

STATE OF SOUTH DAKOTA  
CONSULTANT CONTRACT  
FOR PROVISION OF COMMUNITY HEALTH SERVICES  
BETWEEN

Brookings County Commission  
Suite 210  
520 3<sup>rd</sup> Street  
Brookings, SD 57006  
Referred to as "County"

South Dakota Department of Health  
Family and Community Health  
Child and Family Services  
600 East Capitol Avenue  
Pierre, SD 57501-2536  
Referred to as "State"

The State and the County hereby enter into a contract for providing public health nursing services.

The parties' duties pursuant to this contract shall begin on January 1, 2017, and end December 31, 2017.

I. COUNTY

- A. County is not a full or part-time employee of the State or any agency of the state of South Dakota.
- B. County clerical may use the following equipment or supplies owned by the State of South Dakota:

Computer, system furniture and other equipment necessary to deliver services.

C. County agrees to:

- 1. Pay up to a total of \$10,300.00 for community health nursing services rendered. The County agrees to pay said amount in installments of \$2,575.00 on or before each of the following dates: a) January 15, 2017; b) April 15, 2017; c) July 15, 2017; d) and October 15, 2017. Each installment is to be sent to the: Remittance Center, P.O. Box 5055, Sioux Falls, South Dakota 57117. The State will bill the County approximately one month in advance of the installment due date.
- 2. Provide the following for the community health nurse or nurses:
  - a. Clerical support hours, which do not include WIC Program assistance, for the nursing service hours of this contract.
  - b. Office space sufficient to carry out ordinary day-to-day duties.
  - c. Necessary office equipment, such as a desk, office chair, filing cabinet, and typewriter.
  - d. Provide prompt repairs to office equipment owned by the County.

- e. Provide prompt repairs to the physical facility where the nurse's office is located so as to maintain the office in a habitable condition.
- f. Provide use of a photocopy machine at no cost.
- g. Assure county clerical working with Community Health Services provide documentation on immunization status for MMR, Tdap, annual Influenza and comply with DOH tuberculosis screening policy to prevent the spread of communicable disease.

D. **INSURANCE:** Consultant agrees, at its sole cost and expense, to maintain the following insurance:

1. Commercial General Liability Insurance:

Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this contract or be no less than two times the occurrence limit.

2. Worker's Compensation Insurance:

Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

3. Certificates of Insurance:

Before beginning work under this Contract, Consultant shall furnish State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by State.

E. County agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of performing services hereunder. This section does not require the County to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents or employees.

F. County is a Business Associate of the Department of Health pursuant to requirements of the Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act §§ 13400-13424, 42 U.S.C. §§ 17921-17954 (2009). State's Administrative Policies and Procedures Statement No. 24, as modified from time to time during the term of this agreement, is incorporated by reference and made a part of this agreement as if fully set forth herein.

## Privacy and Security Requirements

1. As a Business Associate, County agrees:
  - a. to be subject to and follow all HIPAA provisions found in 45 CFR 160 and 45 CFR 164, including any potential penalties and/or other consequences relating to a failure to comply with such requirements.
  - b. to use or disclose any Protected Health Information (PHI) solely:
    - i. to meet its obligations in this and any other agreements with State;
    - ii. as required by applicable law, rule or regulation; and
    - iii. as permitted by HIPAA, and any amendments to HIPAA, and subject in particular to limits set forth in 45 CFR § 164.514 (e) (2) (limited data sets) and 45 CFR § 164.502(b) (minimum necessary disclosure requirements);
  - c. to return or destroy all PHI received from, created, or received on behalf of State, at termination of this agreement, or upon request of the DOH, whichever occurs first, or, if such return or destruction is not feasible, to extend the protections of this agreement to the information and limit further uses and disclosures of such PHI;
  - d. to ensure that its agents, including a subcontractor for which Consultant has received prior written consent from State pursuant to “Other Provisions” section H to whom it provides PHI received from or created by Consultant on behalf of State, agrees to the same restrictions and conditions applicable to Consultant, and agrees to implement reasonable and appropriate safeguards to protect all Electronic Protected Health Information (EPHI). Consultant also agrees to create and enforce business associate agreements (BAAs) with any and all subcontractors and to monitor such subcontractors for compliance with HIPAA provisions and to take reasonable steps to ensure that its employees’ actions or omissions do not cause a breach of the terms of this agreement;
  - e. to notify State of any discovery or a breach of unsecured PHI as defined in the HITECH Act or accompanying regulations pursuant to the terms of 45 CFR § 164.410 and cooperate in State’s breach analysis procedures, if requested. A breach shall be treated as discovered by Consultant as of the first day on which such breach is known, or, by exercising reasonable diligence, would have been known, and requires notification to State without unreasonable delay and in no event later than thirty (30) calendar days after discovery of the breach. Such notification will contain the elements required in 45 CFR § 164.410; and
  - f. to comply with all requirements pursuant to the HITECH Act and its implementing regulations, and all additional applicable requirements of the Privacy Rule, including those contained in 45 CFR §§ 164.502(e) and 164.504(e)(1)(ii). Consultant will not directly or indirectly receive remuneration in exchange for any PHI, subject to the exceptions contained in the HITECH Act and without a valid authorization from the applicable individual. Consultant will not engage in any communication which might be deemed to be “marketing” under the HITECH Act, and will comply with all applicable security requirements in 45 CFR §§ 164.308, 164.310, 164.312, and 164.316.

