

STATE OF SOUTH DAKOTA CDBG-DR ASSISTANCE AGREEMENT

THIS AGREEMENT is made and entered into effective the 1st day of March 2026, by and between the Governor's Office of Economic Development, a state agency, having its principal address at 711 E Wells Ave., Pierre, SD 57501 (the "State") and South Eastern Council of Governments, having its principal address at 500 North Western Avenue, Suite 100, Sioux Falls, SD 57104 (the "Recipient").

The State hereby enters into this Agreement for Services with Recipient in consideration of and pursuant to the terms and conditions set forth herein.

I. General Scope and Terms of Agreement

- a. Recipient agrees to provide full administrative service of the U. S. Department of Housing and Urban Development (HUD) Community Development Block Grant Disaster Recovery (CDBG-DR) award under Universal Notice Docket No. FR-6512-N-01. Such assistance includes, but is not limited to, the following primary services:
 - i. Attend all required CDBG-DR Training Provided by GOED & their consultant
 - ii. Assist potential applicants with the completion and submission of CDBG-DR applications
 - iii. Complete and submit the Environmental Review Report (ERR) on behalf of CDBG-DR applicants.
 - iv. Process & submit pay requests on behalf of CDBG-DR subrecipients
 - v. Complete and submit to GOED all subrecipient CDBG-DR reporting as required by HUD.
 - vi. Assist subrecipients with monitoring and closeout of projects.
- b. Recipient's services under this Agreement shall commence on March 1, 2026 and end on December 31, 2031, unless sooner terminated pursuant to the terms hereof.
- c. The State will make payment for services upon satisfactory completion of the services. The TOTAL AGREEMENT AMOUNT is an amount not to exceed \$625,000.00. The State will make a single payment of \$100,000 within thirty (30) days of execution of this agreement. Recipient may bill the State for the remaining balance (\$525,000) in conjunction with project draw requests at a maximum rate of 5% of the amount of each project draw request. All bills will be submitted using an Administration Tracking Form provided by the State. The State's payment for services hereunder shall not exceed \$100,000 plus 5% of actual project costs submitted by CDBG-DR subrecipients.

II. Additional Program Support

In addition to the technical assistance provided pursuant to Section I(A) of this Agreement, the Recipient further agrees to provide additional services to planning district members as follows:

- a. Community Development Block Grant Disaster Recovery ("CDBG-DR") Program
 - i. Recipient agrees to complete all Community Development Block Grant Disaster Recovery (CDBG-DR) application and grant requirements for eligible entities including but not limited to public hearings, initial requirements, reporting, monitoring, close-out, and all other pertinent or applicable CDBG-DR regulations;
 - ii. Recipient agrees it will cause all staff working on CDBG-DR projects to attend and complete all CDBG-DR training sessions during the term of this Agreement;
 - iii. Recipient shall ensure participation by its director in telephone conference calls or other meetings to discuss its CDBG-DR administration performance as may be necessary for the implementation of this Agreement;

Administration fees may be reduced or withheld in their entirety at the discretion of the State in the event Recipient fails timely to provide pertinent documentation and information to the State or Recipient fails to perform any of its obligations with respect to CDBG-DR grants within the specified timeframes outlined by the State CDBG-DR Grant Administration Manual located on the GOED website.

III. Additional Provisions

Recipient will not use State equipment, supplies, or facilities. The Recipient will provide the State with its Employer Identification Number, Federal Tax Identification Number, or Social Security Number upon execution of this Agreement.

- a. Recipient 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 the result of performing services hereunder. This section does not require the 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.

- b. Recipient, at all times during the term of this Agreement, shall obtain and maintain in force applicable insurance coverage of the types as follows:
 - i. Commercial General Liability Insurance: Recipient shall maintain occurrence-based commercial general liability insurance or 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.
 - ii. Business Automobile Liability Insurance: Recipient shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.
 - iii. Worker's Compensation Insurance: Recipient shall procure and maintain workers' compensation and employers' insurance as required by South Dakota law.

