

CONSULTING CONTRACT

SOUTH DAKOTA DEPARTMENT OF TOURISM AND STATE DEVELOPMENT AND SDRC, INC.

THIS AGREEMENT is made and entered into the 22 day of December, 2009 by and between the South Dakota Department of Tourism and State Development ("DTSD") and SDRC, Inc., a South Dakota corporation ("SDRC"), 416 Production Street North, Aberdeen, SD 57401. (605) 725-3251

RECITALS

A. DTSD is an agency and instrumentality of the State of South Dakota empowered and directed to promote economic development in South Dakota and to enter into public-private partnerships for the purpose of promoting economic development in South Dakota.

B. Pursuant to a letter ruling dated April 2, 2004, as revised by a letter ruling dated June 13, 2004; an undated letter ruling issued in response to a December 10, 2006 request; a letter ruling dated June 25, 2008; and an undated letter ruling entitled Third Amendment revising the June 25, 2008 letter ruling, DTSD has been designated by the U.S. Customs and Immigration Service ("CIS") as a regional center (the "Regional Center") for the purposes of and pursuant to 8 CFR 204.6 and other applicable law.

C. SDRC is a South Dakota corporation with its principal place of business in Aberdeen, South Dakota. SDRC and its principal, Joop Bollen, have extensive experience in the marketing and administration of the so-called "EB5 Program" provided for and authorized by 8 CFR 204.6 and other applicable law.

D. DTSD desires to contract with SDRC for the purpose of having SDRC administer the Regional Center and the EB5 Program and to market the EB5 Program for the benefit of South Dakota, all in conformity with applicable statutes and regulations.

AGREEMENT

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties hereto, the parties agree as follows:

1. SDRC shall undertake all activities necessary to administer the Regional Center for DTSD, which administrative duties shall include, but not necessarily be limited to, the following:

a. Contacts with CIS for and on behalf of DTSD, including but not limited to filing all necessary reports, requests for approval, notifications, and responding to inquiries from CIS. SDRC's duties hereunder shall include giving such notifications and obtaining such approvals of this Agreement and the terms hereof as may be required by CIS;

- b. Maintaining all records and reports required by 8 CFR 204.6 and other applicable law;
- c. Making recommendations to DTSD relating to improvements or changes to the EB5 Program or the Regional Center in order to keep pace with developments in the EB5 Program generally and to remain competitive with other regional centers in the U.S. and similar programs abroad;
- d. Recommending and administering such actions as are necessary to maintain compliance with all applicable rules and regulations relating to the EB5 Program and the Regional Center;
- e. Servicing existing EB5 Program projects in South Dakota, including but not limited to compliance with the monitoring, record-keeping and reporting requirements of CIS and 8 CFR 204.6 and other applicable law. A list of existing EB5 Program projects in South Dakota is attached hereto, marked as Exhibit A, and is incorporated herein by this reference;
- f. Development and maintenance of an appropriate website. The content of the website shall be provided to DTSD for its review and approval prior to the website becoming available to the public; and
- g. Such other and further duties as are necessary to carry out the foregoing or as may be agreed upon by the parties.

2. Conditioned upon filing of this Agreement with CIS and any necessary approvals hereof by CIS, DTSD hereby grants to SDRC the non-exclusive right and privilege to market projects for development within the Regional Center's territory, as such territory may be established and approved from time-to-time by CIS. It is further agreed, however, that in the event there are no projects available for SDRC within the Regional Center's service area, then SDRC may participate in projects with the service areas of other regional centers.

3. SDRC shall have the obligation to market all projects proposed by DTSD for the EB5 Program (within the territory included within the Regional Center), provided that:

- a. The proposed project uses the loan model of investment; and
- b. The project is feasible, financially sound, marketable and competitive, as determined by SDRC, acting reasonably.

SDRC shall have a first right of refusal on all future projects proposed for the Regional Center using the "loan" model of investment. SDRC must give notice of its right to exercise its right of first refusal within 15 business days of receiving notice of the proposed project from DTSD.

4. Should SDRC not have the obligation to market a proposed project as provided herein, or if SDRC elects not to pursue a proposed project for any reason, DTSD may contract with

another person or entity to promote said project or undertake it on its own without any further obligation to SDRC concerning that project.

