

RESOLUTION NO. 2021-129

RESOLUTION BY THE HEALTH AND HUMAN DEVELOPMENT COMMITTEE AUTHORIZING AGREEMENT BETWEEN THE WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES AND THE RACINE COUNTY PUBLIC HEALTH DIVISION

To the Honorable members of the Racine County Board of Supervisors:

WHEREAS, the Central Racine County Health Department (CRCHD) previously entered into an agency agreement with the Wisconsin Department of Safety and Professional Services for the purposes of protecting public health through enforcement of regulations which will promote safe and adequate care and treatment of individuals receiving tattooing or body piercing and reduce the risk of communicable disease or infection; and

WHEREAS, the term of CRCHD's previous contract expires in 2022 and the newly created Racine County Public Health Division will now continue the duties previously carried out by CRCHD through agreement with the Wisconsin Department of Safety and Professional Services for the purposes described above and as set forth in Exhibit A.

NOW THEREFORE BE IT RESOLVED by the Racine County Board of Supervisors that the Tattooing and Body Art Agreement between the Wisconsin Department of Safety and Professional Services and the Racine County Public Health Division, as set forth in Exhibit A, is hereby authorized and approved; and

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that said contract shall incorporate such terms and conditions as the Corporation Counsel, the Human Service Department Director, and the Health Officer deem necessary and appropriate; and

BE IT FURTHER RESOLVED by the Racine County Board of Supervisors that any two of the County Executive, the County Clerk and/or the County Board Chairman are authorized to execute any contracts, agreements, amendments, or other documents necessary to carry out the intent of this resolution.

Respectfully submitted,

HEALTH AND HUMAN DEVELOPMENT COMMITTEE

1st Reading _____

2nd Reading _____

Scott Maier, Chairman

Adopted _____

For _____

Against _____

Absent _____

Robert N. Miller, Vice Chairman

Fabi Maldonado, Secretary

VOTE REQUIRED: Majority

Prepared by:
Corporation Counsel

Jason Eckman

Eric Hopkins

Jody Spencer

1 Res. 2021-129
2 Page Two

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5 **The foregoing legislation adopted by the County Board of Supervisors of**
6 **Racine County, Wisconsin, is hereby:**

7 **Approved: _____**

8 **Vetoed: _____**

9
10 **Date: _____,**

11

12

13 _____
Jonathan Delagrave, County Executive



TATTOOING AND BODY ART TERMS OF AGREEMENT

For

Acting as an Agent of the Wisconsin Department of Safety and Professional Services, as authorized by Wis. Stat. ch. 463 and Wis. Admin. Code ch. SPS 221 to protect public health through enforcement of regulations which will promote safe and adequate care and treatment of individuals receiving tattooing or body piercing and eliminate or greatly reduce the danger of exposing these individuals to communicable disease or infection.

This Agreement is made between the **Wisconsin Department of Safety and Professional Services**, hereafter called "the Department", and the **Racine County Public Health Division**, hereafter called "Agent". The effective date shall be **February 11, 2022** to **December 31, 2027**, or your program evaluation, whichever occurs first. Unless specifically terminated, the existing contract shall remain in effect past the expiration date until a new contract can be signed.

I. DEFINITIONS

- A. "**Agent**" means the local public health department operating under the terms of this Agreement.
- B. "**Complaint**" means an allegation of a unique incident or concern brought to the attention of Agent or Department regarding a violation of a statute, administrative rule, or local public health ordinance or regulation requirement for a facility under the jurisdiction of Agent.
- C. "**Conflict of interest**" means any time an employee's action or failure to act could produce a private benefit for the employee or the immediate family or business with which the employee is associated; or the matter is one in which the employee is associated; or the matter is one in which the employee in a private capacity or a member of the employee's immediate family or business with which the employee is associated, has an interest. "Immediate family" means the employee's spouse, children, parents, siblings, or any person who receives more than half of his or her support from the employee or from whom the employee received more than half of his support.
- D. "**Department**" means the Wisconsin Department of Safety and Professional Services (DPS).
- E. "**Enforcement Action**" means the legal methods used to make operators come into compliance with administrative code and statutory requirements. Enforcement methods include citations, fines, suspension or revocation of establishment licenses, closures, and jail terms. Reasons for enforcement action include, but are not limited to noncompliance of written orders, continued repeat violations noted on inspection reports, operating without a valid establishment license and imminent public health and safety violations.
- F. "**Follow up Inspection**" means a type of inspection that is used at the discretion of the inspector to check back with the establishment operator to ensure that violations of a non-critical nature have been corrected following a routine inspection. Unlike a re-inspection, a follow up inspection is not required. (See definition for Re-inspection).
- G. "**License**" means a license issued by the Department or its Agent to operate or practice.
- H. "**Licensing Period**" means the period from July 1 through June 30.

