

1 James R. Lynch (SBN 144694)
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2 GARCIA CALDERON RUIZ, LLP
500 S. Grand Ave., Ste. 1100
3 Los Angeles, California 90071
Tel: (213) 347-0210
4 Fax: (213) 347-0216

5 Attorneys for Respondent
South Dakota Board of Regents,
6 South Dakota International Business Institute

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT FOR CALIFORNIA

10
11 Darley International, LLC, a Delaware
corporation,

12 Petitioner,

13 vs.

14 South Dakota Board of Regents, dba
15 South Dakota International Business
Institute,

16 Respondent.
17

CASE NO.: CV08-05034 DDP PLAx

**DECLARATION OF LAWRENCE E. LONG
IN SUPPORT OF RESPONDENT'S
MOTION TO VACATE ORDER; EXHIBIT
[FRCP Rule 60(b)]**

Date: April 13, 2009
Time: 10:00 a.m.
Ctrm.: 3
Judge: Hon. Dean D. Pregerson

1 I, LAWRENCE E.LONG, declare:

2 1. I have personal knowledge of the facts stated herein and would competently
3 testify thereto under oath if called as a witness.

4 2. I am the Attorney General for the State of South Dakota. I was first elected to this
5 position in 2002 and was reelected in 2006. Prior to that, I served as Chief Deputy Attorney
6 General for South Dakota from 1991 to 2002.

7 3. In order to sue the State of South Dakota or any agency there of, a plaintiff must
8 serve the summons and complaint/petition in the matter upon the Attorney General as required
9 by SDCL 15-6-4(d) and SDCL 21-32-9. The South Dakota Attorney General's Office has
10 maintained a separate log of all such services of process since January of 2005; prior to that a log
11 of such services of process was maintained with the incoming mail log.. Employees of the
12 Attorney General's office regularly record entries in the log upon being served personally or
13 upon signing an admission of service of process, in the ordinary course of performing their
14 official duties. I am the custodian of records for the Attorney General's office and the
15 aforementioned log. There is no record therein of service of any document upon the Attorney
16 General's Office in the above-captioned action.

17 4. The Attorney General's Office has received information that South Dakota
18 International Business Institute, located at Northern State University in Aberdeen, South Dakota,
19 was established by the South Dakota Board of Regents and, under South Dakota law, the
20 Institute has no independent legal capacity to sue or be sued.

21 5. The attorney general has the duty under SDCL 1-11-1(1) to represent the state in
22 legal proceedings. As such, in order for a person to represent the State of South Dakota in
23 litigation generally requires a legal services contract with the State under SDCL 1-11-15 and an
24 appointment from the attorney general under SDCL 1-11-4 and SDCL 1-11-5. The Attorney
25 General's Office maintains records of legal services contracts the State enters into with privately
26 retained counsel as provided by SDCL 1-11-15. I am the custodian of these records. The
27 Attorney General's Office also maintains records of assistant attorney general and special
28

1 assistant attorney general appoints made during my tenure as attorney general. An appointment
2 can last no longer than the term of the attorney general. I am the custodian of these records.

3 6. Joop Bollen has never served as a deputy or assistant attorney general for the
4 State of South Dakota. No legal services contract for Joop Bollen to represent the State of South
5 Dakota in a litigation matter has been filed with my office. Mr. Bollen has never been appointed
6 as a special assistant attorney general for the State of South Dakota during my term as attorney
7 general. Mr. Bollen has never been authorized by me or an authorized representative of my
8 office to accept service of process, defend, or to appear in litigation for, the State of South
9 Dakota.

10 7. Austin Su Ki Kim has never served as a deputy or assistant attorney general for
11 the State of South Dakota. No legal services contract for Mr. Kim to represent the State of South
12 Dakota in a litigation matter has been filed with my office. Mr. Kim has never been appointed as
13 a special assistant attorney general for the State of South Dakota during my term as attorney
14 general. Mr. Kim has never been authorized by me or an authorized representative of my office
15 to accept service of process, defend, or to appear in litigation for, the State of South Dakota. The
16 foregoing statements about Mr. Kim are also true as to the Hanul Professional Law Corporation
17 and any attorney working for Hanul.

18 8. Attached hereto as Exhibit 4 are true and correct copies of a contract between
19 James R. Lynch and the South Dakota Board of Regents to perform legal services in the above-
20 captioned action, and the appointment of Mr. Lynch as a special assistant attorney general.

21

22 I declare under penalty of perjury of the laws of the United States of America that the
23 foregoing is true and correct. Executed this 26th day of February 2009, at Pierre, South Dakota.

