Policies and Procedures Manual for Tribal Voucher Contractors and Subcontractors prepared and distributed by WSDA.

**“Emergency Food Assistance Program (EFAP)”** - The statewide activities of the WSDA to assist local emergency food programs by allocating and awarding state funds.

**“Emergency Food”** - Food that is given to clients who do not have the means to acquire that food themselves, so that they will not go hungry.

**“Emergency Food Provider”** - A local program that provides people who are hungry with any kind of emergency food.

**“Federal Award Uniform Guidance”** means 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, available at [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl)

**“Food Bank”** - An agency that collects, warehouses, and distributes food to emergency food programs and other charities on a regional, county, or statewide basis.

**“Food Pantry”** - An emergency food assistance program that distributes unprepared food without charge to its clients.

**“Full Service Clients”** - For the purposes of EFAP, means Clients who receive food bags with at least three of any of the five main food groups as identified by USDA.

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**“In-Kind”** - The value of volunteer services or donated goods including staff time, rent, food, supplies and transportation.

**“New Client (unduplicated)”** – Client in report month seen for the FIRST time in the current fiscal year.

**“Operational Expenses”** - Those costs clearly identifiable with providing direct services to eligible clients, or distribution services to food pantries.

**“RCW”** - Means Revised Code of Washington.

**“Returning Client (duplicated)”**-Client in report month seen in report month who was previously served during the current fiscal year.

**“Special Dietary Needs”**- Funds to purchase food that meets the nutritional needs of special populations. Special needs population includes infants under one year of age, children with disabilities, pregnant and lactating women, people with chronic diseases such as cancer and diabetes, people with acquired immune deficiency syndrome, people with lactose intolerance, people with chewing difficulties, alcoholics, intravenous drug users, and people with cultural food preferences.

**“Subcontractor”**- Means any association or organization that, by subcontract with the Contractor, is performing all or part of the services under the Contract. The term does not include the Contractor’s employees. The term includes any Subcontractor in any tier.

**“Supplemental Clients”**- Those clients who receive only food items that are comprised of fewer than three of the five food groups and nothing more.

**“WAC”**- Means Washington Administrative Code.

**“WSDA”**- The Washington State Department of Agriculture.

2. **ADVANCE PAYMENTS PROHIBITED.** WSDA shall make no payments in advance of or in anticipation of services to be provided under this Contract.
3. **ALL WRITINGS CONTAINED HEREIN.** This Contract and its incorporated documents contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract binds the parties.
4. **AMENDMENT.** The Parties may alter or amend this Contract by mutual agreement. No amendment shall bind the parties unless in writing and signed by both Parties’ Authorized Representative.
5. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35.** The Contractor must comply with, and ensure that Subcontractors comply with, the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
6. **APPROVAL.** This Contract is not in effect unless signed by WSDA’s Authorized Representative.
7. **ASSIGNMENT.** Contractor shall not transfer or assign this Contract or any claim arising under it without WSDA’s prior written consent.

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8. **ATTORNEYS' FEES.** Unless otherwise expressly permitted in this Contract, each Party shall bear its own attorneys' fees and costs.

### 9. **AUDIT.**

#### 9.1. **General Requirements**

- The Contractor shall maintain, and shall ensure that its Subcontractors maintain records and accounts in conformance with Paragraph 37, Recordkeeping and Reports of these General Terms and Conditions, as otherwise required by the Special Terms and Conditions specific to each Program, and in a manner that will facilitate financial and compliance audits.
- If an audit is required under this Paragraph 9, Contractor shall procure the services of a qualified certified public accountant to conduct audits.
- Contractor is responsible for any audit exceptions incurred by it or its Subcontractor.
- WSDA reserves the right to recover from the Contractor all disallowed costs resulting from an audit.
- Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to WSDA requests for information or corrective action concerning audit issues within thirty (30) days of the date of request. Any management letter from the auditor must also be included with the audit.
- Contractor shall include the audit requirements of this Paragraph 9 in all subcontracts.

9.2. **Federal Funding of \$750,000 or more.** If Contractor expends \$750,000 or more from all federal sources during Contractor's fiscal year, as determined under Part 200.502 of the Federal Award Uniform Guidance, Contractor shall obtain an annual Single Audit conducted in compliance with Federal Award Uniform Guidance and the requirements of this Contract. The \$750,000 includes the value of food received from federal food programs. A Schedule of State Assistance must be included within the audit, to include the EFAP funding.

