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STATE OF SOUTH DAKOTA
DEPARTMENT OF HEALTH
DIVISION OF FAMILY AND COMMUNITY HEALTH
Sub-Recipient Agreement
Between

Brookings County C/O County Auditor 520 3rd St., Suite 100 Brookings, SD 57006	State of South Dakota South Dakota Department of Health Division of Family and Community Health Office of Child and Family Services 600 East Capitol Avenue Pierre SD 57501 (605) 773-3361
Referred to as Sub-Recipient	Referred to as State

The State and Sub-Recipient hereby enter into this agreement (the "Agreement" hereinafter) for a grant award of Federal financial assistance to Sub-Recipient.

A. REQUIRED AUDIT PROVISIONS FOR GRANT AWARDS

1. FEDERAL AWARD IDENTIFICATION

Information for the Federal Award Identification, as described in 2 CFR 200.331 is inserted below. In the event of a change in the award of funding source, the information inserted below may change. Sub-Recipient's consent shall not be required for the change in award or funding source and the change shall not be subject to the requirements for an amendment to this Agreement. In the event of a change, the State will provide updated information at least annually.

1.1 Subrecipient Information:

a. Sub-recipient's name, City, State, and Zip +4: Brookings County, Brookings SD 57006-3894
b. Sub-Recipient's DUNS number /unique entity identifier: 028749724
c. Federal Award Identification Number (FAIN): 203SD708W1003
d. Federal Award Date: 10/01/2019
e. Sub-award Period of Performance: 06/01/2020 to 05/31/2021
f. Amount of Federal Funds Obligated to Sub-recipient in this action for this period of performance: $ 10,054.00
g. Total Amount of Funds Obligated to Sub-recipient prior to this action for this period of performance: $0.00
h. Amount of Federal Award to the Sub-recipient for this period of performance: $ 10,054.00
i. The federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA), is as follows: This agreement is made for the purpose of providing clerical services for the Women, Infants and Children (WIC) Program in Brookings County and for providing rent for Central Office WIC Nutrition Coordinator. The purpose of the WIC Program is to provide supplemental foods and nutrition education, including breastfeeding promotion and support, through payment of cash grants to State agencies which administer the Program through local agencies at no cost to eligible persons.
j. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity: USDA Food and Nutrition Services, South Dakota Department of Health, and Emily Paulsen – Emily.Paulsen@state.sd.us.
k. CFDA No(s) and Name(s): 10.557 Special Supplemental Nutrition Programs for Women, Infants and Children

l. Is the grant award for research and development (R&D)? YES _____ NO X
m. Department of Health Indirect Cost Rate for federal award: 07/01/2019 to 06/30/2020 = 6.3%
07/01/2020 to 06/30/2021 = 6.10%

1.2 Subrecipient Information:

a. Sub-recipient's name, City, State, and Zip +4: Brookings County, Brookings SD 57006-3894
b. Sub-Recipient's DUNS number /unique entity identifier: 028749724
c. Federal Award Identification Number (FAIN): 213SD708W1003
d. Federal Award Date: 10/01/2020
e. Sub-award Period of Performance: 06/01/2020 to 05/31/2021
f. Amount of Federal Funds Obligated to Sub-recipient in this action for this period of performance:
$ 20,108.00 544.00
g. Total Amount of Funds Obligated to Sub-recipient prior to this action for this period of performance:
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m. Department of Health Indirect Cost Rate for federal award: 07/01/2019 to 06/30/2020 = 6.3%
07/01/2020 to 06/30/2021 = 6.10%

2. PERIOD OF PERFORMANCE OF THIS AGREEMENT:

This agreement shall be effective on June 1, 2020 and will end on May 31, 2021, unless sooner terminated pursuant to the terms hereof.