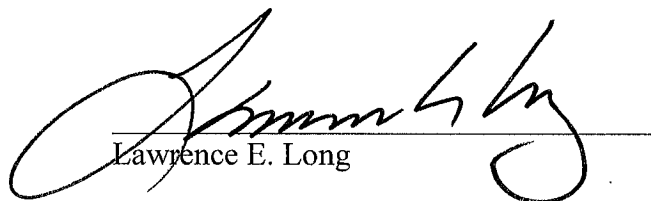
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Lawrence E. Long

**AGREEMENT FOR LEGAL SERVICES
BETWEEN THE SOUTH DAKOTA BOARD OF REGENTS
STATE OF SOUTH DAKOTA, AND
James R. Lynch of Garcia Calderon Ruiz, LLP**

The South Dakota Board of Regents, hereinafter BOARD OF REGENTS and James R. Lynch of Garcia Calderon Ruiz, LLP, hereinafter James R. Lynch, hereby agree that BOARD OF REGENTS will receive legal advice and representation as provided in this Agreement.

Section I. Scope of Work:

James R. Lynch agrees to provide legal services and represent BOARD OF REGENTS to defend the South Dakota International Business Institute, Northern State University and the South Dakota Department of Tourism and State Development in court or arbitration proceedings brought by Darley International, LLC, against the South Dakota International Business Institute and the Hanul Professional Law Corporation.

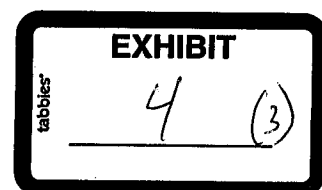
Section II. Payment Provisions:

It is hereby agreed that, in consideration of fulfillment of the terms of this Agreement, BOARD OF REGENTS shall pay James R. Lynch, within thirty (30) days of receipt of acceptable invoices, subject to ordinary State of South Dakota voucher clearance requirements, an amount equal to the number of hours billed times an hourly rate not to exceed three hundred dollars (\$300.00). The total amount expended under this contract shall not exceed (\$20,000.00).

Expenses for travel, meals and lodging incurred by James R. Lynch on behalf of BOARD OF REGENTS shall be reimbursed, upon submission of a complete listing of all expenses actually incurred in the performance of this Agreement.

Section III. Independent Contractor:

While performing the services hereunder, James R. Lynch is acting as an independent contractor and not as an officer, agent or employee of BOARD OF REGENTS or of the State of South Dakota.



Section IV. Hold Harmless and Indemnification:

James R. Lynch 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 which may arise as the result of performing services hereunder. This section does not require James R. Lynch to be responsible for or defend against claims or damages arising from the errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the James R. Lynch, unless such errors or omissions resulted from the acts or omissions of James R. Lynch. Nothing in this agreement is intended to impair the insurance coverage of James R. Lynch or any subrogation rights of James R. Lynch insurers.

Section V. Insurance:

James R. Lynch hereby agrees to maintain during the term of this Agreement appropriate and adequate insurance coverage including general liability, automobile liability and professional liability insurance and shall provide BOARD OF REGENTS with evidence thereof upon request.

Section VI. Limitations Upon Legal Representation:

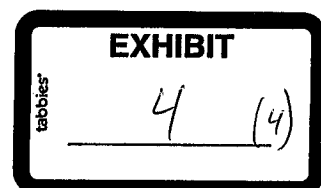
It is agreed and acknowledged by James R. Lynch that in order for James R. Lynch to represent the State of South Dakota or the interests of BOARD OF REGENTS in any court of law, he or any substitute counsel must receive an appointment as an Assistant Attorney General from the Attorney General of the State.

Section VII. Term of the Agreement:

The term of this Agreement shall commence on January 30, 2009 and shall remain in effect through June 30, 2009.

Section VIII. Termination:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice.



Section IX. **Default Provision:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This Agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.

Section X. **Amendment:**

The provisions in this Agreement may only be altered, modified or changed by written amendment hereto subject to the same approval requirements as in this Agreement.

Section XI. **Agreement Not Assignable:**

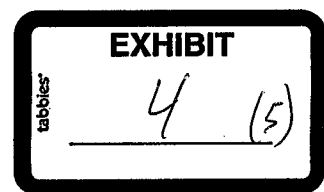
This Agreement is not assignable by James R. Lynch either in whole or in part, without the written consent of BOARD OF REGENTS.

Section XII **Payments Include All Taxes:**

Payments made to James R. Lynch as specified herein shall be deemed to include all taxes of any description, federal, state or municipal assessed against James R. Lynch by reason of this Agreement.

Section XIII **South Dakota Law Controlling:**

It is expressly understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of South Dakota both as to interpretation and performance.




Fax: Feb 4 2009 10:30am P002/002

Section XIV Conflict of Interest:

James R. Lynch agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit A.


