SIoux Falls Parks and Recreation Board Meeting
Wednesday, March 20, 2019
4:00 p.m. Regular Board Meeting
Midco Aquatic Center, 1601 S. Western Ave.

ORDER OF BUSINESS

1. Roll call and determination of quorum

2. Approval of minutes from February 20, 2019 meeting

3. Public Comment

4. Report of standing committees
   a. Marketing and Public Needs
   b. Park System Planning and Development
   c. Partnerships and Recreation

5. Unfinished business

6. New business
   a. Farmer’s Market Agreement – Jackie Nelson
   b. Lloyd Companies Levitt Lawn Naming Application – Jackie Nelson
   c. Sertoma Park Lease – Mike Patten
   d. Bear Sculpture: “Bear Lee Standing” – Mike Patten
   e. NSP Purchase Agreement – Falls Park Substation – Tory Miedema
   f. NSP Purchase Agreement – Morrell Substation – Tory Miedema

7. Report of Director of Parks and Recreation
   a. Community Center report – February
   b. Aquatics report – February
   c. Ice Rink report – February
   d. Golf Course Report – January

8. Items added after the agenda deadline
   a. The Parks and Recreation Board may include other such business as may come before
      this body.

9. Reading of communications to the Board

10. Open board discussion

11. Adjournment

Upcoming events: No news conferences or ribbon cuttings are scheduled

Persons requiring special accommodation for participation in any programs or activities sponsored
by Sioux Falls Parks and Recreation should call 367-8222 during regular business hours at least
48 hours prior to the event. Special needs will be accommodated whenever reasonably possible.
Unofficial minutes to be approved at March 20, 2019 meeting

February 20, 2019

A REGULAR MEETING OF THE SIOUX FALLS PARKS AND RECREATION BOARD was held on Wednesday, February 20, 2019, at 4 p.m., at the Elmwood Golf Course Clubhouse.

Roll Call and Determination of Quorum
Members present: Lorrae Lindquist, Jim Stavenger, Ann Nachtigal, Mark Steinborn, Todd Sundleaf, Patti Abdallah, and Mike Begeman.

Members absent: none.

Parks and Recreation staff present: Don Kearney, Director of Parks and Recreation; Sky Smothers, Recreation Manager; Jackie Nelson, Administrative Manager; Kelby Mieras, Park Operations Manager; Tory Miedema, Park Development Specialist; Mike Patten, Park Development Specialist; and Rita Meyer, Administrative Assistant.

Others present: Karen Leonard, City Attorney’s Office; Eric Mebius, Stensland Family Farms; Nancy Halvorson, Friends of Levitt.

Approval of Minutes (January 20, 2019)
A motion to approve the minutes was made by Nachtigal and seconded by Abdallah. Motion passed unanimously with all present Board members voting yes.

Public Input
No public input.

Report of Standing Committees
The Marketing and Public Needs Committee discussed the items on this agenda, as well as the Farmers Market Agreement. The Park System Planning and Development Committee discussed the items on this agenda. The Partnerships and Recreation Committee discussed the items on this agenda, as well as the Farmers Market Agreement, the new CIP process, a possible round-up program, and the Midco® Aquatic Center annual review.

Unfinished Business
No unfinished business.

Under New Business
Overlook Café Management Agreement: Nelson shared the details of the Management Agreement and Naming Rights. Stensland Family Farms will manage the Overlook Café for a term of five years, with the option to extend an additional five years. The agreement also allows for the name of the café to be named the Falls Overlook Café by Stensland. A motion to recommend approval of the management agreement was made by Abdallah and seconded by Nachtigal. Motion passed unanimously with all Board members voting yes. A second motion to recommend approval of Naming Rights was made by Begeman and seconded by Nachtigal. Motion pass unanimously with all Board members voting yes.

Sculpture Placement Falls Park West: Patten shared the details of placing the Maestro sculpture on the North end of the Levitt Festival grounds at Falls Park West.
The sculpture is the 2016 People’s Choice and is currently owned by the City of Sioux Falls. A motion to recommend approval of placement of the sculpture was made by Stavenger and seconded by Steinborn. Motion passed unanimously with all Board members voting yes.

**Sertoma Park Gifting Agreement:** Patten shared details of a proposed gazebo by Craig Lloyd to be constructed in the southern portion of Sertoma Park. Lloyd would cover all costs of building and maintenance of the gazebo, which will be adjacent to the existing bike trail. A motion to approve the agreement was made by Nachtigal and seconded by Begeman. Motion passed unanimously with all Board members voting yes.

**Howalt+McDowell, A Marsh McLennan Agency Naming Application:** Nelson shared details of a naming application for a hospitality deck at the Levitt Shell. A motion to recommend approval of the naming application was made by Abdallah and seconded by Nachtigal. Motion passed unanimously with all Board members voting yes.

**Tournament Gate Fee Application:** Smothers shared details about the proposed gate fee applications for 2019 softball and baseball tournaments. A motion to approve the application was made by Sundleaf and seconded by Nachtigal. Motion passed unanimously with all Board members voting yes.

**JazzFest Entry Fee Application:** Nelson shared details about the proposed entry fee application for 2019 JazzFest event. A motion to approve the application was made by Nachtigal and seconded by Begeman. Motion passed unanimously with all Board members voting yes.

**Policies and Guidelines:** Nelson shared updates to the Parks and Recreation Policies and Guidelines. A motion to approve the updates was made by Steinborn and seconded by Begeman. Motion passed unanimously with all Board members voting yes.

**Report of Director of Parks and Recreation**
Kearney and Smothers shared details of the multiple swim meet events happening this winter at the Midco Aquatic Center in the Sanford Health 50 Meter Pool. In addition to the many swim meets, an Olympic trials qualifying event will be held this coming weekend. Smothers shared details from the CVB regarding the economic impact to the city for people coming for swim meets from July 2018 through March 2019 is estimated to be $2.5 million.

Patten shared construction updates for the Levitt Pavilion. Roof framework is in place, and will be completed in the next few weeks as weather conditions allow. Interior work on the two buildings is progressing, and outdoor video board has been installed. Remaining site work should be completed in March, with project completion by mid-April.

