DEPARTMENT OF TOURISM & STATE DEVELOPMENT
STATE OF SOUTH DAKOTA
CONSULTING CONTRACT

AGREEMENT made and entered into this 22nd day of May 2009, by and between Department of Tourism & State Development, a state agency, of 711 E Wells Ave, Pierre, SD 57501, (the "State") and Thurman & Thurman, PO Box 1713, Sioux Falls, SD 57101.(the "Consultant").

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

1. The Consultant will write, produce and place radio media ads for the Minnesota Recruitment Campaign in targeted markets at the direction of the State. Messaging of the ads will focus on business recruitment and workforce development which is part of the State's 2010 Initiative to increase the Gross State Product and Brand and Develop South Dakota's Quality of Life.

2. The Consultant's services under this Agreement shall commence on May 22, 2009 and end on May 30, 2010, unless sooner terminated pursuant to the terms hereof.

3. The Consultant will not use State equipment, supplies or facilities.

4. The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed $268,000. The State will not pay Consultant's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher.

5. 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.

6. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force applicable insurance coverage of the types as follows:

A. Commercial General Liability Insurance: The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than $1,000,000 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.

B. Business Automobile Liability Insurance: The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less

than $1,000,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

C. Worker's Compensation Insurance: The Consultant shall procure and maintain workers' compensation and employers' insurance as required by South Dakota law.

The Consultant shall furnish copies of insurance policies if requested by the State.

7. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. Consultant agrees to report to the 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 Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

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.

9. 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 a 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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 Richard Benda on behalf of the State, and by Thurman and Thurman, on behalf of the Consultant, 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.

16. 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.

17. 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.

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

STATE

BY: _____
Richard Benda
Department Secretary

CONSULTANT

BY: _____
Thurman and Thurman

DATE: 5/29/09 DATE: 5/22/2009

-State Agency Coding (MSA Center): 0410, 0430, 0441, 0442
- State Agency MSA Company for which contract will be paid: 1000, 3016
-Object/subobject MSA account to which voucher will be coded: 52041100
-Name and phone number of contact person in State Agency who can provide additional information regarding this contract: Mary Lehecka Nelson 605.773.3301.