



**Events Center Complex Advisory Board  
January 31, 2023, 8:00 a.m.**

City Hall - Media Room (First Floor)  
224 W 9th St, Sioux Falls, SD 57104  
Joining Online via Webex: Included in Outlook Calendar Invite  
Join by Phone: 408-418-9388 – Meeting Code 24810193042

- ITEM 1. Call to Order & Quorum Determination
- ITEM 2. Approval of Agenda (Action Item)
- ITEM 3. Approval of Minutes for December 13, 2022 (Action Item)
- ITEM 4. Presentation by Sanford Sports Complex
- ITEM 5. Set Dates and Times for Upcoming Meeting
- ITEM 6. City Updates
  - a. Status of Proposed Land Exchange with Tounty
- ITEM 7. Final Crossroads Consulting Proposal (Action Item)
- ITEM 8. Facilitated Discussion: State of the Industry / Impact on Events Center District
  - 1. Commercial and Housing Development
  - 2. Hospitality
  - 3. Banking and Finance
- ITEM 9. Next Steps
- ITEM 10. Public Input
- ITEM 11. Adjournment

**Events Center Complex Advisory Board Minutes  
December 13, 2022, 8:00 a.m.**

Meeting Rooms 8-10  
Denny Sanford Premier Center  
1201 North West Avenue, Sioux Falls SD 57104

ITEM 1. Call to Order & Quorum Determination

VOTING MEMBERS PRESENT: Angie Bakke, Ken Bashore, Kurt Brost, Dick Dempster, Mike Hart, Reggie Kuipers, Kristi Metzger, Jamie Nold, Tony Nour, Shailesh Patel, Orlen (OT) Tschetter

NON-VOTING MEMBERS: Mike Krewson, Shawn Pritchett, and Jeff Eckhoff

STAFF: Tom Huber, Scott Rust, Stu Weber, Dustin Powers, and Randi Mosset

ITEM 2. Approval of the Agenda

A motion was made by Orlen (OT) Tschetter and seconded by Jamie Nold to approve the December 13, 2022, meeting agenda. Motion passed unanimously.

ITEM 3. Approval of the Minutes for September 20, 2022

A motion was made by Angie Bakke and seconded by Kristi Metzger to approve the September 20, 2022, meeting minutes. Motion passed unanimously.

ITEM 4. Set Dates and Time for Upcoming Meetings

The next meeting will be held on Tuesday, January 31<sup>st</sup>, at 8:00 a.m. This meeting will be held at City Hall Media Room on the 1<sup>st</sup> floor.

ITEM 5. City Updates

Shawn Pritchett reported that the agreements with ASM Global and Oak View Group were extended for another five years. The agreement with the Canaries was also discussed.

ITEM 6. Event Center District Study Area

Dustin Powers talked about how the study area was determined and where that sat relative to the Downtown District and the Sanford Complex.

ITEM 7. Updated Crossroads Consulting Proposal

Scott Rust wanted to get thoughts on the proposal. Dustin Powers discussed what input his department could give to help with proposal. Scott Rust is going to reach out to get more information and breakdown on proposal.

ITEM 8. Facilitated Discussion: State of the Industry / Impact on Event Center District  
Tony Nour stated that this topic is going be deferred for a later meeting.

ITEM 9. Next Steps  
This will be discussed at the next meeting.

ITEM 10. Public Input  
There wasn't any public input.

ITEM 11. Adjournment  
A motion was made by Kurt Brost to adjourn the meeting and seconded by Orlen (OT) Tschetter. Motion passed unanimously.

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF SIOUX FALLS AND CROSSROADS CONSULTING  
SERVICES, LLC**

Agreement made, 2023, between the City of Sioux Falls, SD (the “City”), and Crossroads Consulting Services, LLC (“Crossroads”).

The parties to this Agreement, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

**Section One**

Crossroads is to conduct a strategic market assessment for the Sioux Falls Events Center Complex. Crossroads provides an independent analysis necessary for the City to make informed decisions related to developing new projects, enhancing existing facilities, improving operations and/or developing business strategies to align with market demand. A key first step would be to conduct an independent assessment of the current opportunities and challenges posed with potential modernization and/or expansion of the Convention Center and the Events Center Complex from a market demand perspective. If modernization and/or expansion appears warranted by demand, the City would like recommendations related to the building program elements in terms of amount and type of space and supporting amenities and visitor/hospitality infrastructure that would help further activate the Events Center Complex and create more of an entertainment district. The City would also like to better understand the type of new business that could potentially be generated by modernization and/or expansion of the Convention Center and the Events Center Complex as well as the broader community impact.