3. SCOPE OF WORK AND PERFORMANCE PROVISIONS:

a. Sub-recipient is not a full or part-time employee of State or any agency of the state of South Dakota.

b. Sub-recipient, as an independent contractor, is solely responsible for the withholding and payment of applicable income and Social Security taxes due and owing from money received under this contract.

c. Sub-recipient may use the following equipment, supplies or facilities owned by the state of South Dakota:

The Sub-Recipient will use a state owned, personal computer and, if the Sub-Recipient is able to demonstrate to the State's satisfaction that general office equipment and general office supplies are not available, the State will provide such office equipment and supplies, including but not limited to, a desk, chair, filing cabinet and general office supplies. No State facilities will be used by the Sub-Recipient in fulfillment of this contract.

d. Sub-recipient will not purchase capital assets or equipment using State funds.

e. The Sub-Recipient will undertake and complete the work or performance described as:

i. Assist and support State in complying with Federal Funding Accountability and Transparency Act (FFATA) requirements by providing any and all information the State must report to be compliant with FFATA. More information about FFATA reporting requirements can be found at www.fsrs.gov.

ii. Indemnify and hold harmless State for any amount of costs for non-compliance with FFATA requirements due to Sub-recipient non-compliance or failure to comply with provision IV. (E) (i) above. Sub-recipient understands and agrees that it is liable to State for any costs determined to be not allowed by the United States government for non-compliance with FFATA requirements due to Sub-recipient's failure to supply State with any requested information necessary to comply with FFATA.

iii. Will comply with the terms and conditions of the Child Nutrition Act of 1966 which WIC is section 1786: https://fns-prod.azureedge.net/sites/default/files/CNA_1966_12-13-10.pdf. The Healthy, Hunger-Free Kids Act of 2010 https://www.gpo.gov/fdsys/pkg/PLAW-111publ296/pdf/PLAW-111publ296.pdf and 7 CFR 246 https://www.ecfr.gov/cgi-bin/text-idx?SID=a42889f84f99d56ec18d77c9b463c613&node=7:4.1.1.1.10&rgn=div5

iv. Provide clerical services for the Women, Infants, and Children (WIC) Program in compliance with federal regulations and State's WIC Policy and Procedure Manual, including ongoing WIC Program memo and policy revisions. This includes determining income, residency and identity of current potential participants.

v. Hire and manage employees to complete the job roles and responsibilities outlined in this contract and in section 1.06H of the policy and procedure manual located at https://sdwic.org/wp-content/uploads/1.06HClerical.pdf

vi. Allow all new WIC clerical employees to attend and participate in new employee training as stipulated by the WIC Program. This will include overnight travel for the SD WIC-IT training.

vii. Allow WIC clerical employees to attend and participate in required annual training to remain effective/efficient in their current roles.

viii. Make appropriate facilities available for WIC services to participants within the county.

ix. Refer potential applicants to the WIC Program and inform applicants of health services available.

x. Safeguard and maintain the confidentiality of applicants and participants and protect records from loss or use by unauthorized persons.

Sub-recipient further agrees that the contents of WIC records shall not be disclosed to anyone other than persons directly connected with the administration or enforcement of the program. Person's directly connected with the administration or enforcement of the program whom the State Agency determines has a need to know the information for program purposes is outlined in the SD WIC Policy and Procedure Manual 1.09. The manual is located at https://sdwic.org/knowledge/policy-and-procedure-manual/

xi. Maintain complete, accurate, documented and current accounting of all program funds received and expended.

xii. Provide on or around 7th of month the Monthly Expenditure Report for expenses (when applicable). (See Attachment A)

xiii. Maintain and have available for the State's review and audit, all documentation associated with administering this contract. All WIC participants files are property of the State.

xiv. In absence of clerical staff, work with another County on scheduling and reimbursement.

xv. Per executive Order 2014-11, all employees providing WIC services must have a flu vaccination by December 1st of each year.

xvi. Comply with State of South Dakota Cyber-Security requirements and policies found at https://bhr.sd.gov/policies-forms/BHRCyberSecurityAwarenessFINAL04092019.pdf to include any mandatory trainings for any individuals who have a state email account/address.