Kearney shared an update on the golf cart storage building following the fire at Elmwood Golf Course. Once the insurance companies have finished their investigation, the cart storage site will be cleared and work can begin on a temporary cart storage area. Gas-powered carts will be brought in for this golf season.
Kearney shared details about the Buffalo Wall Sculpture at Sherman Park. The contract in front of the City Council is for design of a new retaining wall. The City Council has asked for a report on the structural analysis performed on the existing wall. As part of this design work, it will be determined how to incorporate art into this wall. Staff have met with Porter Williams and will continue to meet with Williams who originally designed and constructed the wall that failed last year.

Miedema shared some details about the Comprehensive Parks and Recreation System Plan meetings held over the last month. City leaders and citizens attended the meetings and shared their input. A statistically valid survey will be sent out in the coming months to households to gather input for what people want to see in the future for the park and recreation system.

Items Added After the Agenda Deadline
None.

There being no further business, Nachtigal made a motion to adjourn. Motion passed unanimously. Meeting adjourned.

Secretary

Approved by:

President
AGREEMENT FOR USE OF CITY FACILITIES

Agreement made _____________, 2019, between the City of Sioux Falls, SD (the "City"), and Downtown Farmer's Market, Inc. ("Farmer's Market").

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

Section One

Farmer's Market shall have priority use of the open air shelter and vending stalls located north of Falls Park Drive, as shown in Exhibit A, within Falls Park for Farmer's Market events to be held every Saturday from 8 a.m. to 1 p.m., from May 1 through October 31 of each contract year. Dates and time of use may be revised with the pre-approval of the Director of Parks and Recreation. During the year 2020, the Farmers Market and the City of Sioux Falls shall mutually agree on an appropriate day, time and/or location to hold the Farmer's Market to accommodate parking needs associated with the Annual Independence Day Celebration at Falls Park. Farmer's Market understands that the shelter has been reserved for these dates in advance and agrees to use their best efforts to ensure each event date is filled. Farmer's Market agrees to provide a minimum of 15 days' notice to the Director of Parks and Recreation for event dates that will not be filled.

Section Two

Farmer's Market will be responsible for the setup and removal of barricades if necessary to identify vendor and customer parking at each event. The customer parking area may be identified but not restricted to Farmer's Market customers. The City will provide barricades and trash receptacles. Farmer's Market will be responsible for picking up trash in the event area after each event and disposing of it in the trash receptacles provided. The event area must be clean and vacated by 2 p.m. following each event.

Section Three

Farmer's Market may place signs at the edges of the City property to advertise the Farmer's Market events. Signs shall be approved by the City's Director of Parks and Recreation, or his designee, and must comply with all applicable sign ordinances of the City.
Section Four

Farmer's Market shall obtain all necessary permits and meet all Health Department standards that apply.

Section Five

Farmer's Market shall pay concession fees in the amount of $200 for each vendor in 2019, $225 for each vendor in 2020, and $250 for each vendor in 2021. A list of participating vendors shall be submitted annually to the Director of Parks and Recreation. The list shall include the vendor name, telephone number, home address, South Dakota Tax ID # and product line sold. The concession fee and the vendor list shall be submitted by November 30 of each year.

Section Six

Farmer's Market shall secure the insurance specified below. All insurance secured by Farmer's Market 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.

Commercial general liability insurance providing coverage not less than that of the standard commercial general liability insurance policy ("occurrence form") for operations of Farmer's Market. If the "occurrence form" is not available, "claims made" coverage shall be maintained for three years after completion of this agreement. The policy shall include contractual, personal injury, bodily injury and property damage liability coverages with total available limits not less than $1,000,000 per occurrence, not less than $2,000,000 general aggregate, and $2,000,000 aggregate products and completed operations. The commercial general liability insurance policy shall name the City and its duly authorized representatives as an additional insured. The City shall be provided with a copy of the certificate and the policy endorsement prior to or upon execution of this agreement.

Farmer's Market 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 coverages. Farmer's Market agrees to hold the City harmless from any liability, including additional premium due because of Farmer's Market failure to maintain the coverage limits required.

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

Farmer’s Market hereby agrees to hold the City harmless from any and all claims or liability including attorneys’ fees arising out of the use of the City property, and for bodily injury or property damage arising out of the use of the City property, providing that such claims or liability are the result of an act, error, or omission of Farmer’s Market and/or its employees/agents arising out of the use of the City property.

Section Eight

This agreement shall commence on April 1, 2019 and terminate on December 31, 2021, with the option to mutually extend for one more three year term.

Section Nine

The City may, by written notice to Farmer’s Market, terminate this agreement in whole or in part at any time, either for the City’s convenience or because of the failure of Farmer’s Market to fulfill its agreement obligations. Upon receipt of notice, Farmer’s Market shall immediately discontinue all use of the City property.

Section Ten

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 Eleven

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 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

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

Section Fourteen

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

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

PAUL, TEN HAKEN, MAYOR

DOWNTOWN FARMER’S MARKET INC.

__________________
Print Name

ATTEST:

__________________
FEDERAL TAX ID NO. __________

City Clerk

__________________
Print Name
Signage Agreement

March 15, 2019

This signage agreement ("Agreement"), dated March 15, 2019, is to set forth terms and condition that have been agreed upon by Friends of Levitt Sioux Falls, Inc. (FOL) and Lloyd Companies, Inc. (Lloyd) regarding a sponsorship of the lawn located at the Levitt Shell in Falls Park West.

In this regard, FOL and Lloyd agree as follows:

1. Term -- The term of this Agreement (the "term") will be May 1, 2019, and, unless sooner terminated, will continue for five concert seasons, through September of 2024.

2. Lloyd Sponsorship Elements -- In consideration for payment of each installment fee, as hereinafter defined, Lloyd will be entitled to signage on the Levitt Shell Lawn providing exclusive naming rights as the "Lloyd Lawn at the Levitt Shell."