9.3. **Federal Funding of \$749,999 or less and State Funding of \$100,000 or more.** If Contractor is not required to complete a Single Audit under the previous paragraph and expends \$100,000 or more in total state funds in a fiscal year, Contractor must have a financial audit at least every two years that covers the previous two years as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). Contractor shall submit annual audits to WSDA if Contractor obtains annual audits for its own purposes. The Schedule of State Financial Assistance must be included. As applicable, the schedule must include:

- Contractor agency name
- State program name
- WSDA Contract number
- Contract amount including amendments
- Beginning balance

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- Current year revenues
- Current year expenditures
- Ending balance
- Program total

9.4. Federal Funding of \$749,999 or less and State Funding of \$99,999 or less. If Contractor is not required to complete an Single Audit or financial audit as described in the two previous paragraphs, and Contractor receives at least \$20,000 in EFAP reimbursements from WSDA, Contractor shall submit an Accounting System Verification Form (AGR Form 609-2206) signed by an independent Certified Public Accountant every two years.

### 9.5. Submittal Dates:

- Initial Submittal. Contractor shall submit a copy of its most recent audit report, either a Single Audit or financial audit or Accounting System Verification Form (AGR Form 609-2206), as applicable under this Paragraph 9, no later than ten (10) days after the Contract execution date, except: (1) Contractor is not obligated to resubmit an audit report if Contractor previously submitted its most recent audit report to WSDA and (2) if Contractor was not under a preceding contract with WSDA and previously not obligated to conduct an audit by any other authority, Contractor shall submit an Accounting System Verification Form (AGR Form 609-2206) no later than forty-five (45) days after the Contract execution date.
- Subsequent Submittals. Contractor shall send a copy of reports or forms to WSDA in conformance with the schedule in Attachment B, Schedule of Submittals

## 10. BILLING PROCEDURES AND PAMENT.

- 10.1. Contractor shall submit signed invoices/expenditure reports to the WSDA Representative listed on the Face Sheet, via mail or email to WSDA in conformance with the schedule in Attachment B.
- 10.2. Contractor shall include a detailed general ledger for the program's expenses with every invoice/expenditure Report. Upon WSDA's request, Contractor shall submit supporting documentation (backup) either via mail, email or during site visits. Contractor shall collect and keep on file backup documentation for all Subcontractors' monthly expenditures.
- 10.3. The invoice shall include the Contract Number and indicate the costs incurred for each budget category as directed by WSDA and indicated on WSDA's invoice template.
- 10.4. WSDA will pay Contractor upon acceptance of services provided and receipt of properly completed invoices.
- 10.5 Payment is timely if made by WSDA within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be transferred electronically to Contractor's designated bank account unless Contractor requests checks to be sent to the address designated by Contractor.

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- 11. CALCULATION OF TIME.** Unless otherwise expressly stated, all time periods called for in this Contract indicate calendar years, months, days.
- 12. CIVIL RIGHTS/NONDISCRIMINATION.** Contractor shall ensure compliance with all federal, state, and local laws concerning civil rights and nondiscrimination. Contractor and Contractor's agents, employees, and Subcontractors shall not discriminate against anyone on the basis of race, color, national origin, sex, age, creed, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.
- 13. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION.**
- 13.1. "Confidential Information" as used in this section includes:
- All material provided to the Contractor by WSDA that is designated as "confidential" by the WSDA;
  - All material produced by the Contractor that is designated as "confidential" by WSDA; and
  - All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- 13.2. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of WSDA or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide WSDA with its policies and procedures on confidentiality. WSDA may require changes to such policies and procedures as they apply to this Contract whenever the Contractor reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by WSDA. Upon request, the Contractor shall immediately return to WSDA any Confidential Information that WSDA reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- 13.3. Unauthorized Use or Disclosure. The Contractor shall notify WSDA within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.
- 14. CONFORMANCE WITH LAW.** If any part of this Contract appears to violate any statute or rule, the provision may be interpreted to conform to statute or rule if such interpretation conforms to the purpose of this Contract.

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### **15. DEBARMENT.**

- 15.1. The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any State department or agency from participating in transactions.
- 15.2. The Contractor agrees to include the above requirement in all subcontracts into which it enters to complete this Contract.
- 15.3. Contractor shall notify WSDA within thirty (30) days of any exclusion from participating in transactions as set forth in Paragraph 15.