xvii. Use State funds exclusively for:

a. WIC Clerical Services
- Funding is based on number of WIC participants receiving WIC benefits each month. Budget is based on the participation rates from January 2019 to December 2019.
- Per participant rate is set by the Central Office (FY2021 rate - $5.56). This rate is reviewed annually with yearly budget determination. July 2020 – May 2021 5.67
- The Central Office will generate payment and send to the Sub-Recipient based on WIC issued benefits per month.

b. WIC Clerical Training/Travel
- Funding for training time and travel time to training is based on State average clerical rate, including benefits (FY2021- $18.29). This rate is reviewed annually with yearly budget determination. July 2020 – May 2021 18.606
- Per diem, mileage and lodging for clerical staff attending WIC training, according to county policy, but not exceeding State rates.
- The Central Office will generate payment based on completed Monthly Expenditure Reports submitted by the Sub-Recipient.

c. WIC Other Expenses
- Office rent in amount of $95.00 per month
- The Central Office will generate payment based on completed Monthly Expenditure Reports submitted by the Sub-Recipient.

f. If the State will undertake or complete any work or performance under this Agreement it is described as follows:

i. State will pay, upon the State's satisfaction that the payments are in accordance with all terms of the contract, up to, up to $30,162.00. Expenditure claims are required prior to the initiation of any and all payments. Expenditure claim documentation may include: invoices for reimbursement; receipts of any goods or services purchased; purchase orders for supplies, equipment, etc.; and/or itemized budget details indicating how and the timeframe in which the funds will be used. 30,706.

ii. State will not pay Sub-recipient expenses as a separate item.

iii. Travel expenses will be reimbursed at state rates.

iv. TOTAL CONTRACT AMOUNT (Not to Exceed) $30,162.00. Payment will be made consistent with SDCL Ch. 5-26.

v. State will not be held liable for reimbursement of amounts shown on an itemized billing if not received within 30 calendar days from the close of the month being reported. However, the final invoice of the State of South Dakota fiscal year, ending every year on June 30th, shall be submitted no later than June 9th so payment may be made in the same Fiscal Year as the services are provided.

vi. State agrees to:

a. Administer the WIC Program in accordance with federal regulations and United States Department of Agriculture (USDA), Food and Nutrition Services and the policies and procedures established by the State governing the WIC Program.

b. Provide adequate training to staff and capabilities to operate the WIC Program at the local level including:

- providing the Sub-recipient's clerical personnel with access to WIC Policy and Procedure Manual, on-going WIC Program memos/policy revisions and scheduled Program Trainings.
- answering Sub-recipient clerical personnel's questions regarding the above described Manual and reviewing Sub-recipient clerical personnel's work for the purpose of ensuring compliance with federal WIC guidelines.

c. Establish a food delivery system so qualified local retailers may be authorized to provide foods locally to participants.

d. Develop the annual State Plan as required by Federal WIC regulation for WIC program operation and administration.

e. Establish a financial management system and comply with fiscal requirements prescribed by Food and Nutrition Services guidelines and instructions.

f. Provide monthly payment to the Sub-recipient based on number of participants issued WIC benefits each month.

g. Provide monthly payment for contract period for expenses incurred and reported on the Monthly Expenditure Report (see Attachment A). This includes payment for training of clerical staff.

h. Provide fiscal and administrative management, including participating in the supervision and evaluation of county staff provided by the contract, to ensure efficient utilization of the resources of both parties.

4. BASIS FOR SUBAWARD AMOUNTS:

This grant is made for the purpose of providing clerical services for the Woman, Infants and Children (WIC) Program in Brookings County and for providing rent for Central Office WIC Nutrition Coordinator. The purpose of the WIC Program is to provide supplemental foods and nutrition education, including breastfeeding promotion and support, through payment of cash grants to State agencies which administer the Program through local agencies at no cost to eligible persons.