3. Description of Lloyd Branded Signage -- The signage will be painted with an appropriate material onto the existing concrete pad installed within the lawn for the practical purpose of the lighting and sound controls. The signage will be designed in a way that meets the requirements for naming in the three-way agreement established by the Levitt National Foundation, City of Sioux Falls and Friends of Levitt Shell Sioux Falls, Inc. which states that "Throughout the term, Levitt Sioux Falls and the City, either separately or together, will not offer or allow any third party signage on the Facilities or the Property, whether permanent or temporary, of any size or prominence equal to or greater than the sign ("Levitt Shell Sioux Falls" sign hung in prominent position center stage, approximately 24"X 36"). FOL shall be responsible for obtaining any and all approvals and consents necessary in order for the signage contemplated hereunder to be completed and maintained. In the event such signage is not approved, then this agreement shall terminate and no installment payments shall be due and owing.

4. Installment Fee and Schedule -- In consideration of the rights granted by FOL to Lloyd herein, Lloyd hereby agrees to pay to FOL, in the aggregate, $50,000 in naming rights for a period of five (5) years, payable in annual $10,000 installments. The first $10,000 payment shall be due on or before May 1, 2019, and each subsequent annual payment of $10,000 due on or before May 1 of the sponsorship year.

5. Competing Interests -- Competing interests for concert sponsorships will be pursued at the sole discretion of FOL, however any competing interests will not be installed as a permanent naming opportunity within the Levitt Shell property.

6. Authority -- FOL and Lloyd understand that all naming rights and corresponding signage are subject to the approval by the Sioux Falls Parks and Recreation Board and Sioux Falls City Council.

7. Effect -- This agreement will be binding upon, and will inure to the benefit of, the parties hereto and to their respective successors and permitted assigns.
8. Entire Agreement – This Agreement expresses and contains the entire agreement between the parties, and supersedes and replaces any prior or contemporaneous agreements, understandings, or arrangement between the parties, whether verbal or written. This Agreement may not be modified or amended except by a written instrument signed by both parties.

9. Severability – In case any provision of this Agreement will be invalid, illegal or unenforceable, such provision will be severed from this Agreement. The validity, legality and enforceability of the remaining provision of this Agreement will not in any way be affected or impaired thereby.

10. Failure to Make Timely Payments – If any payment due hereunder from Lloyd to FOL becomes delinquent and is late thirty (30) or more days from its due date FOL may at any time upon written notice terminate this Agreement, and in that event FOL shall have no further rights hereunder.

11. Maintenance and Removal of Cement Signage – Lloyd shall be solely responsible for all maintenance and upkeep that may be required for the cement sign described in Section 3 above, and FOL will have no responsibility for its maintenance or upkeep. Upon termination of this Agreement, including any early termination pursuant to Section 10 above, Lloyd shall promptly remove the cement sign described in Section 3 above, repair any damage caused by such removal, and return the Levitt Shell lawn to its original condition.

12. City Approval – The rights and obligations of the parties under this Agreement are contingent upon receipt of any approvals of the City of Sioux Falls or any board or council thereof that may be required under applicable law. If any such approvals are required and not obtained this Agreement shall be of no further force or effect.

Signatures pending City and Parks Commission Review

FRIENDS OF LEVITT SHELL SIOUX FALLS, INC.  LLOYD COMPANIES, INC.
By: Nancy Helverson  By: 
Name: Nancy Helverson  Name: Chris Thorkelson
Title: Exec. Director  Title: CEO
Levitt Lawn – Naming Application

Concept Design picturing location of concrete pad for equipment:

Levitt Lawn Existing Concrete Pad Images:

Concept Design showing logo* on concrete pad for equipment:

*Final logo still being determined
EXHIBIT C

Executive Order 109

Subject: Insurance Requirements for City Contracts/Agreements

Intent

The City recognizes the need for individuals/groups/businesses to adequately protect themselves and the City from any damages that may arise during or as a result of their work for the City.

Scope

This policy establishes the insurance requirements to apply to City contracts and agreements. The individual/group/business entering into any contract/agreement for services shall secure the insurance specified below and shall cause all its consultants/subcontractors to do likewise. All insurance shall be issued by an insurance company(s) acceptable to the City. The insurance specified in this policy directive 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 any agreement. Exceptions to this policy must be approved by the City Attorney's office and Risk Management.

Insurance Requirements

1. Workers compensation. The policy shall provide 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. The policy shall provide occurrence form contractual, personal injury, bodily injury and 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 name the City and its representatives as an additional insured. 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 contract.

3. Automobile liability. The policy shall cover all owned, non-owned, and hired automobiles, trucks, and trailers. 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. The City also recognizes the need for South Dakota professional architecture/engineering design consultants to adequately protect themselves and the City from any damages that may arise during or as a result of their work.
for the City. Therefore, A/E firms dealing with the City must procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by a negligent error, act, or omission with limits as follows:

a. Projects with an estimated construction cost of less than $1,500,000, A/E firms shall maintain professional liability insurance coverage with a limit of not less than $250,000 each occurrence, $250,000 aggregate.

b. On projects with an estimated construction cost of $1,500,000 or more A/E firms shall maintain professional liability insurance coverage with a limit of not less than $1,000,000 each occurrence, $1,000,000 aggregate.

c. The City may require for particular projects that the A/E firm provide additional coverage amounts or for coverage to be effective for a greater period of time. The cost of additional coverage will be reimbursed as an expense to the project.

d. For the purpose of this section, estimated construction costs will be determined by the City at the time of A/E contract negotiation. Changes in the amount of professional liability insurance coverage will only be required if there are changes in the project scope requiring a contract amendment.

e. A/E firms which are required to provide professional liability insurance coverage are those firms engaged in any services involving the preparation of plans or specifications for bidding purposes, development of architectural reports or engineering recommendations, or those engaged in the practice of architectural engineer or land surveying.

Term of Coverage. All professional liability insurance coverage shall be maintained in force for a period of not less than three years following completion of the project.

5. Professional liability coverage is required on all agreements/contracts with other professionals (physicians, attorneys, etc.). The amounts shall be as negotiated.

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

7. The City's acceptance of a certificate of insurance does not mean that the City assumes responsibility for its validity. Nor does it mean that the City represents that the coverage and limits required are adequate to protect the Contractor.