### **16. DISPUTES.** Except as otherwise provided in this Contract, when a dispute arises between the Parties that cannot be resolved by direct negotiation, either party may request review by WSDA's Director, who may designate another neutral person to hear the dispute, as follows:

- 16.1. The request must:
  - Be written,
  - Identify the Contractor's name, address and the Contract number,
  - State the disputed issues,
  - State each Party's position,
  - Be mailed to the Director, with a copy to the other Party's representative ("respondent") within fifteen (15) working days after the Parties agree that they cannot resolve the issue.
- 16.2. The respondent shall submit a written answer to the request to both the Director or the Director's designee and the requestor within ten (10) working days.
- 16.3. The Director or Director's designee shall review the written statements and provide a decision in writing to both Parties within fifteen (15) working days. At the discretion of the Director or Director's designee, the time in which to make a decision may be extended upon notice to both Parties.
- 16.4. The decision of the Director or the Director's designee shall be the final agency decision.
- 16.5. The Parties shall attempt to resolve the dispute under this Paragraph 16 before filing a claim in any tribunal.
- 16.6. The Contractor shall establish a similar process for all Subcontracts under this Contract no later than thirty (30) days after execution of the subcontract.

### **17. DISTRIBUTION OF FOOD OR FUNDS, ASSOCIATED SERVICES.**

- 17.1. Contractor shall not, and shall ensure that Subcontractors do not, sell, exchange, or barter any food purchased with or supported with EFAP funding.
- 17.2. Contractor shall distribute without charge food purchased with and supported with EFAP funding to Clients.

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17.3. Contractor shall ensure that its operations and the operations of its Subcontractors adhere to a policy of good stewardship of public funds.

- 18. DUPLICATE PAYMENT.** Contractor shall not submit request for payment or reimbursement that duplicates any work to be charged to any other source.
- 19. ETHICS/CONFLICT OF INTEREST.** Contractor shall comply with, and ensure that Subcontractors comply with, Chapter 42.52 RCW, the Ethics in Public Service Act, and any other applicable state or federal law related to ethics or conflicts of interest.
- 20. GOVERNING LAW AND VENUE.** This Contract shall be interpreted in accordance with the laws of the State of Washington. Venue is in Thurston County Superior Court.
- 21. INCORPORATION OF REFERENCED DOCUMENTS.** Unless otherwise expressly stated, all attachments and documents referenced in this Contract are incorporated and made a part of this Contract.
- 22. INDEMNIFICATION.** To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the State of Washington, WSDA, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.
- The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.
- Subcontracts shall include a comprehensive indemnification clause holding harmless Contractor, WSDA, the state of Washington, its officers, employees and authorized agents.
- 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, officers, agents or employees.
- 23. INDEPENDENT CAPACITY OF CONTRACTOR.** An independent contractor relationship is created by the Contract. The Contractor and its employees or agents are not employees or agents of the State of Washington or WSDA. The Contractor shall not hold itself out or claim to be an officer or employee of WSDA or the State of Washington, nor make any claim of right, privilege, or benefit that would accrue to such officer or employee under law. Conduct and control of the work shall be solely with the Contractor.
- 24. INDUSTRIAL INSURANCE COVERAGE.** Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, WSDA may collect from Contractor the full amount payable to the Industrial Insurance Accident Fund. WSDA may deduct the amount owed by Contractor to the accident fund from the amount payable to Contractor by WSDA under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any rights of L&I to collect from Contractor.
- 25. INSPECTION.** Upon reasonable notice and at reasonable times, Contractor shall allow and shall ensure that Subcontractor allows, access for WSDA and representatives of the Washington State Auditor's Office to inspect, review, and audit all records concerning this Contract. Contractor shall allow and shall ensure

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Subcontractor allows for WSDA and representatives of the Washington State Auditor's Office have access to inspect, without notice, facilities storing or distributing foods delivered under this Contract. If this Contract includes federal funding, Contractor shall also ensure that USDA representatives have the same rights of inspection, review, and audit as WSDA.