Amount provided by State/Grantor is	$30,162.00
Amount matched by Sub-Recipient	$ 0.00
Total Grant Amount	$30,162.00

30,706.00

Dollars provided by State consist of the following:

Non-Federal State dollars	$ 0.00
Federal dollars	$30,162.00

5. RISK ASSESSMENTS, MONITORING AND REMEDIES

Risk assessments will be ongoing throughout the project period. Sub-Recipient agrees to allow the State to monitor Sub-Recipient to ensure compliance with program requirements, to identify any deficiencies in the administration and performance of the award and to facilitate the same. At the discretion of the State, monitoring may include but is not limited to the following: On-site visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. As appropriate, the cooperative audit resolution process may be applied.

Sub-Recipient agrees to comply with ongoing risk assessments, to facilitate the monitoring process, and further, Sub-Recipient understands and agrees that the requirements and conditions under the grant award may change as a result of the risk assessment/monitoring process.

In the event of noncompliance or failure to perform under the grant award, the State has the authority to apply remedies, including but not limited to: temporary withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by Sub-Recipient, debarment, or other remedies including civil and/or criminal penalties as appropriate.

6. RETENTION AND INSPECTION OF RECORDS:

The Sub-Recipient agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, and statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Sub-Recipient shall retain such records for a period of three years after the date of the submission of the final expenditure report.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The three-year retention period may be extended upon written notice by the State. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition. When records are transferred to or maintained by the Federal awarding agency or the State, the three-year retention requirement is not applicable to the Sub-Recipient. In the event Sub-Recipient must report program income after the period of performance, the retention period for the records pertaining to the earning of the program income starts from the end of Sub-Recipient's fiscal year in which the program income is earned. In the event the documents and their supporting records consist of indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, the following applies: (1) If submitted for negotiation - If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the State) to form the basis for negotiation of the rate, then the three -year retention period for its supporting records starts from the date of such submission. (2) If not submitted for negotiation - If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the State) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the Sub-Recipient's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

The State, through any authorized representative, shall have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement and shall have access to personnel of the Sub-Recipient for purposes of interview and discussion related to the records, books, papers and documents. State Proprietary Information, which shall include all information disclosed to the Sub-Recipient by the State, shall be retained in Sub-Recipient's secondary and backup systems and shall remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Sub-Recipient's established record retention policies.

All payments to the Sub-Recipient by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment under this Agreement shall be returned to the State within thirty days after written notification to the Sub-Recipient.

7. AUDIT REQUIREMENTS:

If Sub-Recipient expends $750,000 or more in federal awards during the Sub-Recipient's fiscal year, the Sub-Recipient must have an audit conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit
A-133 Coordinator
427 South Chapelle
% 500 East Capitol
Pierre, SD 57501-5070

If the Sub-Recipient expends less than $750,000 during any Sub-Recipient fiscal year, the State may perform a more limited program or performance audit related to the completion of the Agreement objects, the eligibility of services or costs, and adherence to Agreement provisions.

Audits shall be completed and filed with the Department of Legislative Audit by the end of the ninth month following end of the fiscal year being audited.

For either an entity-wide, independent financial audit or an audit under 2 CFR Part 200 Subpart F, the Sub-Recipient shall resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the State or its contractor(s) may perform.

Failure to complete audit(s) as required, including resolving interim audit findings, 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 completely resolved.

The Sub-Recipient shall be responsible for payment of any and all audit exceptions which are identified by the State. The State may conduct an agreed upon procedures engagement as an audit strategy. The Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 C.F.R. 200.84, at the discretion of the State.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the Sub-Recipient must be made available if needed and upon request at the Sub-Recipient's regular place of business for audit by personnel authorized by the State. The State and/or federal agency has the right to return to audit the program during performance under the grant or after close-out, and at any time during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

8. CLOSEOUT

a. The state will provide the sub-recipient a closeout letter after the period of performance end data.

