

STATE OF SOUTH DAKOTA  
GRANT AGREEMENT  
BETWEEN

City of Rapid City  
2915 Canyon Lake Drive  
Rapid City, SD 57702  
Referred to as "Grantee"

South Dakota Department of Health  
Public Health Preparedness and Response  
600 East Capitol Avenue  
Pierre, SD 57501  
Referred to as "State"

State and Grantee hereby enter into an agreement to award financial assistance to Grantee for the purpose of emergency mosquito control. The Grantee's project period begins August 13, 2007 and ends November 1, 2007.

I. GRANTEE

- A. Grantee is not a full or part-time employee of State or any agency of the state of South Dakota.
- B. Grantee is solely responsible for determining any and all taxes due and owing from receipt of this grant award.
- C. Grantee agrees to:
  - 1. Utilize WNV Emergency Funds during the current mosquito season in any or all of the following:
    - a. Support private contract ULV spraying assistance, residual barrier treatments or larviciding by hiring private contractors for an effective kill during optimum conditions.
    - b. Support mutual aid ULV spraying assistance, residual barrier treatments or larviciding to pay other control programs to assist the local mosquito control program for an effective kill during optimum conditions.
    - c. Support existing staff overtime to conduct control operations from now until the end of the current season.
    - d. Support control measures in preparation for and during special events in the community. Examples include, but are not limited to: Dakota Fest, SD State Fair or any other events of any large public gatherings.
    - e. Start or extend buffer zones up to three miles outside the normal

boundaries of the community.

2. Grantee's total award not to exceed \$12,500.00. Funds will be awarded in the following manner:

- Upon Grantee's submission and State receipt of the signed agreement, State will return to the Grantee; one signed original and the total award. All receipts relative to the Grantee's operations shall be retained locally by the Grantee for a period of two years.

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3. Where possible, the Grantee agrees to provide State with relevant electronic data obtained during the conduct of control efforts. This includes GIS data regarding light trap locations, trap counts, larval counts with GIS locations, GIS data of larvacide and adulticide applications, GIS locations of bird submissions, and efficacy data. SDSU has developed a Web-based mosquito population graphing program at: <http://www.ces.sdstate.edu/mosqcount/> to assist in evaluation of mosquito population trends.
  4. Utilize WNV Emergency Funds for current activities only. The funds distributed under this grant agreement must not be used to cover previous control program services or expenses.

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

1. Commercial General Liability Insurance:

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

2. Professional Liability Insurance:

Grantee shall maintain professional liability insurance with a limit of not less than one million dollars each accident.

3. Automobile Liability Insurance:

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

4. Worker's Compensation Insurance:

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

5. Certificates of Insurance:

Prior to commencement of work under this Contract, Grantee shall furnish State properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract and promptly provide updated Certificates of Insurance on an ongoing basis. Such insurance shall not be canceled, except on 30 days' prior written notice to State. Grantee shall furnish copies of insurance policies if requested by State.

- E. Both parties to the agreement recognize the sovereignty of the other and the immunities inherent with such sovereignty. Nothing in this agreement shall be construed as an indemnification by one party of the other for the liabilities, acts, or omissions of the other party or third persons arising out of this agreement. Liability for the acts or omissions of the parties, their employees, agents, contractors, assigns, or other third persons arising out of and during this agreement shall be determined according to applicable law, subject to all available defenses and immunities.
- F. This contract does not require Grantee to engage in a function or activity involving the use or disclosure of the State's Protected Health Information (PHI) as defined in the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR §164.501.

II. STATE

- A. State will award Grantee a Federal financial assistance award of \$12,500.00 upon signing this grant agreement.
- B. State agrees to:
1. \$12,500 conduct disease surveillance activities and provide updates on the occurrence of West Nile Virus cases.

III. OTHER PROVISIONS

- A. INTEGRATION/CHOICE OF LAW AND FORUM: This agreement contains the entire agreement between the parties, and may be amended only in writing signed by both parties. Each amendment shall be attached to and become a part of this agreement. The terms and conditions of this agreement are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this agreement, which cannot be resolved by mutual agreement, will be tried in Hughes County, South Dakota.
- B. TERMINATION: This agreement can be terminated upon thirty (30) days written notice being received by the other party and may be terminated for cause by State at any time with or without notice.
- C. NOTICE: Any notice or other communication required under this contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Grantee Contact Person on behalf of Grantee, 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.
- D. FUNDING TERMINATION: This agreement depends upon the continued availability of appropriated funds and expenditure authority from Congress, the Legislature or the Executive Branch for this purpose. This agreement will be terminated for cause by State if Congress, the Legislature or Executive Branch fails to appropriate funds, terminates

funding or does not grant expenditure authority. Funding termination is not a default by State nor does it give rise to a claim against State.