### **26. INSURANCE.**

- 26.1. Contractor shall maintain insurance coverage meeting the following requirements:
- Minimum public liability insurance coverage of \$1,000,000 per occurrence.
  - Theft coverage of not less than the replacement value of equipment and inventory purchased with EFAP funds when the acquisition cost was \$5,000 or more.
  - For using motor vehicles in conducting activities, minimum liability coverage of \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property; in addition, collision and comprehensive insurance against physical damage, including theft, shall be provided except when the cost of the coverage would exceed the value of the vehicle.
- 26.2. All public or general liability, excess, umbrella, and property insurance policies shall name the State of Washington, Washington State Department of Agriculture (WSDA), its elected and appointed officials, agents and employees as an additional insureds.
- 26.3. Contractor shall ensure that any of its Subcontractors with an annual budget of \$200,000 or more maintain general liability insurance conforming to this Paragraph 25. Contractor shall require Subcontractors with annual budgets of under \$200,000 per year to carry minimum public liability insurance coverage of \$500,000 per occurrence limits and minimum liability insurance for motor vehicles in the amount of \$500,000 per occurrence, using a Combined Single Limit for bodily injury and property. Contractor may require the Subcontractor to list Contractor as additional insured.
- 26.4. Contractor shall purchase fidelity insurance for every person authorized to receive or deposit funds or issue financial documents and instruments of payment in order to provide protection against loss. The amount of coverage must be \$100,000, or the highest planned reimbursement per Contract period, whichever is lowest.
- 26.5. Contractor shall submit the insurance certifications and additional insured endorsements within thirty (30) days of Contract execution and annually thereafter. The additional insured endorsement must be an ISO Standard Endorsement CG 2026 or equivalent, If Contractor has submitted insurance certifications and additional insured endorsements under a previous contract and such documents are still current, Contractor is relieved of the duty to submit again within thirty (30) days of contract execution. WSDA will terminate the Contract if Contractor fails to timely secure and maintain insurance. In the alternative, WSDA may refuse to reimburse Contractor for any costs until Contractor submits evidence of insurance.

**27. LAWS.** Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies, as amended, of local, state, and federal government.

**28. LICENSING, ACCREDITATION, AND REGISTRATION.** Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

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- 29. LIMITATION OF AUTHORITY.** Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.
- 30. ORDER OF PRECEDENCE.** In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:
- 30.1. Applicable federal and state of Washington statutes, regulations and policies
  - 30.2. Special Terms and Conditions, as applicable
  - 30.3. Budget, Attachment A
  - 30.4. General Terms and Conditions, as applicable
  - 30.5. 2015-17 EFAP Policies and Procedures
  - 30.6. 2015-17 Contractor Application
  - 30.7. Schedule of Submittals, Attachment B
- 31. PERIOD OF PERFORMANCE.** The period of performance is between the Beginning Date and End Dates shown of the Contract Face Sheet, unless earlier terminated, amended, or superseded by a new contract. The execution of this agreement shall constitute a ratification of an earlier verbal agreement between the parties hereto, the terms and conditions of which are fully contained and integrated herein. Accordingly, regardless of the date of execution the beginning date of performance of this agreement shall be July 1, 2015.
- 32. POLITICAL ACTIVITIES.** Contractor shall not, and shall ensure that Subcontractors do not use any funds or food Contracted under this Contract to work for or against ballot measures or for or against the candidacy of any person for public office. Political activity of Contractor and Contractor's officers and employees shall comply with the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the federal Hatch Act, 5 USC 1501-1508.
- 33. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION.** Contractor shall not pay any bonus or commission for the purpose of obtaining approval of Contractor's application for this Contract or any allocation of funds or foods Contracted under the Contract, provided, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.
- 34. PROPERTY MANAGEMENT.** Property purchases made with state funds are subject to same Federal Award Uniform Guidance, Section 200.310 through 200.326 and the EFAP Food Pantry Policy and Procedures Manual available from WSDA when undertaking property purchases, procurement, inventory management and disposal.
- 34.1. Contractor shall obtain WSDA preapproval before purchasing any item costing \$5,000 or more by using the Food Assistance Programs-Equipment Purchase Request/Approval Form, AGR Form 609-2204, regardless of the percentage of EFAP funding used in the purchase. Preapproval is not required for items costing less than \$5,000. Contractor must submit the required form on behalf of any Subcontractor request.