2. Notwithstanding the prohibitions set forth in this agreement, County may use and disclose PHI if necessary for its proper management and administration or to carry out its legal responsibilities, provided the following requirements are met:
  - a. the disclosure is required by law; or
  - b. reasonable assurances are obtained from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed. Such person shall notify County of any instances of which it is aware in which the confidentiality of the information has been breached.
3. Availability of PHI

County further agrees:

- a. to comply with any request for restrictions on certain disclosures of PHI pursuant to 45 CFR § 164.522, as agreed by State and with notice to County;
- b. to make PHI available for purposes of accounting of disclosures, as required by 45 CFR § 164.528 and Section 13405(c)(3) of the HITECH Act; and
- c. to cooperate in providing any accounting required on a timely basis.

## II. STATE

1. Employ a nurse to provide nursing services to the County. The State's community health nurse shall provide a minimum of 2080 hours of nursing service to the County. The primary focus of the community health nurse is preventive care and health education. Nursing services may not exceed the standard of care for which a licensed nurse is permitted to give. Examples of the services that may be provided to the County include:
  - a. Case management of pregnant women
  - b. Prenatal care education
  - c. Cribs for Kids
  - d. Family planning program services
  - e. Post partum services
  - f. Child health conferences
  - g. Developmental screening
  - h. Immunizations
  - i. Community screening and education
  - j. Office services (suture removal, blood pressure)

- k. Counseling and education to individuals and groups
  - l. Communicable disease follow-up/counseling
  - m. Tuberculosis testing – TB preventive medication management
  - n. Serve on boards/child protection/local emergency preparedness
  - o. Client need coordination/community networking
  - p. Physical Activity and Nutrition
  - q. Worksite Wellness
2. Act as a resource to assist people with trying to find the health services to which they are in need of or to which they are entitled.
  3. Provide all program policy manuals and forms necessary to provide nursing services.
  4. Provide personnel who will assure that nursing standards and criteria are being met. On-site review of records, direct observation of nursing activities, review of statistical information and inservices will be provided to assist in the measurement and assurance of quality nursing service.
  5. Provide technical assistance from South Dakota Department of Health, in cooperation with County health officers and private physicians.
  6. Provide fiscal and administrative management to ensure efficient utilization of the resources of both parties. All income from patient fees and donations will be deposited in the State's budgetary accounting system.
  7. Pay for telephone charges, office and medical supplies and postage used by the community health nurse in the course of her or his employment so the nurse can perform duties necessary to carry out the terms and conditions of this contract.
  8. Provides county clerical with tuberculosis screening and appropriate immunizations as needed according to Community Health Services/DOH and infection control policy.

### III. OTHER PROVISIONS

- A. CHOICE OF LAW AND FORUM. The terms and conditions of this contract are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract, which cannot be resolved by mutual agreement, will be tried in the Sixth Judicial Circuit Court, Hughes County, South Dakota.
- B. INTEGRATION. This contract is a complete version of the entire agreement between the parties with respect to the subject matter within this contract and supersedes all prior or contemporaneous written or oral understandings, agreements and communications between them with respect to such subject matter. This contract may be modified or amended only by a writing signed by both parties.
- C. TERMINATION: This contract may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by State for cause at any time, with or without notice.
- D. NOTICE: Any notice or other communication required under this contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Consultant Contact Person on behalf of Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first