Source: Renumbered to Executive Order 109 (12-14-18)
EO #98-10 (03-05-98) Hanson
EO #95-47 (03-06-95) Hanson
AMENDED AND RESTATED
LEASE AND SUBLEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AND SUBLEASE AGREEMENT (hereafter the "Lease/Sublease") is made this ______, day of ______________, 2019 by and between the City of Sioux Falls (hereafter the "City"); South Dakota Department of Game, Fish and Parks (hereafter the "State"); and the Butterfly House & Aquarium, Inc. (hereafter "BHA").

RECITALS:

A. The City owns real property, commonly known as "Sertoma Park," which is legally described as Tract 3, of the Oxbow Addition to the City of Sioux Falls, Minnehaha County, South Dakota, according to the recorded plat thereof (the "Property").

B. The City has, pursuant to a Joint Powers Agreement dated July 10, 1995 (the "Joint Powers Agreement"), leased a portion of the Property to the State for its use as a nature preserve and for similar educational and recreational purposes consistent with the Master Plan for the Outdoor Skills Learning Center dated December 1993 (the "Master Plan").

C. On or about May 2, 2002, the City and State made and entered into a Lease and Sublease Agreement, Agreement No. 02-01000 (Original Lease and Sublease Agreement"), whereby Sertoma Club of Sioux Falls d/b/a Sioux Falls Noon Sertoma leased from the City and State a portion of the Property, for the purpose of erecting a specialty building to house butterfly exhibits, a gift shop, and displays and exhibits related to butterflies for educational purposes (the "Butterfly House").

D. On or about January 28, 2014, Sertoma Club of Sioux Falls d/b/a Sioux Falls Noon Sertoma assigned the Original Lease and Sublease Agreement, including all rights, title, and interest in and to the Butterfly House to Sertoma Butterfly House, Inc., a South Dakota nonprofit corporation with the consent of the State and City.

E. On March 15, 2016, Sertoma Butterfly House, Inc. amended its Articles of Incorporation and changed its name to “Butterfly House & Marine Cove, Inc.”

F. On February 28, 2017, Butterfly House & Marine Cove, Inc. amended its Article of Incorporation and changed its name to “Butterfly House & Aquarium, Inc.”

G. The City, State, and BHA desire to amend and restate the Original Lease and Sublease Agreement in its entirety, together with all Amendments.
NOW, THEREFORE, in consideration of the foregoing recitals made part of this
Lease/Sublease and the mutual promises and covenants set forth herein, the parties
hereeto agree as follows:

1. Lease. The City hereby leases to BHA the property shown on Exhibit A, Page 2 as
"City Leased Property."

2. Sublease. The State hereby subleases to BHA the property shown on Exhibit A,
Page 2 as "State Subleased Property."

3. Property Subject to this Lease/Sublease. The City Leased Property and State
Subleased Property, as legally described and shown on Exhibit A, Page 1 shall
collectively be referred to hereafter as (the "Leased/Subleased Property").

4. Term. The term of this Lease/Sublease shall begin upon the last to occur of the
signing of this Lease/Sublease Agreement by the Mayor, the attestation of this
Agreement by the City Clerk, the approval of the Agreement by ordinance adopted
by the City Council, and the expiration of the time within which the City Council’s
approval of the Agreement may be challenged by referendum following the
publishing of the City Council’s ordinance. The term of his Lease/Sublease shall
expire and otherwise terminate on June 30, 2045.

5. Extension. No later than one year prior to termination of this Lease and Sublease,
as permitted by law, the City and State agree to negotiate with BHA in good faith
for a new lease and sublease agreement. Any new lease, sublease, option, or
renegotiation is subject to the approval of the City of Sioux Falls City Council in
office at the time the new lease, sublease, option, or renegotiation is to be put in
effect.

6. Rental Payments. BHA shall pay the City as the full rental payment required for
the property leased from the City and the property subleased from the State the
sum of $1.00, the receipt of which is herein acknowledged.

7. Easement. City and State do hereby grant, bargain, and convey to BHA a non-
exclusive easement for the term of this Lease/Sublease for ingress and egress over
the Sertoma Park service road and parking adjacent to the Butterfly House and
Aquarium on the property leased to the State by the City. BHA shall have no
responsibility for maintenance and repair of the Sertoma Park service road and
parking adjacent to the Butterfly House.

8. Sertoma Master Plan. The State and City hereby approve the concepts and
proposed improvements to the Property as set forth in the Sertoma Park Master
Plan (the "Master Plan") attached hereto, marked as Exhibit B and hereby made a
part of this Lease/Sublease set forth herein.

9. Contemplated Master Plan Improvements. All proposed improvements contained
in the Master Plan are intended to be implemented in multiple phases and will
occur through a combination of private and public funding. Except as otherwise
stated herein, the City is not obligated by this Lease/Sublease to pay for any improvements to the City Leased Property. Except as otherwise stated herein, the State is not obligated by this Lease/Sublease to pay for any improvements to the State Subleased Property. Except as otherwise stated herein, BHA is not obligated by this Lease/Sublease to pay for any improvements to the City Leased Property or the State Subleased Property. BHA shall be solely responsible to pay for any improvements associated with Phase 1 and Phase 2 Addition as set forth on Exhibit B including, but not limited to additional required parking spaces. Parking spaces shall be open to the public during park hours.

10. Approval of Plans. No material structural alteration, construction, improvements, or additions may be made to the Leased/Subleased Property, including the Butterfly House without written approval of the City and the State. Prior to commencement of any material structural alteration, construction, improvements, or additions made to the Leased/Subleased Property, including the Butterfly House, the BHA shall submit to the City and State for approval all such plans, specifications, and elevations which shall be in conformity with the Master Plan and all applicable laws, ordinances, rules, and regulations. The City and State shall approve or reject such plans, specifications, and elevations within thirty (30) days of receipt thereof. If the City and State fail to approve, reject, or request additional information with respect to any material structural alteration, construction, improvements or additions within thirty (30) days of receipt thereof, the plans, specifications, and elevations included in such submittal shall be deemed rejected. If the City and State reject such plans, specifications, and elevations in whole or in part, the City and State shall provide a written notice explaining such rejection, and BHA shall submit new or corrected plans, specifications, and elevations meeting said objections within thirty (30) days of said notice. The provisions of this paragraph relating to approval, rejection, and resubmission of corrected plans shall continue to apply until said plans, specifications, and elevations have been approved by the City and State.