## **FAP - Emergency Food Assistance Program Contract 7-1-15**

- 34.2. Property/Equipment purchased at least in part with EFAP funding and with an original purchase price of \$5,000 or more must be reported on the Annual Inventory Report Form (AGR FORM 609-2201).
  - 34.3. Contractors and Subcontractors may use equipment purchased with EFAP funds as a trade-in for other equipment without receiving approval from WSDA.
  - 34.4. Contractors must submit the Food Assistance Programs-Equipment Disposal Request/Approval Form (AGR Form 609-2203), to WSDA when selling or otherwise disposing of equipment purchased with EFAP funds and with a current fair market value of \$5,000 or more with the exception of equipment used as a trade-in.
  - 34.5. Contractors and Subcontractors must have procurement policies, including inventory policies, in place when they purchase and maintain property purchased with EFAP funding.
  - 34.6. Contractor may not use any funding under this Contract to purchase real property.
- 35. PUBLICITY.** Contractor shall not, and shall ensure that Subcontractor does not, publish or use any advertising or publicity materials states, infers, or implies the name of the State of Washington or WSDA without the prior written consent of WSDA.
- 36. RECAPTURE.** If Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, WSDA reserves the right to recapture funds in an amount to compensate WSDA for the noncompliance in addition to any other remedies available at law or in equity. Repayment by Contractor of funds under this recapture provision shall occur within the time period specified by WSDA. In the alternative, WSDA may recapture such funds from payments due under this Contract.
- 37. RECORDKEEPING AND REPORTS.**
- 37.1. Contractor shall collect such information as necessary from its Subcontractors to maintain records and prepare reports as needed under each program's requirements.
  - 37.2. Contractor shall maintain and make available all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but 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. Contractor shall maintain records in accordance with Paragraph 9, Audit of these General Terms and Conditions.
  - 37.3. Contractor shall retain such records for a period of six years following the date of final payment under the specific funding program.
  - 37.4. 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 finally resolved.
  - 37.5. Contractor shall submit to WSDA such reports and records as required by this Contract in conformance with the schedule shown in Schedule of Submittals, Attachment B.
  - 37.6. Any report that Contractor fails to deliver on time is delinquent.

## FAP - Emergency Food Assistance Program Contract 7-1-15

- 37.7. If a report is delinquent for more than ten (10) days, WSDA may withhold Contractor's funding or suspend this Contract. If funding is withheld or the Contract suspended, WSDA may resume funding or reinstate the Contract after Contractor delivers the delinquent reports and has demonstrated to WSDA's satisfaction that Contractor has taken necessary corrective action to assure timely reporting.
- 37.8. Contractor shall implement corrective action and notify WSDA if a delinquent report, or expected delinquent report, is caused by a Subcontractor's failure to report.
38. **REGISTRATION WITH 211 STATEWIDE TELEPHONE INFORMATION & REFERRAL NETWORK.** Within thirty (30) days of the effective date of the Contract the Contractor must register with the state's 211 Statewide Telephone Information and Referral Network System.
39. **REGISTRATION WITH THE DEPARTMENT OF REVENUE.** If required by law, Contractor shall register with the Washington State Department of Revenue.
40. **SAVINGS.** If funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal expiration, WSDA may immediately terminate the Contract for convenience in conformance with Paragraph 45, Termination or Suspension, of these General Terms and Conditions. In lieu of termination, the Parties may amend the Contract to reflect the new funding limitations and conditions.
41. **SEVERABILITY.** If any part of this Contract or any incorporated document is held invalid, such invalidity shall not affect the other provision of the Contract that can be given effect without the invalid provision, if such conforms to law and the purpose of this Contract. To this end, the provisions of this Contract are severable.
42. **SUBCONTRACTING.**
- 42.1. Contractor shall enter into a written contract with each Subcontractor performing any of Contractor's responsibilities under this Contract before providing Subcontractor with any funding or food under this Contract.
- At a minimum, subcontracts shall comply substantively with WSDA's provided subcontract templates, though Contractor may use different formats or phrasing. Contractor may delete requirement for Subcontractors to indemnify Contractor and name Contractor as additional insured. WSDA does not warrant that the example subcontracts fully protects Contractor's needs or interests. WSDA expressly disclaims that the example subcontract templates include all of any agreement that may exist between Contractor and Subcontractor. Contractor must rely on itself or seek its own legal counsel to determine the adequacy of any provisions of any agreement it enters into with Subcontractors.
  - Contractor may include any additional terms in the subcontracts that Contractor deems necessary for full compliance of its Subcontractors.
  - Unless using WSDA's subcontract templates without modification, Contractor shall submit its subcontract templates for approval by WSDA before entering into agreements with Subcontractors.