5. SDRC may not begin promoting a project for DTSD without first obtaining DTSD's written consent, which consent may not be unreasonably withheld. DTSD agrees to provide its response to such requests within 30 days of a written submittal to DTSD. DTSD may withhold its consent for any reasonable cause, including but not limited to the following:

- a. The proposed project is not feasible;
- b. The proposed project violates the public policy of the State of South Dakota;
- c. The proposed project is not consistent with DTSD's overall objectives for economic development in South Dakota.

6. In consideration of SDRC's administration of the existing EB5 projects listed on Exhibit A, DTSD shall pay to SDRC a fee of \$45,000.00, payable as follows: \$22,500.00 payable upon execution of this Agreement and \$22,500.00 payable on or before January 15, 2010. SDRC shall not utilize equipment or facilities of DTSD or the State of South Dakota in connection with this Agreement absent advance written permission from DTSD.

7. In consideration of DTSD's grant to SDRC of the non-exclusive right and privilege to promote EB5 projects within the Regional Center's territory, SDRC agrees as follows:

a. Except as otherwise provided herein, SDRC shall establish and set aside certain funds, further described below and known as the Expense Fund, Indemnification Fund One and Indemnification Fund Two.

b. The Expense Fund and Indemnification Fund One shall be funded from a fee collectible from SDRC for those projects listed on the attached Exhibit "B" and for any future projects undertaken by SDRC hereunder. The fee for each project shall be agreed upon in writing by DTSD and SDRC and said writing shall be appended to this Agreement as an Exhibit. The parties agree, however, that the fee for each project shall be based generally upon the following: ten percent of the origination/closing fee and twenty-five basis points of any and all interest collected in connection with the project. By way of example and not limitation, if a project bears an interest rate of two percent and the loan amount is \$1,000.00, the annual interest payable would be \$20.00 and the fee payable by SDRC would be \$2.50. If the project is structured as a multi-year loan, the fee payable by SDRC shall be based on the interest collected each year of the loan. By way of example and not limitation, if interest of \$20.00 is payable each year for five years, the fee payable by SDRC on account of that project shall be based, in part, on an anticipated fee payable by SDRC on account of interest of \$12.50. SDRC agrees it will at a minimum charge an origination fee for each project of not less than 1% of the capital to be raised through the EB5 program and that it will charge an interest rate of not less than twenty-five basis points. SDRC shall make all reasonable efforts to collect said origination fees and interest for each project. In the event SDRC does not make reasonable efforts to collect such fees and

interest, DTSD may collect such fees in SDRC's name and SDRC hereby grants DTSD a limited power of attorney for that purpose.

c. The fee shall be collectible and payable as described in this paragraph 7 commencing with the Basin Electric Power Cooperative project, otherwise known as the Deer Creek Station project, the promotion of which project is underway as of the execution of this Agreement;

d. The fee shall only be payable into the funds described above upon collection by SDRC of the moneys to which the fee is attributable.

e. The fees payable to the Expense Fund and Indemnification Fund One as provided herein shall be paid first into Indemnification Fund One. Except as otherwise provided below in subsection 7(f), Indemnification Fund One shall be used for the purposes of (i) satisfying any obligations of SDRC to indemnify DTSD as provided herein which are not covered by and paid under the policy or policies of insurance provided for below in paragraph 16 and not paid out of Indemnification Fund Two; and (ii) reimbursing DTSD for expenses it may incur in investigating or defending claims made or which DTSD believes may be made against it arising out of the EB-5 Program in relation to which DTSD is not entitled to indemnification from SDRC pursuant to this Agreement. SDRC shall pay over funds out of Indemnification Fund One for the purposes of subsection 7(e)(ii) above upon written request from DTSD. Except as otherwise provided below in subsection 7(f), there is no limit on the balance to be held in Indemnification Fund One