11. Cooperation. BHA agrees to coordinate with the City and State during design of all improvements and meet periodically during projects, for construction coordination, planning, scheduling, and staging as determined by the City and State to minimize the impact of any construction and/or improvements upon the use of the Property by the general public, City, and State. All material structural alterations, construction, improvements, or additions to the Leased/Subleased Property, including the Butterfly House and Aquarium, shall be coordinated with the City and the State.

12. No Waiver by City. Any approval by the City of the plans, specifications, and elevations shall not constitute a waiver of any building code or ordinance or other duty imposed by law.

13. Changes to the Plans. In the event BHA wishes to make any material changes to the approved plans, it shall submit the proposed change to the City and State for
review and approval in accordance with the procedures described in paragraph 10, above. A change shall be considered “material” if it (i) adversely affects (whether by reason of cost, time, design, function, cost to operate or maintain, or otherwise) any aspect of the Leased/Subleased Property, as designed; (ii) materially affects the appearance, design, or function of, or cost to operate and maintain, the Leased/Subleased Property, including number and configuration of parking spaces, quality of materials and finishes, access to and from the Sertoma Park, and parking areas; (iii) materially impairs either State’s or the City’s ability to develop and efficiently use, operate, and maintain its respective improvements and the Property; or (iv) necessitates an increase of greater than $10,000.00 in that party’s construction budget.

14. **Lien Waivers.** In addition, BHA must obtain and provide to City on a form provided by the City lien waivers from any and all contractors and/or subcontractors contemplated for the performance of any such work. The City and the State shall have no obligation to finance or otherwise contribute toward the costs of any such alterations, improvements, or additions.

15. **Indemnity.** BHA agrees to indemnify and hold the City and the State harmless from all claims or liability including attorneys’ fees arising out of the planning, construction, improvements, operation, and maintenance of the Leased/Subleased Property, including the Butterfly House and Aquarium, and for bodily injury or property damage arising out of the planning, construction, improvements, operation, and maintenance of the Leased/Subleased Property, including the Butterfly House and Aquarium, providing that such claims or liability are the result of an act, error, or omission of BHA and/or its employees/agents arising out of the planning, construction, improvements, operation, and maintenance of the Leased/Subleased Property, including the Butterfly House and Aquarium.

16. **Risk/Insurance.** The Butterfly House and Aquarium shall be located on the Leased/Subleased Property at the risk of BHA only. The City and the State shall not be held liable for any damage to it unless caused by the negligent or intentional acts of the City or the State or their respective employees/agents. BHA is solely responsible for providing security and insurance for the Butterfly House and Aquarium, including its contents. Through the term of this Lease/Sublease, BHA will maintain workers' compensation, property damage, and liability insurance on the Butterfly House and Aquarium, naming the City and the State as additional insureds, at its expense. BHA agrees that it and its consultants/subcontractors shall comply with and be covered by appropriate levels of workers’ compensation and commercial liability insurance as set forth in Executive Order 109 and as may be amended from time to time. Executive Order 109 is attached hereto, marked as Exhibit C and hereby incorporated herein as if set out in full by this reference. The City’s and State’s approval or acceptance of certificates of insurance does not constitute the City’s or State’s assumption of responsibility for the validity of any insurance policies nor does the City or State represent the coverage is adequate to protect any individual/group/business, its consultants’ or subcontractors’ interest, and the City and State expressly assumes no liability therefor.
BHA will provide the City and the State with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverages. BHA agrees to hold the City and State harmless from any liability, including additional premium due because of the BHA's failure to maintain the coverage limits required. All policies of insurance, to the extent obtainable, shall have attached thereto an endorsement that such policy shall not be canceled or materially changed without at least 30 days' prior written notice to the City, and any additional insured.

17. **Maintenance.** BHA shall, for the term of this Lease/Sublease, and any renewals thereof, maintain the interior and exterior of the Butterfly House and Aquarium. The City will maintain the grounds surrounding the Butterfly House and Aquarium on the Leased/Subleased Property including, without limitation, all lawn mowing, installation of and care taking of landscaping, snow removal, parking lot maintenance, and similar types of expenses, and BHA and the State shall have no liability or responsibility for any such expenses. Similarly, the City and the State shall have no liability or responsibility for the expenses of maintaining the Butterfly House and Aquarium, all of which shall be paid by BHA or its successors or assigns. Notwithstanding anything to the contrary contained herein, BHA shall not be responsible to repair any damage to the Butterfly House or Leased/Subleased Property due to the negligent or intentional acts of the City or the State or their respective employees/agents. BHA shall furnish and be responsible and pay for all utilities used or consumed at the Leased/Subleased Property, which shall include, but not be limited to, electricity, water, sewer, telephone, gas, and oil during the lease term.

18. **Termination of Lease/Sublease.** Upon the expiration of this Lease/Sublease term, BHA shall quit and deliver up the Butterfly House and Aquarium to the City, peacefully and quietly in good order, condition and repair, reasonable wear and tear and acts of God excepted. BHA shall surrender the Lease/Sublease area to the City and the State, as applicable subject to the terms and conditions of the Joint Powers Agreement. Notwithstanding the foregoing, BHA may remove at or prior to the expiration or termination of this Lease/Sublease, any furniture, furnishings, personal property, trade fixtures, equipment or other items used in furtherance of its business installed at the expense of BHA. However, this does not include any parking spaces paid for by BHA as required by the contemplated Phase 1 and Phase 2 Addition Any parking spaces installed at the expense of BHA shall become the property of the City. The property shall then be conveyed, via a Bill of Sale, and by Quit Claim Deed if necessary, upon demand and become the property of City.

19. **Consent of the State.** The State acknowledges that it is the current tenant of the Subleased Premises described herein pursuant to the Joint Powers Agreement between the City and the State. The State agrees that any and all rental payments required of BHA for the Subleased Premises shall be paid directly to the City.