## FAP - Emergency Food Assistance Program Contract 7-1-15

- Each subcontract shall be signed by both parties and bind the Subcontractor to all applicable terms of this Contract including, but not limited to, the Program Requirements for the Emergency Food Assistance Program.
  - Each subcontract must be in the legal name of the Subcontractor. Contractor must use Subcontractor's legal name in all documents referencing the Subcontractor that Contractor submits to WSDA
- 42.2. Upon WSDA's request, Contractor shall submit copies of any executed subcontract to WSDA.
- 42.3. Contractor shall offer technical assistance to Subcontractors as needed to assist in carrying out the goals of the funding program.
- 42.4. Contractor shall assure that Subcontractor continues to meet the requirements to be eligible as a Subcontractor throughout the Contract term. Contractor shall secure and maintain on file the following Subcontractor information:
- Proof that Subcontractor is a Federally Recognized Tribe or a 501(c)3 tax exempt charitable organization. Churches and religious organization associated with a church are exempt from the obligation to prove 501(c)3 status. If a subcontractor loses 501(c)3 status during the contract term as a result of automatic revocation for failure to file reports, the Subcontractor remains provisionally eligible to receive funding or food but Contractor must require the Subcontractor to reapply for 501(c)3 status and provide proof of reapplication to Contractor within 30 days of notice of termination. The subcontract must terminate upon the Subcontractor's failure to timely provide proof of reapplication to Contractor, unless subcontractor can show good cause for the failure to reapply. Contractor shall require the Subcontractor to forward documentation of IRS recognition of 501(c)3 status to Contractor within 180 days of the reapplication date. The subcontract must terminate if a Subcontractor's tax-exempt status is denied or the Subcontractor fails to timely forward proof of status;
  - Food bank must have been operating as a food bank for at least one year prior to the beginning date of the subcontract.
  - Proof that Subcontractor is registered with the State of Washington as a nonprofit organization, if Subcontractor is not a Federally Recognized Tribe. Churches and religious organization associated with a church are exempt from the obligation to prove Secretary of State Registration;
  - Current insurance certifications;
  - Proof of sufficient matching funds, where required by WAC 16-740-060(5).
- 42.5. Contractor must notify WSDA within 10 days of any changes to its Subcontractor list.
- 42.6. The existence of a subcontract shall not operate to release or reduce the liability of Contractor to WSDA for any breach in the performance of the Contractor's duties. Contractor is fully responsible to WSDA if a Subcontractor fails to comply with any applicable term or condition of this Contract. Contractor shall appropriately monitor the activities of all Subcontractors.

## **FAP - Emergency Food Assistance Program Contract 7-1-15**

- 42.7. Contractor shall take action to obtain restitution in connection with any claims against Subcontractor for improper distribution use or loss of, or damage to, foods distributed under this Contract.
- 42.8. Contractor shall perform program reviews of Subcontractors according to the requirements as identified in the Tribal Food Pantry Program's policies and procedures manual.
- 42.9. Contractor shall take action to correct any Subcontractor noncompliance in conformance with the Program Requirements for the Program under which the Subcontractor receives food or funds.
- 42.10. Contractor shall include termination or suspension provisions substantially the same as the termination or suspension provisions in this Contract

### **43. SURVIVAL.**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

### **44. TAXES.**

All payments accrued on account of payroll taxes, unemployment contributions, Contractor's income or gross receipts, any other taxes, insurance or expenses for Contractor or its staff shall be the sole responsibility of Contractor.

### **45. TERMINATION OR SUSPENSION.**

- 45.1. Either party may terminate Contract in whole or in part upon thirty (30) days written notice, regardless of whether termination is for cause or at will. If WSDA determines to terminate because of Contractor's failure to comply with this Contract (termination for cause), WSDA may provide notice and offer Contractor the opportunity to correct the noncompliance. The notice will provide a time by which the Contractor must return to compliance. If Contractor fails to correct the noncompliance within the time WSDA allows, WSDA may then immediately terminate the Contract. If WSDA terminates the Contract for cause, Contractor may request a dispute review as provided under Paragraph 16, Disputes, of these General Terms and Conditions.
- 45.2. As an alternative to termination, WSDA may suspend the Contract in whole or in part, effective upon Contractor's receipt of notice of suspension. If WSDA suspends the Contract because of Contractor's failure to comply with this Contract, WSDA may provide opportunity for Contractor to correct the noncompliance during the period of suspension. WSDA will not pay any costs associated with suspended work from the time Contractor receives notice of suspension until the time Contractor receives notice from WSDA to resume work. WSDA may terminate Contract as provided by this Paragraph 44 at any time during a period of suspension.
- 45.3. On the date of receipt of a notice of suspension, and except as otherwise directed by WSDA, Contractor shall:
  - Continue to perform the work not suspended, if Contract is suspended in part;
  - Stop work to the extent of the suspension;

