

Agreement # _____

Service PO # _____

**STATE OF SOUTH DAKOTA
DEPARTMENT OF HUMAN SERVICES
DIVISION OF LONG TERM SERVICES AND SUPPORTS**

Cooperative Agreement
Between

State of South Dakota
Department of Human Services
Division of Long Term Services and Supports
Hillsview Plaza, East Highway 34
c/o 500 East Capitol
Pierre SD 57501-5070

Referred to as Cooperative Agency

Referred to as State

1. This agreement is made for the purpose of ().

Amount provided by Grantor is	.
Amount matched by Cooperative Agency	.
Total Grant Amount	.

Dollars provided by Grantor consist of the following:

Non-Federal State dollars	.
Federal ()	.
(CFDA#()	.

2. PERIOD OF PERFORMANCE:

This agreement shall be effective as of November 13, 2020 and shall end on 11/14, unless sooner terminated pursuant to the terms hereof.

3. PROVISIONS:

a. The Cooperative Agency agrees to:

1.

b. The State agrees to:

1. Permit the Cooperative Agency a line item budget flex of ten percent. The aggregate of any and all budget flexes will not exceed ten percent of the total budget amount as specified in Section 2 above. This line item flex does not include the category of administrative/overhead.
2. Make payment for services upon satisfactory completion of services and receipt of a bill.
- 3.

4. METHOD AND SOURCE OF COOPERATIVE AGENCY PAYMENT:

Cooperative Agency agrees to submit an initial bill for services within 30 days following the end of the **month** in which services were provided. If the cooperative Agency cannot submit a bill within the 30-day timeframe, a written request for an extension of time must be provided to the State. If a bill has not been received by the State, the State reserves the right to refuse payment. Final billing for agreements ending May 31, 2020 must be received by the State by June 5, 2020.

5. PROPERTY MANAGEMENT STANDARDS:

The Cooperative Agency agrees to observe Federal Government uniform standards governing the utilization of property whose cost was charged to a project supported by a federal grant.

6. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding Department of Human Services' rules, regulations and policies to the Cooperative Agency and to assist in the correction of problem areas identified by the State's monitoring activities.

7. LICENSING AND STANDARD COMPLIANCE:

The Cooperative Agency 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. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Cooperative Agency's failure to ensure the safety of all individuals served is assumed entirely by the Cooperative Agency.

8. ASSURANCE REQUIREMENTS:

The Cooperative Agency agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Drug-Free Workplace, Title VI of the Civil Rights Act of 1964, Section 504 and Section 511 of the Rehabilitation Act of 1973 as amended, Title IX of the Education Amendments of 1972, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Health Insurance Portability and Accountability Act (HIPAA) of

1996, Charitable Choice Provisions and Regulations, Deficit Reduction Act of 2005, and American Recovery and Reinvestment Act of 2009, as applicable.

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

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

10. OFFICE OF INSPECTOR GENERAL EXCLUSIONARY LIST REQUIREMENTS:

Cooperative Agencies, who utilize federal Medicaid or Medicare funds, agree to screen all employees and contractors, prior to hiring or contracting and on a regular basis, to determine whether any of them are listed on the Office of Inspector General (OIG) List of Excluded Individuals/Entities. Cooperative Agency shall maintain documentation to support the screenings were performed and shall immediately report to DHS all cases in which employees are found on the exclusionary list. Cooperative Agency understands that no payment shall be made for any goods or services furnished, ordered, or prescribed by an excluded individual or entity and any payment made for services provided by excluded parties will be recouped; and recoupment may include penalties.

11. RETENTION AND INSPECTION OF RECORDS:

The Cooperative Agency 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, statistical, fiscal, other, and other information records necessary for reporting and accountability required by the State. The Cooperative Agency shall retain such records for six years following termination of the agreement. If such records are under pending audit, the Cooperative Agency agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this agreement.

All payments to the Cooperative Agency by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this agreement shall be returned to the State within thirty days after written notification to the Cooperative Agency.

12. AUDIT REQUIREMENTS:

If the total of all Department of Human Service funding is greater than \$750,000 during the Cooperative Agency's fiscal year, the Cooperative Agency agrees to submit to the State a copy of an annual entity-wide, independent financial audit. The audit shall be completed and filed with the Department of Human Services by the end of the fourth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. The audit should be sent to:

Department of Human Services
Provider Reimbursements and Grants
3800 East Highway 34
c/o 500 East Capitol
Pierre, SD 57501

Audits conducted in accordance with this provision shall contain, as part of the supplementary information for Division of Developmental Disabilities (DDD), a DDD cost report as outlined by the Department of Human Services to include Schedule A, Schedule B, Attachment A, and Attachment B. Attachment 1 shall be submitted annually and directly to the Department of Human Services within the same time frame and is not considered part of the audit.