f. Moneys from Indemnification Fund One shall from time-to-time be swept into the Expense Fund as provided in this subsection 7(f). As funds accumulate in Indemnification Fund One, they shall be swept into the Expense Fund and used to pay current and future expenses incurred or to be incurred by representatives of DTSD (i) in connection with assistance provided by DTSD and others in providing information concerning projects to be undertaken by SDRC; (ii) promoting the EB-5 Program and projects related thereto generally, whether a project is undertaken by SDRC or otherwise; and (iii) in connection with the monitoring and review of SDRC's activities by DTSD pursuant to paragraph 14 below. Moneys shall be swept into the Expense Fund periodically as directed by DTSD in writing until such time as the balance of the Expense Fund equals \$350,000.00, at which time no additional moneys shall be swept into the Expense Fund unless and until it is necessary to replenish it so as to bring the balance of the Expense Fund back to \$350,000.00. Any expenses to be paid out of the Expense Fund must first be approved in writing by the Secretary of DTSD or the Secretary's designee (so designated in writing). In no event may funds from the Expense Fund be paid to or on behalf of any employee of the State of South Dakota in such a manner as to constitute compensation to any such employee for services provided by that employee.

g. In addition to the Expense Fund and Indemnification Fund One, there shall also be established an Indemnification Fund Two, to be funded from collected revenues of SDRC net of reasonable expenses incurred by SDRC to carry out its and duties and obligations hereunder, and in any event revenues other than the fees described above in subparagraph 7(b). Indemnification Fund Two shall be used solely for the purpose of satisfying any obligations of SDRC to indemnify DTSD as provided herein which are not covered by and paid under the policy or policies of insurance provided for below in paragraph 16. On or before November 1, 2010, or

receipt of the origination fee from the SDIF LP3 – Basin Electric Power Cooperative project, whichever occurs first, SDRC shall fund the balance of Indemnification Fund Two in an amount not less than \$500,000.00. It is anticipated that an additional \$500,000.00 will be deposited on or before December 31, 2010, but in any event said additional \$500,000.00 shall be deposited no later than December 31, 2011. No later than December 31, 2011, the balance of Indemnification Fund Two shall be not less than \$1,000,000.00, at which time SDRC shall have no further obligation to deposit additional moneys into Indemnification Fund Two unless necessary to restore a balance of \$1,000,000.00 after the payment of claims. SDRC may not utilize any of the fees described above in subparagraph 7(b) to fund Indemnification Fund Two. Indemnification Fund Two shall be utilized only for the Existing EB5 Projects described on Exhibit B and any later EB5 Projects undertaken and described in an Exhibit to this Agreement as contemplated above in subparagraph 7(b).

h. The fees payable from SDRC pursuant to the terms of this paragraph 7 shall be payable within 60 days of receipt of the applicable revenue by SDRC and shall be payable without any obligation on the part of DTSD to make demand therefor. Payment shall be made into Indemnification Fund One as provided above. Contemporaneously with such payment, SDRC shall provide notice of such payment to DTSD and copies of records reasonably acceptable to DTSD verifying the amount collected by SDRC. SDRC shall provide DTSD with reasonable access to SDRC's books and records directly relating to SDRC's receipt of fees and interest payments on account of projects so that DTSD may assure itself that SDRC is remitting fees into the Funds as required by this Agreement.

8. Upon the termination and winding up of the business and affairs of SDRC or the termination of this Agreement, whichever occurs first, the balance of the Expense Fund shall be paid over to DTSD. Upon the termination and winding up of the business and affairs of SDRC and written demand therefor from DTSD, the balance of Indemnification Fund One shall be paid over to DTSD. In the event DTSD fails to make written demand therefor, the balance then remaining in Indemnification Fund One, less any amount not then obligated or reasonably necessary to pay known or anticipated claims, shall be paid over to DTSD six years and sixty days after the termination and winding up of the business and affairs of SDRC or six years and sixty days after termination of this Agreement, whichever occurs first. Six years and sixty days after the termination and winding up of the business and affairs of SDRC or six years and sixty days after the termination of this Agreement, whichever occurs first, any balance of Indemnification Fund Two not then obligated or reasonably necessary to pay known or anticipated claims shall be paid over to the shareholders of SDRC. In order to facilitate the winding up of the affairs of SDRC, the balance of Indemnification Fund Two may be paid to an escrow agent upon terms and conditions reasonably acceptable to DTSD and consistent with SDRC's obligations hereunder.

