

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is hereby made and entered into by and between the **DIOCESE OF RAPID CITY**, whose address is P.O. Box 678, Rapid City, SD 57709 (hereinafter referred to as the “Licensor”) and the **CITY OF RAPID CITY**, a municipality existing under the laws of the State of South Dakota, whose address is 300 Sixth Street, Rapid City, SD 57701 (hereinafter referred to as the “City”).

WITNESSETH:

WHEREAS, Licensor is the owner of certain real property located in the City of Rapid City, as more particularly described as follows:

Tract A of the Big Sky Subdivision, located in Section 3, T1N, R8E of the B.H.M., Rapid City, Pennington County, South Dakota.

which shall be hereinafter referred to as the “License Area;” and

WHEREAS, the City desires to use Licensor’s property for the purpose of erecting temporary snow fencing; and

WHEREAS, the City’s actions on the property will result in substantial benefit to the City in snow removal in the area of the Licensor’s property; and

WHEREAS, Licensor desires to grant to City a license for the aforementioned purpose.

NOW, THEREFORE, for and in consideration of the terms, conditions and mutual covenants contained herein, and other good and valuable consideration received by each party, the sufficiency of which are hereby acknowledged, Licensor and City hereby agree as follows:

1. **GRANT OF LICENSE:** Licensor hereby grants City, its agents, officers and assigns the right, privilege and license to use the License Area to locate, construct, install, operate, inspect, alter, improve, maintain, repair, move and rebuild snow fencing on, upon and across said License Area; and attain ingress and egress to and upon said License Area for the purpose of exercising the rights, privileges and license granted herein.

2. **TERM:** This License is granted for a term of twelve (12) months from the date this Agreement is signed by Licensor. The License shall automatically renew for a period of twelve (12) months on each anniversary date of Licensor’s signature, unless either party affirmatively terminates the License before said anniversary date. This Agreement may also be terminated by Licensor or City on sixty days’ written notice.

3. **RETENTION OF RIGHTS:** Licensor retains the right to use the License Area in any manner not inconsistent with the rights herein granted to City, provided that the Licensor shall not disturb the snow fencing in any way without prior approval by the City. The City

expressly agrees, however, that Licensor shall have no duty to construct, monitor, inspect, improve, maintain or repair said snow fencing; and that any and all duty and responsibility for any and all issues related to said snow fencing shall be the sole duty and responsibility of the City.

4. INDEMNIFICATION: The City expressly acknowledges and accepts responsibility for all loss, damage, or injury to persons or property, arising out of or resulting from the placement, construction, operation, inspection and/or maintenance of snow fencing on the License Area, unless such claim or demand shall arise out of or result from the willful misconduct of Licensor, its agents, employees, or assigns. The City further agrees to defend, indemnify and hold Licensor, its employees, agents, officers and assigns, harmless from any and all claims, demands or lawsuits, of whatever kind or character, arising out of this License Agreement, including the payment of reasonable attorney's fees and costs. This indemnity obligation shall survive the termination or expiration of this Agreement.

5. WORKMANSHIP: City agrees that any and all work performed on the License Area, and in association with the purposes of this License, shall be done in a good and workmanlike manner and in accordance with applicable law. The City accepts full and complete responsibility for all workmanship done and performed in and on the License Area.

6. TERMINATION: Upon termination of this License Agreement, City shall, within a reasonable time and at City's sole cost and expense, remove all equipment, accessories, and materials owned by City from the License Area and restore said License Area as nearly as practicable to its condition prior to the granting of the License.

7. TIME: Time is of the essence of this Agreement.

8. SEVERABILITY: The parties agree that if any provisions of this Agreement are held invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

9. BINDING EFFECT: This Agreement is binding upon the parties, their heirs, successors, administrators, executors and assigns.

10. INTEGRATION: This writing represents the entire agreement between the parties, and there are no other oral or collateral agreements or understandings of any kind or character except those contained herein.

11. AMENDMENTS: The provisions hereof may be modified only by written agreement signed by the parties.

12. COUNTERPARTS. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

13. HEADINGS: The paragraph headings contained herein are inserted for convenience only and do not constitute a part of this Agreement.

14. CONSTRUCTION AND VENUE. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

IN WITNESS WHEREOF, the undersigned parties have executed this License Agreement on this the ____ day of _____, 2009.

DIOCESE OF RAPID CITY

By _____
Its _____

CITY OF RAPID CITY

By _____
Alan Hanks, Mayor

ATTEST:

James F. Preston, Finance Officer