**TASK 1 - CONDUCT A SITUATIONAL ASSESSMENT AND STRATEGIC MARKET ANALYSIS**

*Task 1.1 - Conduct a Project Kickoff Meeting*

The first step in the study process will be to meet with the appropriate City and Advisory Board representatives to:

- Confirm the study scope and objectives.
- Discuss key issues associated with the project.
- Discuss the approach to performing this engagement.
- Review the recommendations of the Events Center Complex Study Group and comment on how those may or may not promote additional development on or around the Events Center Complex.
- Tour the existing facilities and other amenities in the market to understand the competitive positioning.

Prior to this on-site meeting, Crossroads will obtain and review relevant historical operating data on the Convention Center including mission statement and booking

Agreement No. \_\_\_\_\_

policy, organizational structure/staffing levels, marketing strategy, historical utilization, and financial results in terms of operating revenues and expenses. Crossroads will also review any appropriate master planning documents including Shape Sioux Falls 2040, the 2025 Downtown Plan and Vision Sioux Falls to obtain an understanding of future development initiatives that may impact this project.

During this initial on-site meeting, Crossroads will also meet with key stakeholders including City staff, ASM Global, Experience Sioux Falls, area hoteliers, economic and development entities (e.g., Downtown Sioux Falls, Forward Sioux Falls, Sioux Falls Development Foundation, etc.), and other appropriate public and private organizations identified by the City to obtain their perspectives on the benefits, challenges, and opportunities associated with the existing facilities in the market, the proposed modernization and/or expansion of the Convention Center as well as Sioux Falls as a destination.

#### *Task 1.2 - Assess Local Market Conditions and Supporting Hospitality Infrastructure*

Crossroads will obtain an understanding of the local market conditions, including assessment of current and planned hotel supply, transportation infrastructure, entertainment offerings, key community resources and related visitor attributes of the Sioux Falls market. Obtaining an understanding of potential growth opportunities in the Sioux Falls market will be a key consideration in the analysis. Market attributes to be analyzed include:

- Trends and projections in population, age, income, and employment base
- Hotel supply/committable rooms proximate to the Convention Center
- Hotel rates and local related taxes
- Retail and entertainment destinations and developments such as the Steel District
- Tourism/visitor statistics and trends
- Transportation access and connectivity
- Tourism attractions
- Existing/planned facilities in the market including event and hotel spaces
- Existing/planned amenities and/or other business or commercial development projects that could impact future demand for a modernized and/or expanded Convention Center

#### *Task 1.3 - Analyze Historical Convention Center Operations and Future Bookings*

Crossroads will conduct an analysis of the overall operating attributes of the Convention Center. Crossroads will review the mission statement, booking policy and operating objectives for the facility. Based on available information Crossroads will analyze the historical activity at the existing Convention Center in terms of:

- Number of events and attendance by type (e.g., conventions, tradeshow, public shows, meetings, etc.)
- Room nights generated
- Seasonality
- Amount and type of space used
- Amount and type of space utilized by specific component (i.e., exhibit, meeting, ballroom)
- Occupancy by type of space
- Profitability by event type

Based on available data from facility management and Experience Sioux Falls, Crossroads will analyze lost business reports to obtain an understanding of the reasons that groups are not choosing the Convention Center or Sioux Falls (e.g., the amount and/or type of space, date availability, hotel supply, price/value, air access, etc.) for their event. Crossroads will also review future bookings, particularly in the COVID-19 recovery period, and provide observations related to opportunities to increase business with a modernized and/or expanded Convention Center. Crossroads will also review any customer satisfaction surveys that have been conducted by facility management.

*Task 1.4 – Profile Key Convention/Meeting Industry Trends*

Crossroads will utilize information from secondary sources such as the Center for Exhibition Industry Research (CEIR), Professional Convention Management Association (PCMA), Meetings & Conventions, Destinations International, Meeting Professionals International (MPI), Access Intelligence, and Trade Show Executive combined with the project team’s experience to summarize industry trends that may impact future operations of the Convention Center including those related to supply, demand, venue selection criteria, destination selection criteria, building program, and the COVID-19 pandemic. This will provide the City with insights regarding current factors impacting building development and event growth.

