

**Memorandum of Understanding
Between
The South Dakota Council on Developmental Disabilities
and
The South Dakota Department of Human Services**

This Memorandum of Understanding (hereinafter "MOU") is between the South Dakota Council on Developmental Disabilities (hereinafter "Council") and the South Dakota Department of Human Services (hereinafter "DHS") (jointly referred to as "the Parties").

BACKGROUND AND PURPOSE

The Council is established pursuant to the Developmental Disabilities Assistance and Bill of Rights Act ("DD Act"), 42 USC Ch. 144 (Public Law 106-402); and the most recently effective applicable Executive Order (EO 2018-03). EO 2018-03 establishes the Division of Developmental Disabilities within DHS as the Council's Designated State Agency. Pursuant to SDCL 1-36A-1.5, the Council is administered by DHS.

The Council's mission is to assist people with intellectual and developmental disabilities and their families in achieving the quality of life they desire through advocacy and systems change. DHS's mission is to enhance the quality of life for older adults and for persons with disabilities, in partnership with its stakeholders.

Pursuant to 42 USC 15025 (d)(3)(G), the purpose of this MOU is to delineate the roles and responsibilities of the designated state agency, at the request of the Council, and to set forth the working relationship between the Council and DHS per 42 USC 15025 (d)(3)(B).

GENERAL AGREEMENTS

The Council is an entity separate from DHS, and maintains its own responsibilities under the DD Act. DHS provides the services and support outlined below. The Council agrees to the described manner of providing those services and support.

SERVICES AND SUPPORT PROVIDED BY DHS

1. STAFFING

DHS agrees to provide a full-time position (FTE) to the Council for the Executive Director position. In compliance with 42 USC 15025 (c)(10), the staff of the Council, while working for the Council, shall be responsible solely for assisting the Council in carrying out the duties of the Council as set forth in federal law and shall not be assigned duties by DHS or any other agency or entity of the State.

Council staff, as state employees, will be subject to the administrative rules and policies of the State of South Dakota, as well as applicable state and federal law and regulations. The Council is responsible for selecting and hiring the Executive Director, when that position becomes vacant, and supervising the Executive Director consistent with State personnel policies and procedures. The Executive Committee will complete the required check-ins and annual performance review of the Executive Director in collaboration with DHS and the Bureau of Human Resources and Administration (42 USC 15025 (c)(9)).

2. ADMINISTRATIVE SUPPORT AND SERVICES

DHS will provide the following administrative support and services to the Council in the same manner as is generally considered normal for DHS to provide to other programs within the Department:

- a. For state payroll and benefits purposes, administratively maintain the Council Executive Director as a DHS employee.
- b. Assist the Executive Director, as needed, in utilizing state fleet vehicles for work travel and completing necessary travel requests and reimbursement forms.
- c. DHS agrees to provide recruitment, posting, and processing of applications for the Council Executive Director position.
- d. Other human resources services, through the Bureau of Human Resources and Administration, as appropriate.
- e. Office space and office equipment for the Executive Director.
- f. Information technology support for the Executive Director, including a desktop or laptop computer, printer, networking, server and infrastructure, state email account, network connection (including LAN equipment and data circuits), telephone, and related hardware and software.
- g. Purchasing and procurement services that will enable the Council to procure and receive goods and services consistent with state requirements.
- h. Training and consultation to the Executive Director for contract or grant agreement development and processing as appropriate.
- i. State mail services.

The provision of these services are subject to DHS's current operating procedures and systems. Nothing in this MOU obligates DHS to provide or purchase for Council any administrative service or support not regularly available or provided by or within DHS. Any requests by the Council for modification to DHS's services or support shall be subject to negotiation at the time of the request and if the request is granted, to additional reimbursement to DHS as allowed by the DD Act. The Council agrees to cooperate with DHS in providing any information needed by DHS to carry out the duties set forth herein.

3. FISCAL RESPONSIBILITIES

DHS has the following fiscal responsibilities under 42 USC 15025 (d)(3)(C):

- a. Receive, account for, and disburse funds under this part based on the State plan required in 42 USC 15024; and
- b. Provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, funds paid to the State under the DD Act.

DHS shall not encumber any funds available to the Council, transfer any funds between Council budget categories or from the Council to any other entity, or otherwise initiate charges or expenses against funds available to the Council without specific authorization in advance by the Council.

4. RECORDS AND FINANCIAL REPORTS

DHS has the following responsibilities for records and reports under 42 USC 15025 (d)(3)(D):

- a. To keep and provide access to such records as the Secretary of U.S. Health and Human Services and the Council may determine to be necessary.

- b. To provide timely financial reports at the request of the Council regarding the status of expenditures, obligations, and liquidation by DHS or the Council, and the use of the Federal and non-Federal shares described in 42 USC 15026, by DHS or the Council.

5. NON-FEDERAL SHARE

DHS shall provide the required non-Federal share described in 42 USC 15026 (c) for administrative costs. Grantees of the Council will provide the required match for federal dollars received for specific projects. DHS will track and report all match.

6. ASSURANCES

DHS shall assist the Council in obtaining the appropriate State plan assurances and in ensuring that the plan is consistent with State law.

GRANTS BY THE COUNCIL

The Council shall develop and authorize funding activities to implement the goals and objectives in the approved Council State Plan within the limitations of available funds and applicable state and federal regulations. The Council shall manage all aspects of the application, review, and approval processes for grants and contracts and shall provide ongoing project development and grants management oversight to funded projects. DD Council funded grant projects shall abide by all terms of the grant award and with all applicable federal and state requirements. Except as otherwise stated in this MOU, the Council is solely responsible for the grant selection, award, and management activities of the Council. The Council Executive Director or designee is the authorized signatory for all Council grants and contracts.

COMPENSATION FOR DHS SUPPORT AND SERVICES

The Council agrees to reimburse DHS for the services provided under this MOU consistent with provisions of the DD Act. The Council will reimburse DHS not more than 5% of the total annual grant award or \$50,000 whichever is less, each fiscal year for basic services of accounting, budget, purchasing, and Human Resources. Space billing, Human Resources assistance, IT support and all other services provided to the Council by DHS will be reimbursed by the Council to the extent allowed by state and federal law. DHS will provide the Council documentation of the cost and allocation method for those services.

GENERAL PROVISIONS

1. Term and Amendments

This MOU shall be effective on the date of the last signature and continue in effect for five (5) years. This MOU may be amended at any time upon the mutual written agreement of the Council and DHS.

2. Termination

This MOU may be terminated by mutual agreement of both parties. Either party may terminate the MOU by giving the other party thirty (30) days' written notice of its intent to terminate. Such actions, however, do not alone affect the status of the Governor's designation of DHS's Division of Developmental Disabilities as the Council's designated state agency pursuant to provisions of the DD Act.

3. Entirety of Agreement

This MOU represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreement, whether written or oral.

4. Severability

Should any portion of this MOU be determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and the Parties may renegotiate the term(s) affected by the severance.

5. No Third Party Beneficiary Rights

The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOU shall operate only between the Parties to this MOU and shall inure solely to the benefit of the Parties of this MOU. The provisions of this MOU are intended only to assist the Parties in determining and performing their obligations under this MOU.

South Dakota Council on Developmental Disabilities

South Dakota Department of Human Services

By: _____
Arlene Poncelet,
Council Executive Director

By: _____
Shawnie Rechtenbaugh,
DHS Cabinet Secretary

Date: _____

Date: _____