

**STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT/LETTER OF AGREEMENT
FOR CONSULTANT SERVICES BETWEEN**

Name:	<u>SDN Communications</u>	Department of Corrections
Address:	<u>2900 West 10th Street</u>	3200 E Highway 34
City/State:	<u>Sioux Falls, SD 57104</u>	Pierre SD 57501
	Referred to as Consultant	Referred to as State

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

I. The Consultant

- A. The Consultant services on this agreement shall commence on 06/08/10 and end on 07/31/2010, unless sooner terminated pursuant to the terms hereof.
- B. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent or employee of the State of South Dakota.
- C. The Consultant **will not** use state equipment, supplies or facilities.
- D. The Consultant agrees to provide the following services to the State:
The Consultant agrees to the following services as per attached.

II. The State

- A. The State will make payment for services upon satisfactory completion not exceeding \$23,140.69 (full amount or \$ x.xx/hr).
- B. The State **will not** pay expenses (ex: \$0.37/mile for consultant mileage, meals at state rates) \$0.00
- C. Total Contract Amount (Not to Exceed) \$23,140.69 (total amount A plus B).

III. Other Provisions

- A. **INDEMNIFICATION PROVISION:** The Consultant 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 Consultant 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. **INSURANCE PROVISION:** The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:
1. Commercial General Liability Insurance: The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than **\$1 million** 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.
 2. Business Automobile Liability Insurance: The Consultant shall maintain business automobile liability insurance or equivalent form with a limit not less than **\$1 million** for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.
 3. Worker's Compensation Insurance: The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, the Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days prior written notice to the State. The Consultant shall furnish copies of insurance policies if requested by the State.

- C. **REPORTING PROVISION:** The Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Consultant, or the State of South Dakota or its officers, agents or employees to liability. The Consultant shall report any such event to the State immediately upon discovery.

The Consultant'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. Consultant'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 Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

- D. **TERMINATION PROVISION:** This agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant 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 default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant'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 Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

- E. **DEFAULT PROVISION:** 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 rejections, this Agreement will be terminated by the State. Termination for any of these reasons is not default by the State nor does it give rise to a claim against the State.

- F. **AMENDMENT PROVISION:** 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.

- G. **VENUE CLAUSE:** 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.

- H. **COMPLIANCE PROVISION:** The Consultant 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.

- I. **SUBCONTRACTORS PROVISION:** The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant 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 Consultant 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.