If federal funds of \$750,000 or more have been received by the Cooperative Agency the audit shall be conducted in accordance with OMB Uniform Guidance 2 CFR Chapter I, Chapter II, Part 200, et al Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 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. Audits shall be completed and filed with the Department of Legislative Audit by the end of the fourth month following the end of the fiscal year being audited or 30 days after receipt of the Auditor's report, whichever is earlier. For a Uniform Guidance audit, approval must be obtained by forwarding a copy of the audit engagement letter to:

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

For either an entity-wide, independent financial audit or a Uniform Guidance audit, the Cooperative Agency assures resolution of all interim audit findings. The Cooperative Agency shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the Department or its' contractor(s)/subrecipient(s) may perform.

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 completely satisfied.

13. COST PRINCIPLES

Cooperative Agency agrees to comply in full with the applicable cost principles as outlined in OMB Uniform Guidance 2 CFR Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

14. TERMINATION:

This agreement may be terminated by either party hereto upon thirty (30) days written notice, and 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.

15. FUNDING:

This agreement 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.

16. AMENDMENTS:

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.

17. CONTROLLING LAW:

This agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

18. 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.

19. 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 hereof.

20. 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 Cooperative Agency, 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.

21. SUBCONTRACTORS

Cooperative Agency may not use subcontractors to perform the services described herein without the express prior written consent of the State. Cooperative Agency will include provisions in its subcontracts requiring its subcontractors/subrecipients 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. Cooperative Agency 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.

22. FEDERAL FUNDING ACCOUNTING AND TRANSPARENCY ACT

The award recipient agrees to:

- a. Assist and support State in complying with Federal Funding Accounting 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.
- b. Indemnify and hold harmless State for any amount of costs for non-compliance with FFATA requirements due to award recipient (Cooperative Agency) non-compliance or failure to comply with subsection (a) of this Provision. Award 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 Award recipient's failure to supply State with any requested information necessary to comply with FFATA.

23. AWARD RECIPIENT ATTESTATION

The award recipient or sub-recipient attest to meeting the following requirements per 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.

24. HOLD HARMLESS:

The Cooperative Agency 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 Cooperative Agency to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

25. INSURANCE:

Before beginning work under this agreement, the Cooperative Agency shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the State. The Cooperative Agency shall furnish copies of insurance policies if requested by the State.

a. Commercial General Liability Insurance:

The Cooperative Agency 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 Cooperative Agency shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

c. Worker’s Compensation Insurance:

The Cooperative Agency shall procure and maintain workers’ compensation and employer’ liability insurance as required by South Dakota law.

d. Professional Liability Insurance:

The Cooperative Agency agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

26. REPORTING

Cooperative Agency agrees to immediately report to the Department any event or incident encountered in the course of performance of this agreement which results in injury to any person or property, or which may otherwise subject Cooperative Agency, or the State of South Dakota or its officers, agents or employees to liability. Cooperative Agency shall report any such event to the State immediately upon discovery.

Cooperative Agency’s obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Cooperative Agency’s obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law. Reporting to the State under this section shall not excuse or satisfy any obligation of Cooperative Agency to report any event to law enforcement or other entities under the requirements of any applicable law.

27. PROTECTED HEALTH INFORMATION

Does this Agreement involve Protected Health Information (PHI)? YES () NO (X)

If PHI is involved, a Business Associate Agreement is attached and is fully incorporated herein as part of the Agreement (see Appendix A).

28. CONFLICT OF INTEREST

Cooperative Agency 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 as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Cooperative Agency expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

29. CONFIDENTIALITY OF INFORMATION

For the purposes of the sub-paragraph, “State Proprietary Information” shall include all information disclosed to the Cooperative Agency by the State. Cooperative Agency 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. Cooperative Agency 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. Cooperative Agency 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. Cooperative Agency 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 Cooperative Agency; (ii) was known to Cooperative Agency without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of the State's officers or employees having authority to disclose such information; (iv) was independently developed by Cooperative Agency without the benefit of influence of the State's information; (v) becomes known to Cooperative Agency 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. Grantee understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by 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 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. Cooperative Agency acknowledges that the state and its agencies are public entities and thus bound by the 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 Cooperative Agency will be required to undergo investigation.

30. TERMS:

By accepting this agreement, the Cooperative Agency assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the State shall be in violation of the terms of this agreement, and the agreement shall be subject to termination

Contract Description Code _____

State Agency Coding:

CFDA Number _____

Company _____

Account _____

Center Req _____

Center User _____

Dollar Total _____

SVC PO Code _____

Company _____

Account _____

Center Req _____

Center User _____

Dollar Total _____

SVC PO Code _____

DHS Program Contact Person _____

Phone _____

DHS Fiscal Contact Person Alan Fickbohm

Phone (605) 773-5990

Cooperative Agency Program Contact _____

Phone _____

Cooperative Agency Fiscal Contact _____

Phone _____

Agreement# _____

PO# _____

Vendor # _____

Group _____