*Task 1.5 – Conduct Market Surveys with Event Planners/Customers*

Crossroads will conduct surveys with a select number of existing, past, lost and potential users (e.g., convention/meeting planners, event producers) to obtain their perspectives on the strengths and challenges associated with the current state of the Convention Center, potential opportunities and threats from a competitive standpoint, potential market support for a modernized and/or expanded Convention Center, required program elements/amenities (e.g. amount/type of space), supporting visitor/hospitality infrastructure (e.g. hotels, restaurants, transportation linkages), etc. These surveys will also seek to understand the site selection criteria used by meeting planners/event producers to choose a destination, and how, in general, Sioux Falls meets their objectives. This research will be key to identifying potential new business opportunities that could potentially occur at a modernized and/or expanded Convention Center.

*Task 1.6 – Prepare a Benchmarking Facility and Destination Analysis*

Crossroads will conduct a benchmarking analysis which compares the Convention Center and Sioux Falls to other competitive and comparable facilities and destinations. Based on available information, specific factors to be analyzed in the competitive facility analysis include ownership/management approach, building program elements by type and amount of space, utilization, and financial operations. Crossroads will also provide observations for strategic positioning of the Convention Center relative to existing and planned local event facilities.

The benchmarking analysis will also compare key destination attributes that meeting planners use when selecting a location for their event which may include hotel supply, restaurants, and retail establishments proximate to the convention center, total tax on rooms, per diem travel costs, airport statistics, etc.

Benchmarking is a key element to short and long-term strategic planning. While providing significant data, benchmarks still only serve as a guide. As such, other attributes such as specific facility/market factors and industry trends will also be considered when developing the conclusions and recommendations. The benchmarking analysis will likely be presented in the form of comparative tables and graphs as well as case studies which will serve as a point of context for recommendations related to the potential market opportunities associated with modernization and/or expansion of the Convention Center. The case studies will also identify what lessons can be learned in terms of modernization/expansion approach and amenities.

*Task 1.7 – Develop a Market-Supportable Building Program Analysis (If Warranted by Market Demand)*

Based on the research and analysis conducted in the previous tasks, Crossroads will outline a market supportable modernization and/or expansion program for the Convention Center that take into account the characteristics of the facility and the market as well as the City's economic objectives for the facility. Crossroads will identify the overall program square footage for potential modernization and/or expansion based on market research. This analysis will include the general space requirements (e.g., amount and type of space such as exhibit, meeting, ballroom and multi-purpose/flex) as well as additional amenities and hospitality-related infrastructure (e.g., on-site/adjacent additional hotel, eating/drinking establishments, transportation/connectivity links to downtown and other nearby amenities, etc.) that may be needed to support the proposed program enhancements and to increase the overall marketability and competitiveness of Sioux Falls as a convention/meeting destination. These recommendations will be made within the context of other concurrent planning efforts for the Events Center Complex and the City of Sioux Falls. Right sizing the facility program as well as incorporating the appropriate types of spaces that attendees, meeting planners and show producers require will be important to the overall success of optimizing programming and financial operations. Crossroads will also comment on improvements to enhance overall connectivity and synergy with surrounding developments.

### *Task 1.8 – Provide Status Update*

Based on the research and analysis conducted in the previous tasks, Crossroads will summarize the findings and recommendations related to the market demand for a modernized and/or expanded Convention Center within the context of local market conditions and the broader competitive market for review by the appropriate City representatives. The market findings will include a SWOT (Strengths, Weaknesses, Opportunities, Threats) analysis and take into account the City's overall long-term objectives for the Convention Center. Crossroads will conduct a work session (either in-person or virtual) with the City and other appropriate parties to discuss the preliminary findings and recommendations to date as well as next steps.

## **TASK 2 – FINANCIAL ANALYSIS**

### *Task 2.1. Convention Center Demand Projections*

Based on the research and analysis in Task 1, Crossroads will develop an estimate of potential utilization for a modernized and/or expanded Convention Center in terms of the number of events, average attendance, and total attendance by major event type (e.g., conventions and conferences, trade shows, public/consumer shows, meetings, banquets, etc.). This estimate will serve as the basis for the financial pro forma. The estimate of utilization can be compared to a baseline year (jointly agreed upon by the City and Crossroads) to provide a point of comparison.

### *Task 2.2. Convention Center Financial Pro Forma*

Based on the research and analysis in Task 1 as well as the estimate of utilization, Crossroads will develop a financial pro forma and related assumptions for a modernized and/or expanded Convention Center that estimates financial operations in terms of operating revenues (e.g., facility rental, food & beverage, event services, parking, advertising/sponsorships, etc.) and operating expenses (e.g., salaries/wages and benefits, contracted services, utilities, insurance, repairs/maintenance, general supplies, etc.) as well as a projected operating profit or loss for a stabilized year of operations. The financial pro forma can be compared to a baseline year (e.g., FY 2019) to provide a basis of comparison.