## FAP - Emergency Food Assistance Program Contract 7-1-15

- Place no further orders or enter into any subcontracts for materials, services, or facilities related to the Contract and the extent of the suspension;
- Notify all Subcontractors, if any, of the suspension;
- Provide any reports WSDA requires in connection with the suspended work; and
- Allow WSDA access to conduct any necessary inspections or audits.

45.4. On the date of receipt of notice of termination, and as except otherwise directed by WSDA, Contractor shall:

- Stop work under the Contract, and to the extent specified, in the notice;
- Place no further orders or enter into any subcontracts for materials, services, or facilities related to the Contract;
- Notify all Subcontractors, if any, of the termination;
- Assign to WSDA all of the rights, title, and interest of the Contractor in any orders or subcontracts arising under this Contract. WSDA has the right, in its discretion, to settle with Subcontractors for any outstanding amounts or unperformed work;
- Preserve and transfer any materials, Contract deliverables, or WSDA property in Contractor's possession as directed by WSDA;
- Provide any reports WSDA requires to close the Contract; and
- All WSDA access to conduct any inspections or audits necessary to close the Contract.

45.5. Upon termination, WSDA shall pay Contractor for any valid reimbursable expenses incurred by Contractor under the Contract prior to the date of termination. If Contract is terminated during a period of suspension, WSDA is liable for only any valid reimbursable expenses incurred by Contractor under the Contract prior to the date of suspension. WSDA may withhold any amount due as WSDA reasonably determines is necessary to protect WSDA against potential loss or liability resulting from the termination. WSDA shall pay any withheld amount to Contractor if WSDA later determines that loss or liability will not occur.

45.6. Contractor shall refund WSDA for any misuse or loss of funds or food received by Contractor under this Contract, regardless of whether Contractor has further distributed the funds or food.

45.7. The rights and remedies under this Paragraph 44 are in addition to any other rights and remedies provided under this Contract or as otherwise provide under law.

**46. WAIVER.** Waiver of any default or breach does not waive any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by WSDA's Authorized Representative.

Contract Number: «Contract\_Number\_in\_ECMS»

**ATTACHMENT A, BUDGET**

«Contractor»

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**EFAP**

**SFY 2016 - Year 1**  
**7/01/15-6/30/16**

**SFY 2017 - Year 2**  
**7/01/16-6/30/17**

**\$«EFAP\_\_Year\_1\_\_Total\_»**

**\$«EFAP\_\_Year\_2\_\_Total\_»**

**TOTAL ESTIMATED BUDGET**

**\$«Total\_Contract\_Value»**

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**ATTACHMENT B, SCHEDULE OF SUBMITTALS**

Unless otherwise expressly required by a provision of this Contract, Contractor shall send all submittals and reports to the WSDA Representative at this address:

**Washington State Department of Agriculture - Food Assistance Programs  
1111 Washington St. SE ~ PO Box 42560 ~ Olympia, WA 98504-2560**

<b><u>Due Date</u></b>	<b><u>Form</u></b>
<p>Monthly Reporters: 20<sup>th</sup> of the month following provision of services.</p> <p>Reports are due each month whether or not any expense or activity occurred.</p>	<ul style="list-style-type: none"> <li>• Monthly Invoice/Request for Reimbursement</li> <li>• Demographics- new and returning clients by age group and pounds of food data.</li> </ul>
<p>Quarterly Reporters: The 20th of the month following the quarter for the provision of services: October 20, January 20, April 20 and July 20.</p> <p>Reports are due each quarter whether or not any expense or activity occurred.</p>	<ul style="list-style-type: none"> <li>• Quarterly Invoice/Request for Reimbursement</li> <li>• Demographics- new and returning clients by age group and pounds of food data.</li> </ul>
<p>Forty-five days after the close of the fiscal year.</p>	<p>Emergency Food Assistance Closeout Report, all Tribal Contractors and Subcontractors.</p>
<p>Upon request or as needed</p>	<ul style="list-style-type: none"> <li>• Other reports &amp; data as requested</li> </ul>
<p>Annually, 9 months following end of Contractor’s fiscal year</p>	<ul style="list-style-type: none"> <li>• Single Audit Report, if applicable</li> <li>• Financial Audit, if applicable and if Contractor is conducting an annual audit.</li> </ul>
<p>Every two years, 9 months following the end of Contractor’s fiscal year</p>	<p>Financial Audit or Accounting System Verification Form, if applicable</p>
<p>Within 30 days of contract execution and thereafter upon each renewal.</p>	<p>Insurance Certificates</p>