9. SDRC hereby grants DTSD a security interest in the Expense Fund, Indemnification Fund One and Indemnification Fund Two to secure SDRC's obligations hereunder, including but not limited to SDRC's obligations to indemnify and hold DTSD and the State of South Dakota harmless. SDRC agrees to execute such further instruments as DTSD deems reasonably necessary to perfect the security interest in the Funds granted by this paragraph 9 including, but not limited to, a Deposit Account Control Agreement.

10. The Expense Fund, Indemnification Fund One and Indemnification Fund Two shall be maintained in an account or accounts fully insured by the Federal Deposit Insurance Corporation or otherwise secured against loss to DTSD's reasonable satisfaction.

11. Any fees received on account of the existing EB5 Program projects listed on the attached Exhibit A shall inure to the benefit of SDRC as a part of its fee for managing and administering said projects as provided for herein.

12. SDRC shall at its own expense retain such foreign agents, attorneys, accountants and other consultants as it deems necessary and appropriate to carry out its duties and obligations pursuant to this Agreement. In order to protect the integrity of the EB5 Program and the continued viability of the Regional Center, SDRC may not contract with any foreign agent, attorney, accountant or consultant without DTSD's prior written consent, which consent may not be unreasonably withheld.

13. Once a project has been agreed upon in writing, DTSD shall not interfere with SDRC's efforts to market said project; provided, however, that DTSD may order SDRC to discontinue marketing a project upon a material change in circumstances or upon DTSD obtaining information that the project is no longer appropriate under the terms and conditions of this Agreement. In the event DTSD terminates a project pursuant to the terms of this paragraph 13, DTSD shall reimburse SDRC for its reasonable out-of-pocket expenses for travel, advertising and marketing, but specifically excluding any fees owed to agents, attorneys or other professionals.

14. SDRC shall maintain such books, records and reports as are currently or in the future required by CIS, 8 CFR 204.6 or other applicable law, or as may otherwise reasonably be required by DTSD. SDRC shall provide true and correct copies of such books, records and reports to DTSD as often as such books, records and reports are required to be provided to CIS, but in no event less often than monthly. SDRC shall provide DTSD or its designee reasonable access to SDRC's original books, records and reports such that DTSD can assure itself of SDRC's compliance with the record-keeping requirements contained in this paragraph.

15. SDRC agrees to indemnify and hold the State of South Dakota and its departments, offices, agencies and instrumentalities (including but not limited to DTSD) and its and their elected officials, officers, employees, agents and consultants harmless from and against any and all claims, causes, actions, causes of action and liabilities arising out of or related to the services provided by SDRC and SDRC's officers, directors, employees, agents and consultants which are in any way related to this Agreement. Nothing in this paragraph shall require SDRC to provide indemnification for any liability arising solely out of an act or omission of the State of South Dakota and its departments, offices, agencies and instrumentalities, and its and their elected officials, officers, employees, agents and consultants.

16. SDRC shall purchase and maintain in force during the term of this Agreement professional liability insurance from companies licensed to do business in South Dakota providing coverages reasonably acceptable to DTSD and with limits of liability not less than

\$3,000,000.00 per occurrence and provide proof thereof to DTSD. If said insurance is issued on a "claims made" basis, SDRC shall make arrangements reasonably acceptable to DTSD to maintain "tail" coverage for a period of six years after the termination and winding up of the business and affairs of SDRC. Said insurance shall cover SDRC's obligations to indemnify provided for herein and shall name DTSD as an insured.

17. The term of this Agreement shall commence December 22, 2009, and end June 30, 2014. This Agreement may be terminated at any time by either party for cause, including but not limited to any breach of this Agreement or the lack of good faith compliance by either party with the terms of this Agreement.

18. This Agreement depends upon the continued availability of appropriated funds, authority from the South Dakota Legislature to continue the EB5 Program and/or the Regional Center and authority from CIS to continue with the EB5 Program and/or the Regional Center. This Agreement will be terminated by DTSD if the Legislature fails to appropriate funds or if the Legislature or CIS withdraws such authority. Termination for this reason is not a default by the DTSD nor does it give rise to a claim against DTSD. Termination pursuant to this paragraph 18 shall not affect the duties and obligations of the parties as to projects agreed to and ongoing upon such termination.