## **TASK 3 – ECONOMIC AND FISCAL IMPACT ANALYSIS**

Crossroads will estimate the return on investment to the community in terms of the potential economic benefits associated with ongoing operations of a modernized and/or expanded Convention Center. Specific subtasks include:

- Estimate direct spending inputs generated from activities both inside and outside of a modernized and/or expanded Convention Center based on available primary and secondary research and industry data. The primary types of spending quantified in the analysis will include spending generated from the ongoing operations of the facility as well as spending from attendees outside the facility on items such as lodging, transportation, shopping, entertainment, business services, etc.
- Allocate the estimated direct spending amounts into specific spending categories which will serve as the basis for the multiplier analysis.



- Apply the multipliers using a regional economic forecasting model provided by IMPLAN Group, LLC to calculate total (i.e., direct, indirect, and induced) output, earnings, and employment. One of the primary advantages of the IMPLAN model is that it is both location and industry specific. Consequently, the analysis will delineate the individual industries that are affected by the direct spending generated from operations at a modernized and/or expanded Convention Center.
- Estimate the annual tax revenues to local and State governments.

#### **TASK 4 – EVENTS CENTER CAMPUS - DESTINATION DISTRICT MARKET STUDY**

Crossroads will conduct a destination district market study that explores the opportunity for development and destination placemaking for land adjacent to/surrounding the Convention Center. Subtasks include:

- Obtain relevant and available market data from the City’s Planning Department related to:
  - Inventory of land uses within a specific radius (e.g., 1,3 or 5 miles) of the Events Center Campus
  - Demographic and socioeconomic data (e.g., population, households, income, etc.)
  - Residential market and affordable housing
  - Commuting patterns
  - Existing/future inventory of space
  - Existing and proposed hotel inventory
  - Office and commercial vacancy rates
  - Potential tax incentives for development
  - Prepare Peer Group Case Studies related to comparable suburban markets having similar convention facilities and analyze immediate surrounding development patterns connected to residential, commercial/retail and hotel development.
  - Develop recommendations for the optimal mix of uses and potential development opportunities in the Events Center District that could benefit the Events Center Campus. This will include a discussion of what are reasonable expectations based on current or potential development around the Events Center Campus including market limitations and opportunities.

#### **DELIVERABLES**

Once the above tasks 1-4 have been completed, Crossroads will issue a draft report that summarizes the findings and recommendations for City representatives and other appropriate parties to review. The report will also include potential next steps in the strategic planning process. Once Crossroads receives review comments on the draft report, Crossroads will make any appropriate refinements and issue the final report.

Crossroads will also plan to participate in work sessions/presentations as appropriate to discuss the report findings.

The deliverables will consist of documents in PDF format and will not include forecasted or projected financial statements. Crossroads deliverables will be prepared for internal use by the City in its ongoing planning decisions regarding the Convention Center and the broader Events Center Complex. Crossroads deliverables and advice cannot be used or relied upon for investment or other financial decisions by the City or by any third party. It is understood that Crossroads findings will constitute only one of several factors that the City will consider related to this project.

## Section Two

The City will pay Crossroads for the scope of work not to exceed one hundred twenty-five thousand seven hundred dollars (\$125,700.00).

City of Sioux Falls - Strategic Market Assessment - Cost of Services			
Major Task	Description	Hours	Professional Fees
1	Situational Assessment and Strategic Market Analysis	333	\$59,800
2	Financial Analysis	110	\$18,700
3	Economic & Fiscal Impact Analysis	74	\$12,300
4	Events Center Campus - Destination District Market Study	136	\$30,300
5	Report Deliverables & Work Session	24	\$4,600
<b>Total</b>		<b>677</b>	<b>\$125,700</b>

This assumes the following staff hours and hourly rates, although we may reallocate resources within the not-to-exceed cap:

Crossroads Consulting - Hourly Billing Rates By Position	
Position	Hourly Billing Rate
Principal/Project Executive	\$275
Senior Project Manager	\$230
Project Manager	\$190
Senior Analyst	\$160
Analyst	\$145

Additional expenses expected are;

**Travel Expenses** with a cap of \$1,250 per person. Three (3) on-site-trips are expected;

- Two (2) trips with three (3) consultants - \$7,500.00
- One (1) trip with two (2) consultants - - \$2,500.00

### **Data Resources**

- IMPLAN multipliers - \$1,000.00

Additional expenses will be billed at the actual cost. Crossroads work would be billed monthly on a percent complete basis.

