

**STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES**

**GRANT AGREEMENT
Between**

Local Emergency Planning Committee	State of South Dakota Department of Agriculture and Natural Resources Joe Foss Building 523 East Capitol Ave. Pierre, SD 57501-3182
Referred to as Grantee	Referred to as DANR

WHEREAS, the State Emergency Response Commission (SERC), is duly constituted as an instrumentality of the Department of Agriculture and Natural Resources (DANR) and the State of South Dakota exercising public and governmental functions, pursuant to SDCL Chapters 1-50; and

WHEREAS, a Local Emergency Planning Committee (LEPC) is “active” and eligible to receive grant funding if it meets the requirements listed under SDCL § 1-50-10.

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. CONSIDERATION.

In consideration of the Grantee's agreement to observance and performance of the terms and conditions set forth herein and in reliance on the representations made herein, DANR and the SERC will grant a dollar amount to be determined by utilizing the formula set forth in SDCL § 1-50-10.

2. INVOICING AND PAYMENT.

The SERC will award grants to Local Emergency Planning Committees (LEPC's) that submit a grant application to demonstrate they meet the definition of “active” as defined under SDCL 1-50-10. Completed Grant Application forms are due no later than November 30, 2023. After the SERC votes to award grants, the Grantee will submit a signed grant award/disbursement form. Payment to Grantee under this Agreement shall be made within 30 days of receipt of that form.

3. FUNDING.

This Agreement depends upon the availability of 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, then this Agreement, may be terminated by either party. Termination for any of these reasons is not a default by either party nor does it give rise to a claim against either party.

4. FUTURE FUNDING

DANR and the SERC are in no way obligated to provide future grant funding.

5. GRANTEE REPRESENTATIONS.

The Grantee agrees to utilize the funds to defray the expenses of operating the Superfund Amendments and Reauthorization Act (SARA) Title III program and related SARA Title I activities. No expenditures may be incurred for other purposes. The Grantee acknowledges that all obligations under this Agreement are conditioned upon satisfactory compliance with the requirements outlined in the grant application package and under SDCL 1-50-10.

6. ASSIGNMENT AND AMENDMENT.

This Agreement may not be assigned without the express prior written consent of the parties. 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. INSURANCE.

The Grantee shall at all times during the term of this Agreement keep and maintain property and casualty insurance, workers compensation, and liability insurance with insurers licensed to do business in the State, or risk pool coverage programs described in SDCL chapter 3-22, against such risks and in such amounts as are customary in the State for entities such as the LEPC. Grantee shall furnish copies of insurance policies if requested by the State.

8. GRANTEE OR SUBGRANTEE ATTESTATION.

By signing this agreement, Grantee attests to the following:

- (a) A conflict-of-interest policy is enforced within Grantee's organization;
- (b) Internal Revenue Service Form 990 has been or will be filed, if applicable, in compliance with federal law, and will be displayed immediately after filing on Subgrantee's website;
- (c) An effective internal control system is employed by Grantee's organization; and
- (d) Grantee is in compliance with the federal Single Audit Act, if applicable, in compliance with SDCL 4-11-2.1, and that audits are displayed on Grantee's website.

Grantee agrees to disclose to the State, in writing, any conflicts of interest that exist under the Grantee's conflict of interest policy. The State will publicly post any disclosed conflicts of interest along with the corresponding grant agreement on the OpenSD website.

9. USE OF FUNDS

No part of the funding provided hereunder may be utilized for the payment of costs associated with litigation directly or indirectly involving the Grantee. No member of the Grantee's governing body or other officers, agents, employees or immediate family members, shall receive direct personal benefit from this Agreement other than reasonable compensation for services rendered, expenses incurred in furtherance of the purposes herein authorized, or benefits received as a member of general public served by the Grantee.

10. 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.

11. MERGER.

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.

12. CONTROLLING LAW AND VENUE.

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.

13. INDEMNIFICATION.

Grantee agrees to indemnify DANR, the State of South Dakota, its officers, agents and employees, 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 Grantee to be responsible for or defend against claims or damages arising from errors or omissions of DANR, the State, its officers, agents or employees.

14. NOTICES.

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 Kelsey Newling on behalf of DANR. 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.

15. DEFAULT, CURE, AND CANCELLATION.

In the event the Grantee utilizes the funds in a manner that is inconsistent with the requirements outlined in the grant application package and under SDCL 1-50-10, DANR may declare this Agreement to be in default and shall provide Grantee with verbal or written notice of such default. If such default has not been cured, within thirty (30) days, DANR may cancel this Agreement and the Grantee shall be obligated to reimburse DANR for any grant funds that were inappropriately expended. If not promptly paid DANR may pursue any rights and remedies under any applicable laws or regulations.

16. CUMULATIVE REMEDIES AND WAIVER.

The rights and remedies herein conferred upon DANR shall be cumulative and not alternative and shall be in addition and not in substitution of or in derogation of rights and remedies conferred by any other agreements between the parties hereto or by any applicable law. The failure of DANR to enforce strict performance of any covenant, promise, or condition herein contained, shall not operate as a waiver of the right of DANR thereafter to require that the terms hereof be strictly performed according to the tenor thereof.

17. STANDARD COMPLIANCE.

Grantee 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. Grantee will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify DANR, and to provide insurance coverage in a manner consistent with this Agreement. Grantee 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.

18. CERTIFICATION OF NO STATE LEGISLATOR INTEREST.

Grantee (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, Grantee hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

19. SOVEREIGN IMMUNITY

Nothing in this Agreement is intended to constitute a waiver of sovereign immunity by or on behalf of the State of South Dakota, its agencies, officers or employees.

20. HEADINGS.

The headings in this Agreement are for convenience of reference only and shall not be used to construe meaning or intent, or limit or otherwise affect the meaning hereof.

21. AUTHORIZED SIGNATURES.

IN WITNESS WHEREFOF, the parties have set their hands effective on the day and year first written here below.

SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE
AND NATURAL RESOURCES

LEPC

Hunter Roberts (Date)

LEPC Chairperson (Date)