20. **Use of Leased/Subleased Property.** During the term of this Lease/Sublease, and for any renewal term hereof, the use to be made of the Leased/Subleased Property by BHA shall be limited to the operation of the Butterfly House and Aquarium, a
specialty building housing butterfly and aquarium exhibits, a gift shop, displays and exhibits related to butterflies and aquatic animals, or any other purpose which is consistent with the provision of recreational opportunities, education, and resources to the residents of the City and the State. Any use of the Leased/Subleased Property shall be consistent with those uses and purposes described in the Master Plan and as may be amended from time to time, with approval of the Park Board and Director. Except as otherwise stated herein, BHA shall not use the Leased/Subleased Property for any political, religious, or commercial purposes without the written consent of the City and the State, nor shall BHA discriminate against any person in the use of such Lease/Sublease based upon race, creed, sex, or religion.

21. **Assignment and Subletting.** BHA may not assign its rights under this Lease/Sublease without the written consent of the City and the State. Notwithstanding the forgoing, BHA may make any collateral assignment of BHA’s rights under this Lease/Sublease to any lender who provides financing for a material structural alteration, construction, improvement or addition of the Butterfly House and Aquarium. BHA may mortgage its interest in this Lease/Sublease or any part thereof under any first or other leasehold mortgage, provided that the City and State consent in writing, is notified in writing of the making of such mortgage, and the terms of such mortgage do not conflict with this Lease/Sublease. Any such leasehold mortgage shall be subject and subordinate to the City’s fee title interest to the land comprising the Leased/Subleased Property. The leasehold mortgage shall be an encumbrance or lien only on BHA’s interest in this Lease/Sublease and leasehold estate and not on City’s fee interest in the Property. Any assignment shall be approved in writing by the City and the State. Such approval shall not be unreasonably withheld.

22. **Covenants.** BHA hereby covenants and agrees:

- BHA hereby covenants and agrees:
  a. To furnish good, prompt, and efficient service adequate to meet all reasonable demands for its service at the Butterfly House and Aquarium on a year-round basis.
  b. To furnish service on a fair, equal, and nondiscriminatory basis to all users thereof.
  c. BHA’s use of the Leased/Subleased Property or any alteration, construction, improvements, or additions thereto shall not interfere with the City’s, State’s, or public’s use and enjoyment of the Property without written agreement from the State and City.
  d. That BHA, its agents, employees, assigns, successors in interest, subcontractors, and suppliers, shall be subject to the provisions of Section 98.003 of the Code of Ordinances of Sioux Falls, SD. It is declared to
be discrimination 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.

BHA, its agents, employees, assigns, successors in interest, subcontractors, and suppliers, will not discriminate against any person or class of persons by reason of race, color, creed, or national origin in providing any services or in the use of any of its facilities provided for the public, in any manner prohibited by Title 49 of the Code of Federal Regulations, Part 21, Subtitle A, Nondiscrimination in Federally assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1984, to the extent that it applies to the Leased/Subleased Property. BHA further agrees to comply with such enforcement procedures as the United States might demand that the City take in order to comply with the Americans with Disabilities Act, to the extent that such procedure apply to the Leased/Subleased Property.

If BHA, its agents or employees, are adjudicated to have intentionally engaged in discrimination, subject to any right of appeal, this contract may be terminated in whole or in part by the City.

e. BHA grants to City and State an irrevocable right to enter upon the Leased/Subleased Property at reasonable times during the term of this Lease/Sublease for the purpose of its governmental functions which shall include, but not be limited to, the right of ingress, egress, and access over, under, across, and through the Leased/Sublease Property to design, install, construct, maintain, repair, and replace any utilities and/or public improvements constructed or hereafter constructed on any of the Leased/Subleased Property and for the purposes of pedestrian or vehicular ingress, egress, or access.

f. That BHA shall comply and shall make reasonable efforts to require that BHA's agents, officers, and those doing business with it and employees comply with all federal, state, and local laws and ordinances, governmental rules, and regulations. The BHA shall at all times maintain all required licensing and permits; a material breach of this section shall be cause for cancellation of this Lease/Sublease.

The BHA shall provide the City and the State a true copy of any notice, warning summons, or other legal process for the enforcement of any such laws, ordinances, rules, regulations, or orders promptly upon receipt of same.

The BHA covenants and agrees that it will not enter into any agreements or understandings, whether or not binding, with any person, firm, association,
corporation, or other entity, which would be in violation of applicable federal, state, and/or local law.

23. Remedies; Events of Default.

**Default by BHA.** Each of the following occurrences shall constitute an “Event of Default” of BHA under this Lease/Sublease:

a. Bankruptcy:

   (1) If any petition is filed by or against BHA, as debtor, seeking relief (or instituting a case) under Chapters 7 or 11 of the United States Bankruptcy Code or any successor thereto provided that BHA is given ninety (90) days after filing to dismiss an involuntary bankruptcy action and is unable to do so within the time allowed;

   (2) If BHA admits its inability in writing to pay its debts, or if a receiver, trustee, or other court appointee is appointed for all or a substantial part of BHA’s property and such receiver, trustee, or other appointee is not discharged within ninety (90) days from such appointment;

   (3) If the Butterfly House and Aquarium is levied upon or attached by process of law, and such levy or attachment is not discharged within ninety (90) days from such levy or attachment; or

   (4) If a receiver or similar type of appointment or court appointee or nominee of any name or character is made for BHA or its property, and such receiver or appointee or nominee is not discharged within ninety (90) days of such appointment.

b. Failure to Perform Regarding Other Covenants, Commitments, Conditions, and Agreements. BHA’s failure to perform according to, or to comply with, any of the other covenants, commitments, conditions, and agreements to be performed or complied with by BHA in this Lease/Sublease, and the continuing failure for a period of sixty (60) days after notice thereof in writing from the City or the State to BHA (which notice shall specify how the City or the State contends that BHA has failed to perform any such covenants, conditions, and agreements), shall constitute a BHA Event of Default; provided, however, if such default is capable of cure, but cannot reasonably be cured within sixty (60) days, then BHA shall have an additional commercially reasonable time within which to cure such BHA Event of Default, but only if:

   (1) BHA within said sixty- (60-) day period shall have commenced and thereafter shall have continued diligently to prosecute all actions necessary to cure such default; and
(2) The Butterfly House and Aquarium continues to operate in the ordinary course of business, to the extent commercially reasonable taking into account the nature of the alleged failure to perform according to the covenant, condition, or agreement in question.