In the event that services are provided that are outside of the specified services, Crossroads will contact the City immediately and mutually agree on the cost and completion of the additional services. A written description of these additional services and the agreed upon compensation will be provided and a written addendum will be executed by both parties for the Agreement.

### **Section Three**

This Agreement shall terminate on or before December 31, 2023.

### **Section Four**

Crossroads shall be subject to the provisions of Chapter 98 of the Code of Ordinances of Sioux Falls, SD. It is declared to be discrimination for Crossroads, because of race, color, sex, creed, religion, ancestry, national origin, or disability, to fail or refuse to hire, to discharge an employee, or to accord adverse, unlawful, or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment.

If Crossroads is guilty of discrimination, this Agreement may be terminated in whole or in part by the City and Crossroads shall be liable for any costs or expense incurred by the City in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the Agreement so terminated or canceled.

Should the Sioux Falls Human Relations Commission in a proceeding brought as provided by the Code of Ordinances of Sioux Falls, SD, find that Crossroads has engaged in discrimination in connection with this Agreement and issue a cease and desist order with respect thereto, the City shall withhold up to 15 percent of the contract price until such time as the Commission's order has been complied with or Crossroads has been adjudicated not guilty of such discrimination.

Crossroads will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the

Commission, its agencies, or representatives, to ascertain compliance with the above provisions.

This section shall be binding on all subcontractors or suppliers.

### **Section Five**

Crossroads shall secure the insurance specified below. All insurance secured by Crossroads under the provisions of this section shall be issued by insurance companies acceptable to the City. The insurance specified in this section may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance shall be provided to the City upon execution of this Agreement.

1. Workers' compensation insurance providing the statutory limits required by South Dakota law. In addition, it shall provide Coverage B, Employer's Liability Coverage, of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limits. The required limit may be met by excess liability (umbrella) coverage.
2. Commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury, and a property damage liability coverage with limits of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. The required limit may include excess liability (umbrella) coverage. The policy shall by separate endorsement name the City and its representative as additional insureds. If "occurrence form" insurance is not available, "claims made" insurance will be acceptable. The policy shall be maintained for three years after completion of this Agreement.
3. Automobile liability insurance covering all nonowned, and hired automobiles, trucks, and trailers. Crossroads does not own any vehicles that will be used in this project. The coverage shall be as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.
4. Professional liability insurance providing occurrence basis coverage for any claim arising from the errors, omissions, failure to render a service, or the negligent rendering of the service by Crossroads in the amount of \$1,000,000 each occurrence and \$1,000,000 annual aggregate. If occurrence form insurance is not available, claims made coverage shall be maintained for two years after final completion of the services. The City does not represent that the above coverages and limits are adequate to protect Crossroads and assumes no responsibility therefor.

The City of Sioux Falls utilizes myCOI to track and verify Contractor's insurance coverage, if required, so the Contractor does not have to spend time requesting, collecting, or delivering a Certificate of Insurance (COI) to the City. Upon the City's receipt of this executed contract and approval as a Contractor, the Contractor will receive an email from [registration@myCOItracking.com](mailto:registration@myCOItracking.com). The Contractor must follow the instructions contained in the email and complete the online registration if not previously

completed. Upon completion of registration, myCOI will request proof of insurance agent(s). In addition to other terms and conditions contained herein, Contractor shall not commence work and no payments shall be made to Contractor, unless vendor is registered with myCOI, and a compliant COI has been received.

Crossroads will provide the City with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. Crossroads agrees to hold the City harmless from any liability, including additional premium due, because of the Crossroads failure to maintain the coverage limits required.

The City's approval or acceptance of certificates of insurance does not constitute the City's assumption of responsibility for the validity of any insurance policies, nor does the City represent that the above coverages are adequate to protect any individual/group/business, its consultants', or subcontractors' interests, and assumes no liability therefor.

### **Section Six**

If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this Agreement, this Agreement shall impose no obligation on the City for payment. This Agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage shall accrue to the benefit of Crossroads, its successors, or assignees, for any further payments.

### **Section Seven**

The parties agree that Crossroads operates an independent business and is contracting to do work according to his own methods, without being subject to the control of the City, except as to the product or the result of the work. The relationship between the City and Crossroads shall be that as between an independent contractor and the City and not as an employer-employee relationship. The payment to Crossroads is inclusive of any use, excise, income, or any other tax arising out of this Agreement.