B. STANDARD CLAUSES

1. ASSURANCE REQUIREMENTS:

The Sub-Recipient agrees to abide by all applicable provisions of the following: Byrd Anti Lobbing Amendment (31 USC 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, 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 as amended, 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 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

2. COST PRINCIPLES:

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

3. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Sub-Recipient breaches any of the terms or conditions hereof, this agreement may be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

4. RESTRICTION OF BOYCOTT OF ISREAL

Pursuant Executive Order 2020-01, for contractors, vendors, supplies, or subcontracts with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars ($100,000) or more, by signing this contract Consultant certifies and agrees that it has not refused to transact business activities, have not terminated business activities, and have not taken other similar actions intended to limit its commercial relations, related to the subject matter of the contract, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for State to terminate this contract. Consultant further agrees to provide immediate written notice to State if during the term of the contract it no longer complies with this certification, and agrees such noncompliance may be grounds for contract termination.

5. FUNDING:

This contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this

Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

6. ASSIGNMENT AND AMENDMENT:

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

7. CONTROLLING LAW:

This Contract shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

8. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

9. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

10. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Sub-Recipient, 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.

11. SUBCONTRACTORS/SUB-SUB-RECIPIENTS:

The Sub-Recipient will not use subcontractors or other sub-recipients to perform work under this Agreement without the express prior written consent from the State. The State reserves the right to complete a risk assessment on any proposed sub-contractor or sub-recipient and to reject any person or entity presenting insufficient skills or inappropriate behavior.

The Sub-Recipient will include provisions in its subcontracts or sub-grants requiring its subcontractors and sub-recipients to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Sub-Recipient will cause its subcontractors, sub-recipients, 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. The State, at its option, may require the vetting of any subcontractors and sub-recipients. The Sub-Recipient is required to assist in this process as needed.

12. STATE'S RIGHT TO REJECT

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior.

13. CONFLICT OF INTEREST:

Sub-Recipient agrees to establish safeguards to prohibit any employee or other person from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing and approved, in writing, by the State. In the event of a conflict of interest, the Sub-Recipient expressly agrees to be bound by the conflict of interest resolution process set forth in SDCL § 5-18A-17 through 5-18A-17.6.

14. TERMS:

By accepting this Agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the State shall be a violation of the terms of this Agreement, and the Agreement shall be subject to termination.

15. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Sub-Recipient certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Sub-Recipient further agrees that it will immediately notify the State if during the term of this Agreement it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

C. AGENCY OR GRANT SPECIFIC CLAUSES

1. This agreement is exempt from the request for proposal process.

2. Does this agreement involve Protected Health Information (PHI)? YES (X) NO ( )

   a. Sub-recipient 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

   i. As a Business Associate, Sub-recipient 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:
         1) to meet its obligations in this and any other agreements with State;
         2) as required by applicable law, rule or regulation; and

3) 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 Sub-recipient has received prior written consent from State pursuant to "Standard Clauses" section 11 to whom it provides PHI received from or created by Sub-recipient on behalf of State, agrees to the same restrictions and conditions applicable to Sub-recipient, and agrees to implement reasonable and appropriate safeguards to protect all Electronic Protected Health Information (EPHI). Sub-recipient 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 Sub-recipient 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). Sub-recipient 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. Sub-recipient 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.

ii. Notwithstanding the prohibitions set forth in this agreement, Sub-recipient 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 Sub-recipient of any instances of which it is aware in which the confidentiality of the information has been breached.

iii. Availability of PHI

Sub-recipient 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 Sub-recipient;

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.

3. PROPERTY MANAGEMENT STANDARDS:

The Sub-Recipient agrees to observe Federal Government uniform standards governing the utilization of property whose cost was charged to a project supported by a Federal grant.

4. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding the State's rules, regulations and policies to the Sub-Recipient and to assist in the correction of problem areas identified by the State's monitoring activities.

5. LICENSING AND STANDARD COMPLIANCE:

The Sub-Recipient 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 Sub-Recipient 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 Sub-Recipient's failure to ensure the safety of all individuals served is assumed entirely by the Sub-Recipient.

6. WORK PRODUCT:

Sub-Recipient hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, state proprietary information, state data, end user data, Personal Health Information as defined in 45 CFR 160.103, and all information contained therein provided to the State by the Sub-Recipient in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Sub-Recipient without the written consent of the State.