24. Remedies for BHA’s Default.

a. Upon the occurrence of a BHA Event of Default, the City and the State shall be entitled to seek all legal and equitable remedies available under South Dakota law, including without limitation, termination of this Lease/Sublease, removal of BHA from the Leased/Subleased Property, injunctive relief, and damages. If the City or the State obtains the right to terminate this Lease, by mutual agreement with the BHA or from a final order by a court with jurisdiction from which the time for appeal has expired, the term of this Lease/Sublease shall terminate, upon the mutually agreed-upon date or the date set forth in the final order from such court, as fully and completely as if that date was the date originally fixed for the expiration of the term. On the date mutually agreed upon or as specified in such final order, BHA shall then quit and peaceably surrender the Leased/Subleased Property to the City and State as applicable and the Butterfly House and Aquarium to the City.

b. Upon the termination of this Lease by default, all rights and interest of BHA in and to the Leased/Subleased Property and the Butterfly House and Aquarium and every part thereof shall cease and terminate.

c. Upon the termination of this Lease/Sublease for default, BHA shall take whatever actions are necessary to transfer to City and the State, as applicable the Leased/Subleased Property and the Butterfly House and Aquarium to the City.

25. Permits and Licenses. BHA shall obtain all required permits or licenses for the construction, improvements, and operation of the Butterfly House and Aquarium and/or for the placement of any signage or similar notices or advertisements for the Butterfly House and Aquarium. Any signage or advertising for the Butterfly House and Aquarium on City property or property leased to the State shall be approved by the City and the State. The City and the State will cooperate with BHA to expedite and facilitate the issuance of any such permits or licenses.

26. Binding Effect. This Lease/Sublease shall be fully binding upon the parties hereto and their respective personal representatives, heirs, successors, and assigns.

27. Modification of Agreement. This Lease/Sublease shall not be modified or altered without a written agreement signed by all parties hereto.

28. Entire Agreement. This Lease/Sublease, including attached Exhibit A, Exhibit B, and Exhibit C, shall constitute the entire agreement between the parties hereto. Any prior understandings, negotiations, or representations of any kind preceding the date of this
Lease/Sublease shall not be binding upon any party hereto, except to the extent incorporated herein.

29. **Further Documentation.** The Parties to this Lease/Sublease will cooperate with each other and use their best efforts in pursuing the successful completion of material structural alterations, construction, improvements or additions to the Butterfly House and Aquarium project, if any. They will execute whatever documents reasonably necessary to effectuate the intentions and goals of this Lease/Sublease and the spirit of cooperation and mutual assistance contemplated hereunder.

30. **Captions.** The captions of this Lease/Sublease are for convenience only and shall not be relied upon in its interpretation or enforcement.

31. **Litigation.** In the event of any dispute concerning this Lease/Sublease, any litigation commenced shall be vened exclusively in the state or federal courts located in Minnehaha County, South Dakota.

32. **Authority.** Each party executing this Lease/Sublease on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind.

33. **No Agency Relationship.** Neither the BHA or BHA’s agents, contractor, or subcontractors are or shall be considered to be agents of the City and/or the State in connection with the performance of any of BHA’s obligations under this Lease/Sublease.

34. **Authorization and Approvals by the City.** All requests for action or approvals by the City shall be sent to the City Attorney for decision as to who within the City, including the City Council, must act or approve the matter on behalf of the City.

35. **Independent Contractor.** The parties agree that the BHA or its agents and contractors/subcontractors operate an independent business and will do work according to their own methods, without being subject to the direct control of the City and/or State. The relationship between the City, State, and BHA or its agents and contractors/subcontractors shall be that as between an independent contractor and the City and/or State is not as an employer-employee relationship.

36. **Voluntary Agreement.** The parties acknowledge that they are entering into this Lease/Sublease freely and voluntarily, that they have the opportunity to be represented and advised by counsel in the negotiations resulting in this Lease/Sublease, 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.

37. **Severability.** If any section or provision of this Lease/Sublease should be declared by the courts to be invalid, the same will not affect the validity of the
Lease/Sublease as a whole or any part therefor, other than the part declared to be invalid.

38. **Notice/Amendments.** Any notice or other communication required under this Lease/Sublease shall be in writing and sent or delivered to the address set forth below:

**To City:**

City of Sioux Falls  
224 West Ninth Street  
P.O. Box 7402  
Sioux Falls, SD 57117-7402

**To State:**

State of South Dakota  
Department of Game, Fish and Parks  
523 East Capitol  
Pierre, SD 57501

**To BHA:**

Butterfly House & Aquarium, Inc.  
4320 South Oxbow Avenue  
Sioux Falls, SD 57106

Notices or communication to or between the parties shall be deemed to have been delivered when mailed by first-class mail, provided that notice of default or termination shall be sent by registered or certified mail or, if personally delivered, when received by such party. No amendment or modification of this Lease/Sublease shall be effective for any purpose unless the same be in writing and signed by authorized representatives of the parties.

[Signature Page and Exhibits Follow]
IN WITNESS WHEREOF, the parties have executed this Lease/Sublease the day and year first above written.

CITY OF SIOUX FALLS

BY ____________________________

Printed Name: ____________________

ATTEST:

_________________________________

City Clerk

Printed Name: ____________________

STATE OF SOUTH DAKOTA, by and through its Game, Fish and Parks Department

BY ____________________________

Printed Name: ____________________

BUTTERFLY HOUSE & AQUARIUM, INC.