- I. **“Pre-inspection”** means a required inspection for all new establishments and establishments having a change of operator. Pre-inspections must be completed before the new or changed operator may open the establishment for business.
- J. **“Reimbursement”** means the portion of the license fee collected by the Agent that shall be returned to the Department.
- K. **“Re-inspection”** means the type of inspection that is required to assure that violations have been corrected when an immediate danger to public health exists that cannot be corrected during the routine inspection; continued repeat violations are noted, or an excessive number of violations are observed.
- L. **“Routine inspection”** means an evaluation of the operational practices of a licensed establishment. The inspection may be scheduled, unscheduled or may be performed in conjunction with the follow up of a complaint or investigation of a public health or safety concern. A separate inspection form shall be used for each type of visit and each shall be signed by the inspector and the operator.

II. INSPECTIONS

- A. Agent will conduct inspections of tattooing establishments, body art establishments and combined tattooing and body art establishments within the geographic jurisdiction of the Agent in accordance with Wis. Stat. ch. 463 and Wis. Admin. Code ch. SPS 221. Additional inspections may be conducted as deemed necessary by the Agent to preserve public health and safety.
- B. Pre-licensing and emergency complaint inspections will take priority over routine inspections and re-inspections. Re-inspections shall take priority over routine inspections.
- C. The Department may conduct inspections of establishments in an Agent’s jurisdiction in response to an emergency; for the purpose of monitoring and evaluating the Agent’s licensing, inspection and enforcement program; for the purpose of training or education; or at the request of the Agent. The Department shall make a reasonable effort to notify the Agent before an inspection is conducted. Agent may accompany the Department during inspections.
- D. Agent may, with written approval from the Department, have written agreements with other local units of government to perform inspection activities relating to enforcement of some of the Department’s laws discussed in this Agreement. The Agent holds the enforcement responsibilities under this contract.
- E. Agent shall conduct inspections regarding complaints against regulated establishments in a timely and adequate manner, and in no case shall Agent allow a lapse of more than 30 days from the date a complaint is received until it conducts the investigation.
- F. When Agent receives information that indicates a communicable disease outbreak has occurred at a body art establishment, the Agent shall notify the Department of Health Services Division of Public Health and investigate the matter. The Agent shall copy the Department on its communication to the Department of Health Services.

III. ENFORCEMENT

- A. Agent will enforce Wis. Admin. Code ch. 221. The Agent will not allow facilities to operate unless properly licensed.

- B. Agent shall have available for evaluation, and have distributed to all health inspectors, a description of the inspection and enforcement plan to be implemented by the Agent. This inspection and enforcement plan and any changes to it shall be reviewed by the Department during periodic evaluations.
- C. Agent will take appropriate enforcement action for significant public health hazards and noncompliance with applicable administrative code.
- D. Agent will take appropriate enforcement action in response to an immediate danger to public health. Additional reasons for enforcement action include, but are not limited to noncompliance of written orders, continued repeat violations noted on inspections reports, and operating without a valid establishment license.
- E. Upon request from the Agent, the Department may aid in enforcement activities.

IV. STAFFING

- A. Agent inspection staff must meet the hiring criteria set forth by local ordinance and personnel practices.
- B. Agent shall make written arrangements for backup of inspection and enforcement staff to ensure adequate coverage during the absence of regular staff. These arrangements shall be made available to the Department upon request.
- C. Upon request of the Agent, the Department will provide technical assistance and training. The Agent will cooperate with the Department in conducting training programs for operators and employees of establishments regulated by Wis. Stat. ch. 463 and Wis. Admin. Code ch. SPS 221, which are in its jurisdiction.
- D. Agent shall prohibit the conducting of inspections by an employee deemed to have a conflict of interest.

V. LICENSES

- A. No establishment regulated by Wis. Stat. ch. 463 may operate within the Agent jurisdiction without a valid license. A practitioner's license issued by the Department is also required.
- B. A license shall be issued annually to each establishment regulated by the Agent and shall be placed in a prominent place in the establishment and readily visible to the public.
- C. A minimum of the following shall appear on the annual license: name and complete address of the establishment and the legal licensee; expiration date of the license; license number; "non-transferable" notation; "Post in Plain Public View"; and type of establishment.
- D. All licenses issued by Agent shall expire on June 30, except that new licenses initially issued during the period beginning on April 1 and ending on June 30 expire on June 30 of the following year.
- E. Agent shall accept a current license of a practitioner issued by the Department. Applications for new practitioner licenses shall be made to the Department. The Department will issue all new practitioner licenses.