Paper, reports, forms software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State none the less reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Sub-Recipient agrees to return all information received from the State to State's custody upon the end of the term of this contract, unless otherwise agreed in a writing signed by both parties.

7. IT STANDARDS:

Any software or hardware provided under this agreement will comply with state standards which can be found at http://bit.sd.gov/standards/.

8. HOLD HARMLESS:

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

9. INSURANCE:

Before beginning work under this Agreement, the Sub-Recipient shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. The Sub-Recipient, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Sub-Recipient agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Sub-Recipient shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

The Sub-Recipient shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than $1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance:

The Sub-Recipient shall maintain business automobile liability insurance or an equivalent form with a limit of not less than $ 0 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

C. Worker's Compensation Insurance:

The Sub-Recipient shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. Professional Liability Insurance:

The Sub-Recipient agrees to procure and maintain professional liability insurance with limit not less than $ 0.

10. CONFIDENTIALITY OF INFORMATION:

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Sub-Recipient by the State. Sub-Recipient 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. Sub-Recipient 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. Sub-Recipient 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. Sub-Recipient 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 Sub-Recipient; (ii) was known to Sub-Recipient 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 Sub-Recipient without the benefit or influence of the State's information; (v) becomes known to Sub-Recipient 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. Sub-Recipient 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 of the information disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the agreement except as required by applicable law or as necessary to carry out the terms of the agreement or to enforce that party's rights under this agreement. Sub-Recipient 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 agreement 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, including but not limited to posting this Agreement on the State's website. If work assignment performed in the course of this Agreement required security requirements or clearance, the Sub-Recipient will be required to undergo investigation.

Sub-recipient acknowledges that the State shares general information, including performance information, about Sub-recipient among and between other State agencies upon request of such agencies for the purpose of making determinations of the risk involved with potential, subsequent grant awards and for other purposes. Sub-recipient expressly consents and agrees to such uses by the State.

11. FEDERAL AND STATE LAWS:

Sub-Recipient agrees that it will comply with all federal and state laws, rules, and regulations that 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 provided by state or federal law.

12. REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE:

Sub-Recipient agrees to report promptly to State any event encountered in the course fo performance of this contract which results in injury to the person or property of third parties, or which may otherwise subject Sub-Recipient or State to liability. Reporting to State under this section does not satisfy Sub-Recipient's obligation to report any event to law enforcement or other entities as required by law.

13. FORCE MAJEURE:

Neither Sub-Recipient 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.

14. 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 Sub-Recipient.

15. When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

16. Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

17. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

D. SUB-RECIPIENT ATTESTATION

By signing this Agreement, Sub-Recipient attests to the following requirements as set forth in SDCL § 1-56-10:

A. A conflict of interest policy is enforced within the recipient's or sub-recipient's organization;

B. The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or sub-recipient's website;

C. An effective internal control system is employed by the recipient's or sub-recipient's organization; and

D. If applicable, the recipient or sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or sub-recipient's website.

Sub-Recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were provided to the State and resolved to their satisfaction prior to signing this Agreement.

In the event of a significant change in the conflict of interest policy, sub-recipient agrees to provide immediate notice of such change to the State, and provide a copy of the new conflict of interest policy. Sub-recipient understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

Furthermore, pursuant to SDCL § 1-56-10, if a conflict of interest is identified as outlined by your organization's conflict of interest policy, you are required to disclose the conflict to the Department of Health for display on the website created pursuant to SDCL § 1-27-45.

THE FOLLOWING MUST BE COMPLETED BY THE SUB-RECIPIENT:

1) Is your organization required to file the Internal Revenue Service Form 990? ____Yes ____No

   If you answered "YES," in the space provided below, please provide the link to your website where this information can be found.

   _____
   _____

2) Is your organization subject to compliance with the federal Single Audit Act? ____Yes ____No

   If you answered "YES," in the space provided below, please provide the link to your website where the audits can be found.

   _____
   _____

3) Have any conflicts of interest been identified pursuant to your organization's conflict of interest policy? ____Yes ____No

   If you answered "YES," in the space provided below, please list any and all identified conflicts of interests.