### **Section Eight**

The funding being provided pursuant to this Agreement is an authorized budget item of the City of Sioux Falls for calendar year 2023. If the financial condition of the City should change during the term of this Agreement to the extent that the City would or might have insufficient yearly revenue to meet all of its budgeted expenditures, this Agreement may be modified by the City such that the funds provided for herein may be reduced in the event the Mayor implements spending restraints. Any reduction in funding will be in proportion to budget reductions. However, the City may implement minor spending restraints and may reduce compensation provided herein by up to five percent without regard to proportionality of overall spending restraints at its discretion. The City will use its best effort in notifying of any adjustment to compensation invoked under this section. Should any such reduction in funding occur, the parties shall negotiate a commensurate reduction in services to be provided under the Agreement.

## **Section Nine**

Crossroads agrees to defend, indemnify, and hold harmless the City from all claims or liabilities including, but not limited to, attorneys' fees arising out of the services furnished under this Agreement, and for bodily injury or property damage arising out of services furnished under this Agreement, providing that such claims or liabilities are the result of an act, error, or omission of Crossroads and/or its employees/agents arising out of the services described in the Agreement. This agreement does not waive the City's sovereign immunity and the City reserves the right to rely on sovereign immunity to the extent permitted by South Dakota Law. The City will be responsible for errors, omissions, and negligence of its employees, officers, and agents to the extent provided by law. This section does not require Crossroads to be responsible for or defend against claims of damages arising solely from the negligent or intentional acts of the City, its employees, officers, and agents.

## **Section Ten**

The City may, by written notice to Crossroads, terminate this Agreement in whole or in part at any time, either for the City's convenience or because of the failure of Crossroads to fulfill its contract obligations. Upon receipt of notice, Crossroads shall immediately discontinue all services affected, unless the notice directs otherwise.

If the termination is for the convenience of the City, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit or unperformed service.

If the termination is due to the failure of Crossroads to fulfill the contract obligations, the City may take over the work and complete it by contract or otherwise. In such case, Crossroads shall be liable to the City for any excess costs occasioned to the City thereby.

The rights and remedies of the City provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

## **Section Eleven**

The parties acknowledge that they are entering into this Agreement freely and voluntarily, that they have the opportunity to be represented and advised by counsel in the negotiations resulting in this Agreement, that they have ascertained and weighed all the facts and circumstances likely to influence their judgment, that they have given due consideration to the provisions contained herein, and that they thoroughly understand and consent to all provisions herein.

## **Section Twelve**

The validity, performance, and enforcement of this Agreement are governed by the laws of the state of South Dakota. Jurisdiction and venue of any legal proceeding involving

the parties in connection with this Agreement will lie exclusively with the state and federal courts located in Sioux Falls, South Dakota.

### **Section Thirteen**

Should any section or provision of this Agreement be declared by the courts to be invalid, the same will not affect the validity of the Agreement as a whole or any part thereof, other than the part declared to be invalid.

### **Section Fourteen**

This instrument contains the entire Agreement between the parties, and no statement, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding. This contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed hereon.

### **Section Fifteen**

The reports, schedules, models, budgets, and other documents prepared or assembled by Contractor, and all information contained therein, will be deemed by the parties to be done as works made for hire. Contractor hereby assigns to the City all right, title, and interest in and to all reports, schedules, models, budgets, and other documents, and all information contained therein, prepared, and assembled by Contractor in connection with this Agreement.

### **Section Sixteen**

This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, assignees, and successors of the respective parties.

### **Section Seventeen**

The parties agree that electronic transmission via facsimile or email to the other party of a copy of this Agreement bearing such parties' signature shall suffice to bind the party transmitting same to this Agreement in the same manner as if an original signature had been delivered. Without limitation of the foregoing, each party who electronically transmits an executed copy of this Agreement via facsimile or email bearing its signature covenants to deliver the original thereof to the other party as soon as possible thereafter.

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

CITY OF SIOUX FALLS

CROSSROADS CONSULTING  
SERVICES, LLC

BY: \_\_\_\_\_

BY: \_\_\_\_\_

PRINTED NAME: Paul TenHaken

PRINTED NAME: \_\_\_\_\_

TITLE: Mayor

TITLE: \_\_\_\_\_

FEDERAL TAX ID NO. \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK  
PRINTED NAME: \_\_\_\_\_