Recipient shall furnish the State with properly executed Certificates of Insurance, which shall clearly evidence all insurance required in this Agreement, upon its request. In the event of a substantial change in insurance, issuance of a new policy, cancellation, or non-renewal of the policy, the Recipient agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Recipient shall furnish copies of insurance policies if requested by the State.

- c. While performing services hereunder, the Recipient is an independent contractor and not an officer, agent, or employee of the State of South Dakota.
- d. Recipient agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Recipient or the State to liability. Recipient shall report any such event to the State immediately upon discovery.

Recipient'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. Recipient's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client

communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Recipient to report any event to law enforcement or other entities under the requirements of any applicable law.

- e. This Agreement may be terminated by either party hereto upon thirty (30) days' written notice. In the event the Recipient breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is affected by the State, any payments due to Recipient at the time of termination may be adjusted to cover any additional costs to the State because of Recipient's default. Upon termination, the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Recipient it is determined that Recipient was not at fault, then the Recipient shall be paid for eligible services rendered and expenses incurred up to the date of termination.
- f. No party shall be liable for a delay in performance or failure to perform its obligations under this Agreement if such delay or failure is due to acts of God or any other event beyond the control of the parties, including, without limitations, fire, explosion, weather, disease, war, insurrection, civil strife, riots, government action, or power failure, provided, however, that the party who is unable to perform resumes performance as soon as possible following the end of the event causing the delay.
- g. 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 law or federal funds reductions, 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.
- h. Termination for Non-Appropriation of Funds (Presidential Budget):
Notwithstanding any other provision of this Agreement, the continuation of this Agreement beyond the current grant timeframe is contingent upon the appropriation of sufficient funds for the purposes of this Agreement in the President's annual budget submission to Congress and the subsequent enactment of such appropriations by Congress. In the event that the President's budget does not include funding for this Agreement for any future grants, or if Congress fails to appropriate sufficient funds, the Governor's Office of Economic Development may terminate this Agreement at its discretion, by providing written notice to the Recipient. In such an event, the Governor's Office of Economic Development

shall have no further obligation or liability under this Agreement beyond payment for goods or services delivered and accepted prior to the effective date of termination.

- i. 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.
- j. 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.
- k. The Recipient will comply with all federal, state, and local laws, regulations, ordinances, guidelines, permits, and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.
- l. CERTIFICATION OF NO STATE LEGISLATOR INTEREST: Recipient (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, Consultant hereby certifies this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.
- m. COMPLIANCE WITH SDCL CH. 5-18A: Recipient certifies and agrees that the following information is correct: The Recipient is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

The Recipient further agrees to provide immediate written notice to the State if, during the term of this Agreement, Recipient no longer complies with this certification and agrees such noncompliance is grounds to terminate this Agreement and would be cause to suspend and debar a business under SDCL § 5-18D-12.

- n. **CONFLICT OF INTEREST BY STATE OFFICER OR EMPLOYEE:** Recipient agrees to establish safeguards to prohibit State officers or 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 Recipient expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.
- o. The Recipient may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Recipient 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 for the benefit of the State in a manner consistent with this Agreement. The Recipient 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.
- p. Recipient hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s), and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Recipient in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Recipient without the written consent of the State. Papers, reports, forms, software programs, source code(s), and other material which are a part of the work under this Agreement will not be copyrighted without written approval

of the State.

- q. 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 Jack Valentine, on behalf of the State, and by Lynne Keller Forbes, on behalf of the 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.
- r. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
- s. 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.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

BY: *Jack Valentine* **Jack.Valentine** Digitally signed by Jack.Valentine
Date: 2026.03.06 08:33:21 -07'00'
Jack Valentine, Operations Division Director
Governor's Office of Economic Development

RECIPIENT

BY: *Lynne Keller Forbes*
DocuSigned by:
62C726EE7B484AB...
Lynne Keller Forbes, Executive Director
South Eastern Council of Governments

-State Agency Coding: CDBG Technical Assistance 2005-0105123006
-Object/sub-object MSA account to which voucher will be coded: 52049600.
-Name and phone number of contact person in State Agency who can provide additional information regarding this contract: Operations Division Director (605-773-4633).