   _____
   _____
   _____
   _____
   _____
   _____
   _____
   _____

E. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by signing below.

Colleen Winter, Director Division of Family and Community Health Department of Health	Date	Sub-recipient Signature	Date 5/5/2020
		Michael Bartly Print or Type Sub-recipient Name	
Kari J. Williams Administrator, Financial Management Department of Health	Date		

State Agency Coding:

CFDA#	10.557			
Company	2018	1000	1000	1000
Account	5206570	5206570	5206570	5206570
Program	0904004	0901001	0901001	0901001
Fund Src-subfund	113WC			
Dollar Total	$30,162.00	$30,706.00		

State Program Contact Person: Emily Paulsen
Phone: 773-4988

State Fiscal Contact Person: Contract Accountant
Phone: 605 773-3361

Sub-Recipient Program Contact Person: _____
Phone: _____
Sub-Recipient Program Email Address: _____

Sub-Recipient Fiscal Contact Person: _____
Phone: _____
Sub-Recipient Fiscal Email Address: _____

Auditor Approval _____

Attachment A

FY21 6.1.20 - 5.31.21 SD DEPARTMENT OF HEALTH-WIC PROGRAM MONTHLY EXPENDITURE REPORT

WIC LOCAL AGENCY (County Name): Brookings County Contract #: 21SC090531

TOTAL CONTRACT BUDGET: $ 30,162.00 MONTH/YEAR SERVICES PROVIDED: June 2020

ACTUAL EXPENDITURES FOR REPORTING MONTH

Note: Meals can't exceed state rates		Leave before	Return after	Mileage can't exceed state rate of $.42 per mile	Lodging: Includes actual cost of lodging up to a maximum of:
$6	Breakfast	5:31 AM	7:59 AM		$55 plus tax per day June 1- June 30 $75 plus tax per day July 1-May 31
$14	Lunch	11:31 AM	12:59 PM		
$20	Dinner	5:31 PM	7:59 PM		

CLERICAL TRAVEL TIME TO COVER ANOTHER CLINIC (113WC)

Site	Travel Hours	Rate Per Hr.	Total
		$ 18.29	$ -
		$ 18.29	$ -
		$ 18.29	$ -
Total			$ -

Mileage	Miles	Rate	Total
			$ -

Meals	Total

# of Trips to clinic

TOTAL CLINIC TRAVEL EXPENSES $ -

CLERICAL TRAINING EXPENSES (113WC)

Staff Name	Hrs. Traveled & Training Time	Rate per Hour	Total
		$ 18.29	$ -
		$ 18.29	$ -
		$ 18.29	$ -
		$ 18.29	$ -
Total			$ -

Mileage	Miles	Rate	Total
			$ -

Meals	Total	Lodging	Total

NOTE: Training MUST be reported in SDWIC-IT before submitting expenses.

Only 50% of total costs of BIT training for those who failed security test can be charged to WIC (50% paid only 1 time per person

Training covering topics outside of WIC: Figure % of training that pertains to WIC and multiple that % by the total training cost.

List Training title, place & dates attended. If Regional training, list % of training costs charged to WIC:

TOTAL CLERICAL TRAINING EXPENSES: $ -

CLERICAL SDWIC-IT FOCUS EXPENSES (113WCS)

Staff Name	Hrs. Traveled, meeting & Testing	Rate	Total
		$ 18.29	$ -
		$ 18.29	$ -
Total			$ -

Mileage	Miles	Rate	Total
			$ -

Meals	Total	Dates of Meeting/Testing

TOTAL SDWIC-IT FOCUS EXPENSES: $ -

OTHER EXPENSES (SPECIFY): Rent

TOTAL MONIES TO BE REIMBURSED $ -

I hereby certify the above expenses were incurred in activities approved under the contract with the S.D. Department of Health

Health Professional Signature Date Regional Manager Signature Date

County Auditor Signature Date

Rev. 6/20

For Central Office Use:	113WC $ -	113WCS $ -	Total $ -