

STATE OF SOUTH DAKOTA

**CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS
DESTINATION MARKETING ORGANIZATION
BENEFICIARY AGREEMENT**

This agreement is entered into by and between the State of South Dakota, by and through the Department of Tourism ("Tourism" or the "State"), 711 E Wells Ave, Pierre, SD 57501 and _____, (insert address) a Destination Marketing Organization ("DMO").

WHEREAS The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program, a part of the American Rescue Plan, delivered monies to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency; and

WHEREAS SLFRF funds may be used to provide aid to industries impacted by the COVID-19 pandemic and the travel, tourism, or hospitality have been designated as an impacted industry; and

WHEREAS the DMO submitted an application on [MONTH, DATE, YEAR], to the State for \$ _____ in ARPA/SLFRF relief funds pursuant to the DMO Marketing Assistance Program for support due to the adverse impacts of the COVID-19 pandemic to its organization, and, based upon said application, meets the U.S. Department of Treasury's definition of a SLFRF "beneficiary", and which application is attached hereto as Exhibit A and hereby incorporated into this Agreement as if set out in full; and

WHEREAS the DMO's application attested that the DMO and the communities it serves, suffered an impact due to the pandemic specifically as to the reduction of tourism; and

WHEREAS the DMO's application attested that the funds sought were related and reasonably proportional to the extent and type of impact experienced by the DMO and the communities it serves; and

WHEREAS the State wishes to provide the DMO with funding to mitigate adverse impacts to its organization as a result of the COVID-19 pandemic; and

WHEREAS the Beneficiary is willing to execute this Agreement obligating itself to comply with its terms and conditions in exchange for receipt of the funds described herein; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows.

1. The DMO will use the funding under this Agreement for the purpose of covering allowable and reasonable expenditures by the DMO due to the adverse impacts of the COVID-19 pandemic to its organization and as provided for in the DMO Marketing Assistance Program Toolkit, a copy of which is attached as Exhibit A and incorporated herein as if set forth in full. The DMO will not use funds received under this Agreement for expenditures for which the DMO receives reimbursement from another source of funds including, but not limited to, other federal programs. The DMO will repay to the State any such amount expended hereunder unless the DMO demonstrates such amount could still be expended on other eligible expenses under this Agreement.

2. The DMO and the undersigned executing this Agreement on its behalf, certifies by virtue of signing this Agreement that the representations made in the DMO's application for this funding are truthful, complete, and accurately reflect the DMO's needs and uses for ARPA/SLFRF funding. The DMO acknowledges that the State reasonably relied upon the DMO's representations in its application in determining eligibility for funding.

3. This Agreement shall be effective on _____, 2023 and end on _____, 2026, unless sooner terminated pursuant to the terms hereof.

4. The DMO will not use State equipment, supplies, or facilities.

5. The DMO is awarded a DMO Marketing Assistance Program grant ("Grant") in an amount not to exceed \$ _____, to be disbursed as follows:

Year one: \$ _____ on or before _____.

Year two: \$ _____ on or before _____.

Year three: \$ _____ on or before _____.

Year four: \$ _____ on or before _____.

No funds may be carried over to the succeeding year and any unused funds must be returned to the State as provided for herein.

6. The DMO 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 this Agreement. This section does not require the DMO to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

7. The DMO agrees to comply with all terms, provisions, reporting requirements and guidance found in the State's DMO Marketing Assistance Program Toolkit, a copy of which is attached as Exhibit A and incorporated herein as if set forth in full.

8. The DMO agrees that to the extent further instruments, documents, or amendments may in the State's discretion become necessary either to achieve the purposes of this Agreement or to ensure the DMO's performance of its obligations

herein, the DMO agrees it will execute such additional instruments, documents, or amendments at the State's request.

9. Any yearly unspent grant funds shall be returned to the State by the last business day in **January** of the next year. The payment for each subsequent yearly amount is conditioned upon compliance with this Agreement, receipt of documentation acceptable to the State, in its sole discretion, that the funds have been utilized in conformance with this Agreement.

10. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the DMO breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice.

11. 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.

12. In addition to any other rights and remedies provided for elsewhere in the Agreement, the DMO hereby agrees to repay the State an amount equal to any amount disallowed by a subsequent audit or investigation, or the amount determined by a subsequent audit or investigation, as well as any excess funds it receives from the State under this Agreement. As security for, and additional comfort of, its ability to perform its repayment obligation under this Agreement, the DMO hereby grants to State a right of offset against any State funding or payment to which the DMO is entitled, now or in the future, for so long as any repayment obligation created by this section.

13. 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.

14. The various rights, powers, options, elections, and remedies of the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed the State by law, and shall in no way affect or impair the right of the State to pursue any other contractual, equitable, or legal remedy to which the State may be entitled. The election by the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

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

16. The DMO will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to this Agreement, and will be solely responsible for obtaining current information on such requirements.

17. The DMO agrees to maintain or supervise the maintenance of records necessary for the proper and efficient review of any expenditures made hereunder, including records and documents regarding applications, determination for eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The DMO's obligations above shall in no way limit the application of the additional record requirements outlined in Exhibit B.

18. Pursuant to Executive Order 2020-01, for contractors, vendors, suppliers, or subcontracts with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this contract the Vendor certifies and agrees that it has not refused to transact business activities, have not terminated business activities, and have not taken other similar actions intended to limit its commercial relations, related to the subject matter of the contract, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this contract. The Vendor further agrees to provide immediate written notice to the State if during the term of the contract is no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

19. This Agreement, together with all amendments and attachments hereto, is a public record.

20. Any notice or other communication required under this Agreement shall be in writing and sent to the addresses set forth above. Notices shall be given by and to **James D. Hagen** on behalf of the State, and by and to the signatory below, on behalf of the DMO, 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. 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. Failure by the State to strictly enforce any provision, right or responsibility contained herein shall not operate as a waiver as to any provision, right or responsibility.

22. 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.

[SIGNATURE PAGE FOLLOWS]

SAMPLE

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

STATE

DMO

By:

By:

James D. Hagen, Secretary
Department of Tourism

Name, Title
DMO Name

Date

Date

SAMPLE