VI. REPORTS

- A. Agent shall make a report to the Department within 10 days after taking any enforcement action involving license suspension, revocation, or court action.
- B. By the 10th of each month following the event, Agent shall provide to the Department a list of establishment address or name changes, new establishments issued a license, all changes of operators or partners, and establishments that went out of business unless the Agent is using HealthSpace or current Department software for its licensing and inspection program.
- C. By the 10th of each month, Agent shall report to the Department all temporary tattoo or body-piercing establishment licenses issued during the previous month unless the agent is using HealthSpace or current Department software for its licensing and inspection program.
- D. Within 10 days of any major organizational change or change of key staff for the direct supervision or implementation of work under this Agreement, a report of the change shall be submitted by the Agent to the Department in writing.
- E. By September 1 of each year, Agent shall provide the Department with a complete roster of all establishments, by type and ID number/license number, issued a license during the previous period of July 1 through June 30 unless the Agent is using HealthSpace or current Department software for its licensing and inspection program.
- F. When a new license is issued, DSPS form #3174 shall be sent to the Department unless the Agent is using HealthSpace or current Department software for its licensing and inspection program.
- G. Agent will submit reports as requested by the Department or evaluation staff may request a copy of any inspection report, correspondence or order on any establishment regulated under this Agreement.

VII. RECORDS

- A. The Agent will maintain current records of licensed establishments and facilities within their jurisdiction as provided by HealthSpace or current Department software. Records will include the name, address, ID number and type of establishment. The Agent shall maintain a file record of each establishment licensed under this contract. A file shall minimally contain the latest three (3) years of inspection reports, follow-up investigations, enforcement actions, confirmed complaint follow-ups and summaries, disease outbreak information, variances, and waivers.
- B. Records kept in electronic form shall be in a format that is readily printed or is easily accessible by the Department for audit or evaluation purposes. Copies of all electronic reports shall be maintained separately on disc, hard copy, or electronically backed-up to prevent loss of data .
- C. The Agent, in accordance with applicable public record statutes, shall make any records in Agent's possession that were transferred from the Department accessible to the public.
- D. Records transferred from the Department shall adhere to the same policies as documents issued from the Agent unless specified by the Department.
- E. Agent shall keep records on the cost of issuing licenses to, making investigations and inspections of, providing education, training and technical assistance to establishments regulated by Wis. Stat. ch. 463 and other direct program costs for work under this Agreement.

- F. Agent shall keep records of all revenue, including license fees, pre-inspection fees, change of operator fees, fines, late payments, etc., relating to work covered by this Agreement.
- G. Agent shall keep readily available for use by inspection staff, Department evaluation staff and the public, copies of all pertinent statutes, administrative codes, local ordinances, and enforcement procedures.
- H. Agent shall have, and make available for review by Department staff and the public, written procedures for the investigation and follow-up of citizen complaints about facilities regulated by this Agreement.
- I. Agent shall have, and make available to Department staff and the public, written procedures for the investigation and follow-up of reports of suspected or confirmed contraction of a communicable disease related to procedures.
- J. Agent shall have, and make available to Department staff, a written plan of action to ensure that there is cooperation with federal, state, and other local agencies in the event of a natural disaster or emergency.
- K. Inspection report forms approved by the Department shall be used for all pre-licensing, routine and follow-up inspections.

VIII. REIMBURSEMENT

No later than three (3) months after the close of each fiscal year, the Agent shall provide for the reimbursement to the Department of a portion of fees for each license issued by the Agent in accordance with Wis. Stat. § 463.16. The reimbursement amount shall be 10 percent of the State license fee for each license listed in the Fee Schedule in Wis. Admin. Code ch. SPS 221, Table 221.05 A in the Agent's geographic jurisdiction.

IX. COSTS

Revenue collected by the Agent from establishments and practitioners to carry out the provisions of this Agreement shall not exceed direct program annual costs.

X. EVALUATION

- A. The Department may, at any reasonable time, perform an evaluation of the Agent's program. The evaluation may include a review of records, equipment, reports, policy and any relevant material the Department determines is necessary to complete the evaluation. The evaluation may also include a field component. The evaluation process assesses compliance with the provisions of this Agreement and may require up to a week to complete depending on the size of the Agent's program.
- B. Unsatisfactory performance of the provisions of this Agreement, as determined in an evaluation by the Department, may be a condition of termination of this Agreement or placement of Agent on probation.

XI. DURATION

The Department may not make changes to this contract during the effective dates of the contract without permission of the Agent.

XII. AMENDMENTS

The Agreement may be periodically amended upon the mutual agreement of the Parties in order to meet the changing requirements of the public health program, and the evolving nature of the Department/Agent relationship.

