

**SETTLEMENT AGREEMENT AND  
RELEASE IN FULL OF ALL CLAIMS  
ARISING OUT OF MALLOW FIRE**

In consideration of the payment of Thirty Thousand Dollars (\$30,000) to The City of Rapid City (referred to herein as the “City”), the receipt and sufficiency of which is hereby acknowledged, the City, for themselves, their heirs, insurers, and assigns, do hereby fully releases and forever discharge Michael Mushitz, d/b/a/ Mushitz Fencing, Mainline Contracting, Inc. and Dioten Engineering, Inc., and their respective insurers, including any misnomers, parent, sister or affiliated companies of said insurers, together with all officers, directors, employees, partners, agents and shareholders of all parties released (collectively referred to as the “Released Parties”), from any and all claims, demands, liabilities, obligations, damages, costs, expenses, loss of service, consequential damages, loss of profits, diminution in value of property, actions and causes of action, including each and every right of payment for damages arising or alleged to have arisen out of a fire that occurred on or about March 9, 2012, in Rapid City, Pennington County, South Dakota, commonly known as the “Mallow Fire.”

This release shall extend and cover all claims and damages, whether now known or unknown, including, but not limited to, the natural and probable consequences of any injury or damage alleged or which could have been alleged, as arising out of or associated with the above occurrence, including the release and waiver of any claim for future damage or remediation of any injury claimed or which could have been claimed by City, or their representatives, insurers or heirs.

As additional terms of this agreement, the undersigned states as follows:

1. The City declares an understanding that in making this release and agreement they are relying wholly upon their own judgment as well as that of counsel as to the nature, extent and

duration of any claimed loss or injury and as to the value and validity of the consideration. They further state that they have not been influenced in making this release by any representations, made by the persons, firms or corporations who are hereby released, or by any other person or persons representing those entities and persons released, except those representations set forth herein.

2. The undersigned City representative declares that the terms of this release have been completely read, understood and voluntarily accepted for the purpose of making a full and final compromise and settlement of all claims, disputed or otherwise, on account of the above-described occurrence, and for the express purpose of precluding, forever, any further claims related to this occurrence. The City agrees that payment and settlement of these claims is not to be construed as an admission of liability on the part of any party released. Further this release shall not be construed as acknowledging a rightful claim by the City to damages associated with the above occurrence.

3. Further the City hereby discharges and releases not only the Released Parties specifically or generally referred to herein, but also, in a like manner and to the same extent, all other persons, companies, partnerships, business entities whatsoever such as are classified as joint tortfeasors or joint obligors under SDCL §15-8, or any other applicable law; it being the intent of this agreement to completely bar any right of action against any such tortfeasors or joint obligors by the City, whether or not said parties are named herein, and vest in the Released Parties all rights to contribution from any such joint tortfeasors or joint obligors not specifically named herein.

4. It is specifically acknowledge that this agreement was reached as the result of a negotiated settlement in which all parties were represented by counsel and had full opportunity to

have all questions and issues addressed and that the same have been addressed to their satisfaction.

This release contains the entire agreement between the parties hereto, and the terms of this release are contractual and not a mere recital.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF RAPID CITY

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Sam Kooiker, Mayor

ATTEST:

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Pauline Sumption, Finance Officer