class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

- E. ASSURANCES: The Consultant agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Byrd Anti Lobbying Amendment (31 USC 1352), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013, American Recovery and Reinvestment Act of 2009, and Section 106 (g) of the Trafficking Victims Protection Act of 2002, as amended (22 U.S.C. 7104) as applicable.
- F. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION: Consultant agrees that neither Consultant, nor any of Consultant's principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency. Consultant will provide immediate written notice to the Department of Health, Division of Administration (600 East Capitol Avenue, Pierre, SD 57501 (605) 773-3361), if Consultant, or any of Consultant's principals, becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions involving Federal funding. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with all applicable regulations pursuant to Executive Order 12549, including Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. § 98.510 (1990).
- G. FUNDING TERMINATION: This contract depends upon the continued availability of appropriated funds and expenditure authority from Congress, the Legislature or the Executive Branch for this purpose. This contract will be terminated for cause by State if Congress, the Legislature or Executive Branch fails to appropriate funds, terminates funding or does not grant expenditure authority. Funding termination is not a default by State nor does it give rise to a claim against State.
- H. NONASSIGNMENT/SUBCONTRACTING: Consultant shall not assign this contract, or any portion thereof, without the prior written consent of State. Consultant's assignment or attempted assignment of this contract, or any portion thereof, without State's prior written consent constitutes a material breach of contract. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of State. Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage in a manner consistent with this Agreement. Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.
- I. FEDERAL AND STATE LAWS: Consultant agrees that it will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract, including the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213, and any amendment thereto, Section 306 of the Clean Air Act, and Section 508 of the Clean Water Act. Both parties further agree to provide services covered by this contract without regard to race, color, national origin, sex, age or disability as prohibited by state or federal law.
- J. OWNERSHIP: All reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses, or other products produced as a result of the services rendered under this contract, excluding medical records kept in the normal course of Consultant's business, will become the sole property of State. State hereby grants Consultant the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of Consultant's business for any lawful purpose. Either the originals, or reproducible copies satisfactory to State, of all technical data, evaluations, reports and other work product of Consultant shall be delivered to State upon completion or termination of services under this contract.
- K. REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE: Consultant agrees to report promptly to State any event encountered in the course of performance of this contract which results in injury to the person or property of third parties, or which may otherwise subject Consultant or State to liability. Reporting to State under this section does not satisfy Consultant's obligation to report any event to law enforcement or other entities as required by law.
- L. SEVERABILITY: In the event that any term or provision of this contract shall violate any applicable law, such provision does not invalidate any other provision hereof.
- M. AUDIT REQUIREMENTS:  
(EXPENDING \$750,000 OR MORE)  
A nonprofit subrecipient, (as well as profit hospitals) (Consultant), expending \$750,000 or more in one year in Federal awards, must have an annual audit made in accordance with 2 CFR Chapter I, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General's approval

should be obtained annually. The auditor must follow the Auditor General's guidelines when conducting the audit. The draft audit report must be submitted to the Auditor General for approval prior to issuing the final report. The auditor must file the requested copies of the final audit report with the Auditor General. Audits shall be completed and filed with granting agencies by the end of the ninth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. If it appears that a required audit cannot be completed by the end of the ninth month following your fiscal year, you must request an extension from the federal agency for which the majority of federal expenditures relates.

Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.

- N. **FORCE MAJEURE:** Neither Consultant nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this contract, "force majeure" means acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.
- O. **CONTRACT ORIGINAL AND COPIES:** An original of this contract will be retained by the State Auditor's Office. A photocopy will be on file with the South Dakota Department of Health and a second original will be sent to Consultant.
- P. **RECORD RETENTION/EXAMINATION:** Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of three years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.
- Q. **LICENSING AND COMPLIANCE:** The Consultant agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. The Consultant will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Consultant's failure to ensure the safety of all individuals served is assumed entirely by the Consultant.
- R. **CONFIDENTIALITY OF INFORMATION:** For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Consultant by the State. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Consultant is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Consultant shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Consultant; (ii) was known to Consultant without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Consultant without the benefit or influence of the State's information; (v) becomes known to Consultant without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Consultant understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the contract except as required by applicable law or as necessary to carry out the terms of the contract or to enforce that party's rights under this contract. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this contract for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.
- S. **CONFLICT OF INTEREST:** Consultant agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational conflict of interest, or personal gain. Any potential conflict of interest must be disclosed in writing.
- T. **RECYCLING.** State strongly encourages Consultant to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.

The parties signify their agreement by signing below.

\_\_\_\_\_  
Colleen Winter, Director  
Division of Family and Community Health  
Department of Health

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairman, County Commissioner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Kari J. Williams  
Administrator, Financial Management  
Department of Health

\_\_\_\_\_  
Date

State Contact Person: Scott Gregg

Phone: 773-2569

11/28/16  
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