

TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement is made this _____ day of _____, 20___, between the **City of Rapid City**, of 300 6th St., Rapid City, SD 57701, a municipality in the State of South Dakota ("Licensee") and the **City of Presidents Foundation**, of 302 Main St., Rapid City, SD 57701-2838, a South Dakota nonprofit corporation ("Licensor").

1. License. Upon the acceptance of this Agreement Licensor hereby grants to Licensee, and Licensee accepts, a limited right to use, under the terms of this Agreement the following service mark or state-registered trademark: "CITY OF PRESIDENTS" and other commercial symbols as Licensor may designate to be used in connection with said trademark (herein, collectively, the "Marks").
2. Use. Licensee's right to use the Marks is derived solely from this Agreement, is nonexclusive and is limited to the conduct of municipal business and promotion of the City of Rapid City by Licensee. Any unauthorized use of the Marks by Licensee is a breach of this Agreement and an infringement of the rights of Licensor in and to the Marks. Licensee shall not at any time acquire an ownership interest in the Marks by virtue of any use it may make of the Marks, and this Agreement does not confer any goodwill, title or interest in the Marks to Licensee other than as set forth herein. It is agreed that Licensee is not an affiliate of Licensor, and no representations will be made by either party that would create a parent-agency, employment, or partnership, and neither party shall have the authority to act for the other in any manner to create obligations or debts that would be binding on the other. Licensor shall not imply, suggest or represent that the Licensee is the Licensor, or is a division or affiliate of the Licensor. Licensor retains the full right to use and further license the Marks for any purpose and to operate, advertise and promote its own nonprofit activities using the Marks without limitation.
3. Inspection and Liability.
 - 3.1 Inspection. Upon reasonable request and with at least 48 hours notice from the Licensor, Licensee will notify the Licensor of the past and current usage and planned future usage of the Marks.
 - 3.2 Licensees' Liability. Licensee will indemnify, defend, and hold harmless the Licensor from and against any claims relating to Licensee's use of the Mark that does not comply with this Agreement.
4. Term. This Agreement shall be for a term of one (1) year from the date of execution of this Agreement. The parties may mutually agree in a signed writing to extend the term for an additional one (1) year term and for additional one (1) year terms thereafter.
5. \$0 Fee. Licensee will not be responsible for a royalty fee during the term of this Agreement or any renewal thereof.

6. Reasonableness. Licensee expressly recognizes and acknowledges that the restrictions contained herein are reasonably necessary for the protection of the legitimate interests of the Licensor.

7. Remedies. In the event of a breach or threatened breach of this Agreement by either party, the non-breaching party shall be entitled to an injunction restraining such breach or threatened breach, and the non-breaching party shall also have the right to pursue for such breach or threatened breach such other remedies as may be available at law, equity, by statute or under this Agreement, and including, but not limited to, the recovery of damages.

8. Waiver of Sovereign Immunity. Licensee waives the defense of sovereign immunity in connection with the enforcement of this Agreement as to the Licensor only.

9. Miscellaneous.

9.1 Entire agreement. This Agreement is the entire agreement between the parties with respect to the transaction contemplated herein and supersedes all previous written or oral negotiations, commitments and writings. No promises, agreements, representations or warranties with respect to said transaction have been made by any of the parties except as set forth herein.

9.2 Headings. The paragraph headings contained herein are inserted for convenience only and do not constitute a part of this agreement.

9.3 Severability. Each provision of this Agreement shall be considered severable, and if for any reason any provision or provisions of this Agreement are determined to be invalid and contrary to any existing or future law, the invalidity shall not affect or impair the operation of those portions of this Agreement that are valid, or the application of such provisions in situations in which they are not invalid.

9.4 Waiver. The failure of either party to insist on strict performance of this Agreement by the other, according to the terms and understanding herein set forth, shall not be construed as a waiver of the right to insist on such performance and no waiver by either party of any breach by the other of any provisions hereof shall be deemed a waiver of any other prior or subsequent breach.

9.5 Representation of Parties. Both parties have been advised that they have the right to have their respective legal counsel review this Trademark License Agreement.

9.6 Attorneys Fees and Costs. Reasonable attorneys fees incurred to enforce the provisions of this Agreement shall be awarded to the prevailing party in addition to costs and necessary disbursements.

9.7 Jurisdiction and Venue. Any and all claims, questions or disputes regarding the interpretation, performance, and enforceability of this Agreement, the rights and remedies of the parties hereunder, and all related actions of counterclaims shall be initiated and or prosecuted

exclusively in Pennington County Circuit Court, Rapid City, South Dakota. The parties further agree to submit to the jurisdiction of said courts.

9.8 Assignment. This Agreement shall not be assigned by Licensee without the prior written consent of Licensor.

9.9 Relationship. Nothing contained in this Agreement shall be construed in any way to create a partnership, joint venture, or parent-subsidiary relationship, and the nonprofit activities of Licensor are separate and apart from any that may be operated by Licensor without any supervision or control by the Licensee.

9.10 Disclaimer of Warranties. The Licensor makes no warranties or representations regarding the Marks of any kind.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day, month and year first above written.

CITY OF RAPID CITY

CITY OF PRESIDENTS FOUNDATION

By: _____

By: _____

Its: _____

Its: _____