- E. **LOBBYING:** Grantee agrees to not use any of the funds received pursuant to this agreement for lobbying purposes. Grantee further agrees that if this agreement involves federal funds or federally mandated compliance, the Grantee is in compliance with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including Certification and Disclosure, 29 C.F.R. § 93.110 (1990).
- F. **NONASSIGNMENT/SUBCONTRACTING:** Grantee shall not assign this agreement, or any portion thereof, without the prior written consent of State. Grantee's assignment or attempted assignment of this agreement, or any portion thereof, without State's prior written consent constitutes a material breach of contract. The Grantee may not use subcontractors to perform the services described herein without the express prior written consent of State. Grantee will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage in a manner consistent with this Agreement. 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.
- G. **REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE:** Grantee agrees to report promptly to 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 Grantee or State to liability. Reporting to State under this section does not satisfy Grantee's obligation to report any event to law enforcement or other entities as required by law.
- H. **SEVERABILITY:** In the event that any term or provision of this agreement shall violate any applicable law, such provision does not invalidate any other provision hereof.
- I. **SMOKE FREE WORK PLACE:** Grantee agrees that no person may smoke tobacco or carry any lighted tobacco product in any public place or place of employment where any services pursuant to this contract are rendered. SDCL §§ 22-36-2 to 22-36-4.
- J. **DRUG FREE WORK PLACE:** Grantee agrees to encourage all its employees to refrain from using illegal drugs which may affect an employee's ability to perform the essential functions required under the terms and conditions of this agreement. State reserves the right to terminate this agreement if Grantee, or any of its employees or agents, is convicted of using illegal drugs. Grantee further agrees that if this agreement involves federal funds or federally mandated compliance, then Grantee is in compliance with the requirements of the "Drug-Free Workplace Act" (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. §§ 701 et seq.).
- K. **RECYCLING:** State strongly encourages Grantee to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.
- L. **CIVIL RIGHTS POLICY:** Both parties agree to provide services covered by this agreement without regard to race, color, sex, religion, national origin, creed, marital status, age or disability as prohibited by state or federal law.
- M. **AUDIT REQUIREMENTS:  
(EXPENDING \$500,000 OR MORE)**  
A nonprofit subrecipient, (as well as profit hospitals) Grantee, expending \$500,000 or more in one year in Federal awards, must have an annual audit made in accordance with Office of Management and Budget Circular A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions and the Auditor General's guidelines.
- All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General's approval should be obtained annually. The auditor must follow the Auditor General's guidelines when conducting the audit. The draft audit report must be submitted to the Auditor General for approval prior to issuing the final report. The auditor must file the requested copies of the final audit report with the Auditor General. Audits shall be completed and filed with granting agencies by the end of the ninth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. If it appears that a required audit cannot be completed by the end of the ninth month following your fiscal year, you must request an extension from the federal agency for which the majority of federal expenditures relates.
- Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.
- N. **PERSONNEL:** Neither the Grantee nor any employee or agent thereof will hold him or herself out as or claim to be an officer or employee of State and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of State including, but not limited to, workers' compensation, health, life, malpractice insurance, and retirement membership or credit.

- O. CONTRACT ORIGINAL AND COPIES: An original of this contract will be retained by the South Dakota Department of Health and a second original will be sent to Grantee.
- P. RECORD RETENTION/EXAMINATION: Grantee agrees to maintain all records that are pertinent to this agreement and retain them for a period of three years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.
- Q. FEDERAL AND STATE LAWS: Grantee agrees that it will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this agreement, including Section 306 of the Clean Air Act and Section 508 of the Clean Water Act.
- ~~R. AMERICANS WITH DISABILITIES ACT: Grantee agrees to provide all services required in this contract in compliance with the Americans With Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213, and any amendments thereto.~~
- S. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION: Grantee agrees that neither Grantee, nor any of Grantee's principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency. Grantee will provide immediate written notice to the Department of Health, Division of Administration (600 East Capitol Avenue, Pierre, SD 57501 (605) 773-3361), if Grantee, or any of Grantee's principals, becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions involving Federal funding. Grantee further agrees that if this agreement involves federal funds or federally mandated compliance, then Grantee is in compliance with all applicable regulations pursuant to Executive Order 12549, including Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. § 98.510 (1990).
- T. OWNERSHIP: All reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses, or other products produced as a result of the services rendered under this agreement, excluding medical records kept in the normal course of Grantee's business, will become the sole property of State. State hereby grants Grantee the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of Grantee's business for any lawful purpose. Either the originals, or reproducible copies satisfactory to State, of all technical data, evaluations, reports and other work product of Grantee shall be delivered to State upon completion or termination of services under this agreement.
- U. FORCE MAJEURE: Neither Grantee nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this agreement, 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 agreement, "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.

The parties signify their agreement by signing below.

\_\_\_\_\_  
 Thomas E. Martinec, Director  
 Health Systems Development and Regulation  
 Department of Health

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Grantee Signature

\_\_\_\_\_  
 Date

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

\_\_\_\_\_  
 Linda Zeller  
 Administrator, Financial Management  
 Department of Health

\_\_\_\_\_  
 Date

State Contact Person: Bill Chalcraft

Phone: 773-3364

Grantee Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_

**The following shall be completed by the Grantee:**

Nonprofit \_\_ Profit \_\_

Grantee fiscal year beginning \_\_\_\_\_ and ending \_\_\_\_\_

**The following shall be completed by the State:**

MSA Account code 5 2 0 4 \_\_\_\_\_

Fund Source Name:	Fund Source Name:	Fund Source Name:
CFDA No:	CFDA No:	CFDA No:
Program:	Program:	Program:
CO: 2018-Federal	CO: 2018-Federal	CO: 2018-Federal
3047-Other	3047-Other	3047-Other
1000-General	1000--General	1000-General

*8-9-07*