19. The terms of this Agreement shall be construed and governed under the laws of the State of South Dakota and applicable federal law. Any lawsuit arising out of or pertaining to the Agreement must be commenced in the state courts of South Dakota. Time is of the essence in the performance of the covenants, terms and conditions of the Agreement. This Agreement constitutes the entire agreement of the parties concerning its subject matter, and supersedes any prior discussions, representations or agreements, wither oral or written. The terms of this Agreement may only be amended by a written document, executed with the same formalities as this Agreement.

20. SDRC may not assign its rights, duties or obligations under this Agreement (including any assignment intended as security for a loan or other obligation of SDRC) without DTSD's prior written consent, which consent may be withheld at DTSD's sole discretion. DTSD may assign its rights, duties and obligations under this Agreement to any other instrumentality of the state government of South Dakota without consent. Unless otherwise provided in the legislation or executive order creating a successor entity, this Agreement shall be automatically assigned to any successor entity or instrumentality created by virtue of any reorganization of the executive branch of state government.

21. SDRC agrees to report to DTSD 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 SDRC, the State of South Dakota or the State's officers, agents or employees to liability. SDRC shall report any such event to DTSD immediately upon discovery. SDRC's obligation under this section shall only be to report the occurrence of any event to DTSD and to make any other report provided for by SDRC's duties hereunder or applicable law. SDRC's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications.)

\$3,000,000.00 per occurrence and provide proof thereof to DTSD. If said insurance is issued on a "claims made" basis, SDRC shall make arrangements reasonably acceptable to DTSD to maintain "tail" coverage for a period of six years after the termination and winding up of the business and affairs of SDRC. Said insurance shall cover SDRC's obligations to indemnify provided for herein and shall name DTSD as an insured.

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20. SDRC may not assign its rights, duties or obligations under this Agreement (including any assignment intended as security for a loan or other obligation of SDRC) without DTSD's prior written consent, which consent may be withheld at DTSD's sole discretion. DTSD may assign its rights, duties and obligations under this Agreement to any other instrumentality of the state government of South Dakota without consent. Unless otherwise provided in the legislation or executive order creating a successor entity, this Agreement shall be automatically assigned to any successor entity or instrumentality created by virtue of any reorganization of the executive branch of state government.

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22. SDRC agrees to avoid conflicts of interest, and to provide DTSD with prompt written notification of any circumstances which may give rise to actual or apparent conflict of interest. The existence of an unresolved conflict of interest shall constitute cause to terminate this Agreement.

23. Nothing in this Agreement shall be construed to give rise to a partnership or joint venture between SDRC and DTSD or any other agency or instrumentality of the State of South Dakota. Rather, SDRC shall be acting as an independent contractor and this Agreement is intended to be in the nature of a professional services and licensing agreement.

Dated this 22 day of December, 2009.

SDRC, Inc.

By: 

Its: President

(SEAL)

Dated this 22nd Day of December, 2009.

South Dakota Department of Tourism and
State Development

By: 

Richard Benda, Secretary

EXHIBIT "A"
Existing EB5 Projects

1. Van Winkle Dairy LP
2. Global Dairy LP
3. Winter Dairy LP
4. K & K Dairy LP
5. Swier Dairy LP
6. Drumgoon Dairy LP
7. Moody Dairy LP
8. Veblen East Dairy LP
9. Northern Beef Packers LP (initial equity only)

Exhibit "B"
Fees for Existing EB5 Projects

1. SDIF LP1 - Dakota Provisions (100 EB-5)
2. SDIF LP2 - Deadwood Mountain Grand Hotel, Casino & Event Center ("Deadwood Hotel & Casino") (up to 65 EB-5)
3. SDIF LP3 - Basin Electric Power Cooperative (up to 200 EB-5)
4. SDIF LP4 - Dakota Provisions (up to 20 EB-5)
5. SDIF LP5 - Basin Electric Power Cooperative (up to 19 additional EB-5)
6. SDIF LP6 - Northern Beef Packers (60 EB-5)

The fees for projects 1-6 above shall be negotiated by SDRC and DTSD, reduced to writing and attached as an Addendum to this Exhibit B no later than January 15, 2010. If for any reason said fees are not agreed upon by the close of business on January 15, 2010, then the standard fee set forth above in subsection 7(b) shall apply to each of projects 1-6.