**ATTACHMENT C, FOOD ASSISTANCE PROGRAMS FORMS & PUBLICATIONS**

Available for download on our website:

<http://agr.wa.gov/FoodProg/Forms.aspx>

**Accounting / Audit:**

- Accounting System Verification Form (AGR FORM 609-2206)

**Equipment:**

- Equipment Procurement Requirements and Guidelines (Publication No. 609-454)
- FAP Equipment Purchase Request / Approval Form (AGR FORM 609-2204)
- FAP Equipment Disposition Requirements (Publication No. 609-452)
- FAP Equipment Disposal Request / Approval Form (AGR 609-2203)

**EFAP Subcontract Templates:**

- EFAP Food Bank Subcontract (AGR FORM 609-2209)

**ATTACHMENT D, CROSS WALK OF TERMINOLOGY USED IN CONTRACT**

Current Language	As in WAC 16-740-030	As in Code of Federal Regulations	As Used in Previous TEFAP & CSFP Contract (Respectively)
Contract	Grant	Agreement (All)	Contract; Contract & Agreement
Contractor	Grantee	Eligible Recipient Agency (7 CFR 251.3); Subdistributing Agency (7 CFR 247.3 & 7 CFR 250.3); Local Agency (7 CFR 247.3) Recipient Agency (7 CFR 250.3)	Subdistributing Agency (SDA); Local Agency
Food Bank	Distribution Center	Food Bank (7 CFR 251.3)	Not Referenced in either
Food Pantry	Food Bank	Food Pantry (7 CFR 251.3)	Household Feeding Program; Pantry
Meal Program	N/A	Soup Kitchen (7 CFR 251.3)	Congregate Feeding Programs; Not Referenced
Program Review	Monitor	Monitor (7 CFR 251.10.e; Reviews (7 CFR 250.19)	Not referenced in either
Subcontract	Subgrant	Agreement (All)	Contract; Contract
Subcontractor	Subgrantee	Eligible Recipient Agency (7 CFR 251.3); Recipient Agency (7 CFR 250.3)	Recipient Agency; Recipient Agency

**ATTACHMENT E, BUSINESS CONTACTS – ALL PROGRAMS**

<p><b>«Contractor»</b></p> <p>&lt;Insert Physical Address&gt;                  &lt;Insert Website Address&gt;                  &lt;Insert General Phone Number- Public Contact&gt;                  &lt;Insert General Email - Public Contact&gt;</p>			
<b>Tribal / Board Chair:</b>	<Insert name> <Insert phone> <Insert e-mail> ]  Would like to be included on email lists for: <input type="checkbox"/> Program Manager <input type="checkbox"/> Fiscal <input type="checkbox"/> Other _____	<b>Executive Director:</b>	<Insert name> <Insert phone> <Insert e-mail> ]  Would like to be included on email lists for: <input type="checkbox"/> Program Manager <input type="checkbox"/> Fiscal <input type="checkbox"/> Other _____
<b>Emergency Contact:</b>	<Insert name> <Insert primary phone> <Insert secondary phone> <Insert e-mail> ]	<b>Other:</b>	<Insert name> <Insert phone> <Insert e-mail> ]
<p><b>EFAP Program Contact List</b></p>			
<b>Program Manager:</b>	<Insert name> <Insert phone> <Insert e-mail> ]	<b>Fiscal Contact:</b>	<Insert name> <Insert phone> <Insert e-mail> ]
<b>Additional Program Contact:</b>	<Insert name> <Insert phone> <Insert e-mail> ]	<b>Additional Fiscal Contact:</b>	<Insert name> <Insert phone> <Insert e-mail> ]