FOR SOUTH DAKOTA BOARD OF REGENTS:



 Robert T. Perry

Dated: 2/4/09

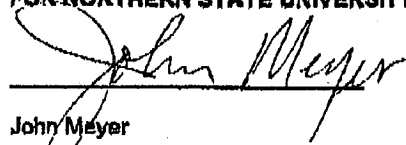
JAMES R. LYNCH OF GARCIA CALDERON RUIZ, LLP



 James R. Lynch

Dated: 2/3/09

FOR NORTHERN STATE UNIVERSITY:



 John Meyer

Dated: 2/4/09

SOUTH DAKOTA OFFICE OF THE ATTORNEY GENERAL:

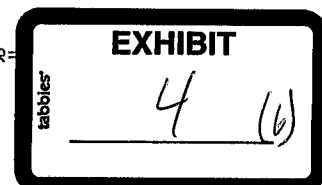


 Jeffrey R. Hallen

Dated: 2/5/09

The foregoing Agreement is hereby approved as to form.

Post-It Fax Note	7871	Date	# of pages ▶
To	Jim Shekleton	From	John Meyer
Co./Dept.	BAR	Co.	
Phone #		Phone #	626-2521
Fax #	773-2422	Fax #	



Approved as to Form
Larry Long

by JPK/AAG

Larry Long
Attorney General

Dated: 2/5/09

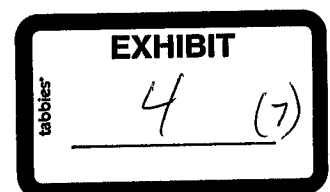


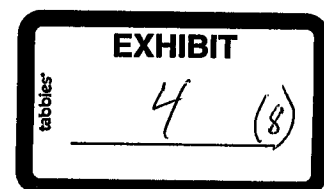
Exhibit A

POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

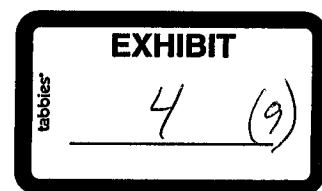
A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.



B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney's non-State client may have against each other; unless the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.
2. Any condemnation action in which the contracting attorney represents a condemnee.
3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.
6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to

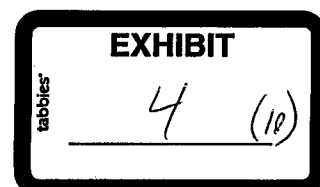


information which would give the non-State client an unfair advantage in the criminal action.

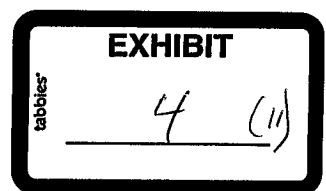
8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.
9. Any action brought through representation under a long-term contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.
10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.
11. Any lobbying activity by the contracting attorney
12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.

D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of \$50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of \$50,000.



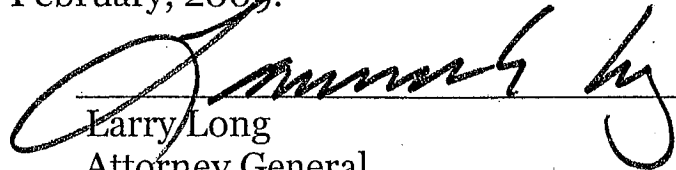
E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.



**Office of Attorney General
State of South Dakota**

I, Larry Long, Attorney General of the State of South Dakota, do hereby appoint **JAMES R. LYNCH** of Los Angeles, California, to represent the Board of Regents in legal matters involving the South Dakota International Business Institute, Northern State University and the South Dakota Department of Tourism and State Development concerning Darley International, LLC; to serve at the will of the Attorney General.

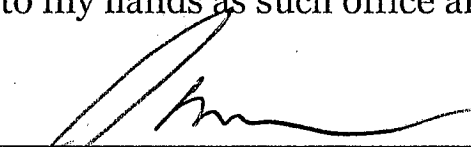
Dated this sth day of February, 2009.



Larry Long
Attorney General

State of California)
 : ss
County of Los Angeles)

I, James R. Lynch, having been appointed as a Special Assistant Attorney General for the State of South Dakota, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of South Dakota, and that I will faithfully and impartially discharge the duties of such office, and render a true account of all money, accounts, credits and property of any kind that shall come into my hands as such office and pay over and deliver the same according to law.



James R. Lynch

Subscribed and sworn to before me, a notary public, this 6th day of February, 2009.



Notary public/California

My commission expires:

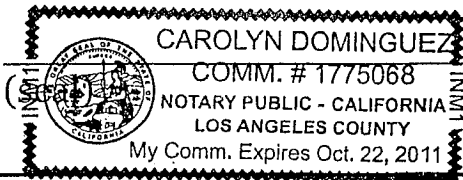


EXHIBIT
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