XIII. TERMINATION

- A. Termination of this Agreement by the Department may be based on unsatisfactory performance of the provisions of this agreement by the Agent, as determined by an evaluation by the Department. However, the Agent shall be given the opportunity to respond to the results of the evaluation and negotiate changes necessary to comply with the Agreement.
- B. Upon termination of this Agreement, Agent shall transfer to the Department all applicable inspection and enforcement records and reimburse the Department all amounts due under Article VIII of this Agreement. The transfers and reimbursements shall be made by the Agent within 30 days of termination of this Agreement.
- C. This Agreement may be terminated by either party upon 90 days written notice to the other party.

XIV. NONDISCRIMINATION

- A. In connection with the performance of work under this Agreement, Agent agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, sexual orientation, or national origin. This provision shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Agent further agrees to take affirmative action to ensure equal employment opportunities. Agent agrees to post in a conspicuous place, available for employees and applicants for employment, notices to be provided by the Department setting forth the provision of the nondiscrimination clause.
- B. In connection with the performance of work under this Agreement, Agent agrees not to discriminate against owners or operators of establishments regulated by this Agreement because of age, race, religion, color, handicap, sex, sexual orientation, or national origin.

XV: PRIVACY AND CONFIDENTIAL INFORMATION

A. Definitions

- 1) **“Confidential Information”** means all tangible and intangible information and materials, including all Personally Identifiable Information, being disclosed in connection with this Agreement, in any form or medium (and without regard to whether the information is owned by the State or by a third party), that satisfy at least one of the following criteria:
 - a. Personally Identifiable Information;
 - b. Information not subject to disclosure under Wis. Stat. ch. 19, subch. II. Public Records and Property, related to the Department’s employees, customers, technology (including databases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or

- c. Information expressly designated as confidential in writing by the Department.
- 2) **“Personally Identifiable Information”** means an individual’s last name and the individual’s first name or first initial, in combination with and linked to any of the following elements, if the element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable:
- a. The individual’s Social Security number;
 - b. The individual’s driver’s license number or state identification number;
 - c. The number of the individual’s financial account, including a credit or debit card account numbers, or any security code, access code, or password that would permit access to the individual’s financial account;
 - d. The individual’s DNA profile; or
 - e. The individual’s unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.
- 3) **“Corrective Plan of Action”** means a plan developed by the Agent and approved by the Department that the Agent must follow in the event of any threatened or actual use or disclosure of any Confidential Information not specifically authorized by this Agreement, or in the event that any Confidential Information is lost or cannot be accounted for by the Agent.

B. Duty of Non-Disclosure and Security Precautions

- 1) The Agent shall not use Confidential Information for any purpose other than the limited purposes set forth in the Agreement, and all related and necessary actions taken in fulfillment of the obligations thereunder. The Agent shall not disclose such Confidential Information to any persons other than those Agent Representatives who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Agreement and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Agreement. The Agent shall be responsible for the breach of this Agreement by any said Representatives.
- 2) The Agent shall institute and maintain such security procedures as are reasonable to maintain the confidentiality of the Confidential Information while in its possession or control including transportation, whether physically or electronically.
- 3) The Agent shall ensure that all indications of confidentiality contained on or included in any item of Confidential Information shall be reproduced by the Agent on any reproduction, modification, or translation of such confidential Information. If requested by the Department, the Agent shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the Department, as directed.
- 4) The Agent shall return to the Department all Personally Identifiable Information it maintains, possesses or controls, collected on behalf of this Agreement, upon termination of this Agreement and destroy all copies.

- C. Legal Disclosure. If the Agent or any of its Representatives shall be under a legal obligation in any administrative, regulatory or judicial circumstance to disclose any Confidential Information, the Agent shall give the Department's Chief Legal Counsel prompt notice thereof (unless it has a legal obligation to the contrary) to allow the Department to inspect the Confidential Information and seek a protective order or other appropriate remedy. If such a protective order or other remedy is not obtained, the Agent and its Representatives shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.
- D. Unauthorized Use, Disclosure, or Loss
- 1) Immediately upon becoming aware of any threatened or actual use or disclosure of any Confidential Information that is not specifically authorized by the Agreement, or of any Confidential Information being lost or unaccounted for, the Agent shall notify the Department's Chief Legal Counsel of the problem. Such notice shall include, to the best of the Agent's knowledge at that time, the persons affected, their identities, and a description of the Confidential Information disclosed.
 - 2) The Agent shall take immediate steps to mitigate any harmful effects of the unauthorized use, disclosure, or loss. The Agent shall cooperate with the Department's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual breach, or to recover its Confidential Information, including complying with a Corrective Action Plan.

XVI: ENTIRE AGREEMENT

This Agreement contains the whole agreement between the Parties and supersedes any prior written or oral agreement between the Parties.

AGREED by the Parties through their authorized signatories:

For, and on behalf of Agent:

For, and on behalf of Department:

Signature _____

Al Rohmeyer, Chief Legal Counsel
Department of Safety and Professional Services

Printed Name: _____

Title: _____

Date: _____

Date: _____