BY ____________________________

Printed Name: ____________________

Its: ____________________________
City of Sioux Falls Parks & Recreation
Sertoma Park
The Outdoor Campus
South Dakota Game, Fish & Parks
Butterfly House & Aquarium

EXISTING OUTDOOR CAMPUS BUILDING

ZONING REQUIREMENTS
ZONED REC OPEN FORUM
FREESTANDING SIGNS
ONE SIGN SHALL BE ALLOWED PER FRONTAGE
SHELTER NOT TO EXCEED 10 SQ FEET AND 8 FEET IN HEIGHT PER STREET FRONTAGE FOR LOT WITH FRONTAGE EXCEEDING 160 FEET.
BUILDING MOUNTED SIGNS
ONE SQ FOOT OF SIGN FOR EACH TWO LINEAR FEET OF BUILDING FRONTAGE

South Dakota Game, Fish & Parks
The Outdoor Campus
Butterfly House & Aquarium

CITY OF SIoux FALLS PARKS & RECREATION
SERTOMA PARK

Sign Concepts
Sertoma Park | Outdoor Campus East | Butterfly House & Aquarium
Sioux Falls, South Dakota | 18005SF

CONFLUENCE
July 18, 2018
EXHIBIT A

LEGAL DESCRIPTION: That part of Tract 3, The Ox Bow an Addition to the City of Sioux Falls, Minnehaha County, South Dakota more particularly described as follows:

Commencing at the Northwest corner of Tract 3, The Ox Bow an Addition to the City of Sioux Falls, Minnehaha County, South Dakota, thence along and with the east right-of-way of Ox Bow Avenue on an assumed bearing S01°44'56"E 423.48'; thence N88°15'04"E 314.20' to the Point of Beginning; thence N62°47'05"E 730.00'; thence S27°12'55"E 290.00'; thence S62°47'05"W 730.00'; thence N27°12'55"W 290.00' to the Point of Beginning containing 211,700 sq. ft. ± or 4.860 acres ± and subject to any easements or encumbrances of record.

I HEREBY CERTIFY THAT THIS SURVEY, PLAN OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF SOUTH DAKOTA.

REGISTERED LAND SURVEYOR NO.

Exhibit "A" Page 1 of 2
TRACT 3 OF THE OXBOW ADDITION TO THE CITY OF SIOUX FALLS, SOUTH DAKOTA
SERTOMA PARK

Including:

A) Subleased Property, within Property 1, which is subleased from the State of South Dakota by the Butterfly House & Aquarium

B) Leased Property, within Property 2, which is leased from the City of Sioux Falls by the Butterfly House & Aquarium

Exhibit "A"
Page 2 of 2
To the Visual Arts Commission  
City of Sioux Falls  
Sioux Falls, SD 57117

Visual Arts Commission  
Public Art Presentation Form  
City of Sioux Falls

Presenter's Name(s)  
Great Bear Recreation Park, Inc  
Date 6/17/19

If applicable, Donor Name(s)  
City of Sioux Falls  
Date 6/17/19  
Date 6/17/19

Contact Person Name  
Dan Grider  
Address 2401 W. 49th St  
Great Bear Park  
SD 57105  
Date 6/17/19

Telephone (h)  
605 929 7924  
(w) 605 367 4309  
(Cell)  
Email dgrider@greatbearpark.com

Artist Name  
Gary Hovey

Address  
Date  
City  
State  
Zip

Telephone (h)  
(w)  
(Cell)  
Email

Artwork  
Title  
Bear, Lee Standing  
Height 6'  
Width 3'  
Length  
Weight

Media  
Steel knives, forks, spoons  
Approximate value  $12,500-

Proposed location  
Great Bear Recreation Park  
Permanent □ or Temporary □

If temporary, please define exact time frame

Project completion time frame

Please address the following evaluation criteria for the proposed permanent artwork placement on City-owned property:

1) Appropriateness—How is the content or obvious symbolism of the proposed piece of artwork appropriate for those who will view the art and is it within the context of the site where it will be viewed? This sculpture is appropriate to Great Bear Recreation Park.

2) Relevance—Does the artwork seem particularly relevant to the place where it will be displayed or the public who will view it? Proposed location is near the west main entrance to Great Bear Chalet.

3) Site plan—Does the scale of the artwork fit appropriately within and complement and/or enhance the physical location where it will be placed? Yes.

4) Installation cost—Are there any significant costs associated with the installation of the artwork at the proposed site? Yes.

5) Safety/security—How will the artwork be well protected from potential theft and vandalism, and how will it be properly secured to ensure the safety of those around the artwork? Lighting and security cameras surveillance for proposed location already exist.

6) Visibility/impact—Does the proposed location offer high visibility and impact to the public? Yes.

7) Need—Does the organization or location where the artwork will be placed have the means and/or ability to procure artwork through other avenues? Are we serving locations and audiences deemed in greatest need? Yes.

8) Is this art piece being donated to the City of Sioux Falls? This sculpture is City-owned.

9) Artwork concept/history/context—2018 Sculpture Walk People's Choice Award

10) Installation, e.g., responsible party, method, and equipment requirements: City of Sioux Falls

11) Are City support services needed, e.g., utilities maintenance requirements, lighting, etc? This sculpture to be maintained through City's existing art maintenance program.

Artists' resume, qualifications, references: 2018 Sculpture Walk People's Choice Award.

I/w e declare this art proposal is my/our original intellectual property.

Name(s)  
Dan Grider  
Date 6/17/19

Please attach one 8" x 10" illustration or photograph of the proposed artwork to be kept on file.

Return the completed form to: Visual Arts Commission, c/o City Planning Office, 224 West Ninth Street, P.O. Box 7402  
Sioux Falls, SD 57117-7402

I:\AD\0250\11251125028.docx
Sioux Falls Parks and Recreation Public Art Donation Application

Date Submitted: 1/17/19

Donor Name(s): City of Sioux Falls

Contact Person Name: Dan Grider

Address: 2401 W 49th St

City: Sioux Falls  State: SD  Zip: 57105

Telephone (Home): 605-367-1745  Work:  (Cell): 929-7924

Email: dgrider@greatbearpark.com

Artist Name: Gary Hooven

Address: 

City:  State: Ohio  Zip: 

Telephone (Home) Work (Cell): 

Email: 

Artist Title: Bear Lee Standing

Height: 6'  Width: 3'  Length:  

Weight: 

Media: 55 Knives, spoons, forks  Approximate Value: $12,500

Proposed Location

First Choice: Great Bear Recreation Park - main entrance (chalet)

Second Choice: 

Third Choice: 

Why is this art piece being donated to Sioux Falls Parks and Recreation?

City-Owned Sculpture, 2018 People's Choice Award.

Concept/history/context:

This sculpture is appropriate and relevant to Great Bear Recreation Area. Proposed location is near the west main entrance to Great Bear Chalet. Lighting and security camera surveillance for proposed location already exists.
CONSERVATION ASSESSMENT
Bearn Lee Standing – Gary Hovey

Prepared for: City of Sioux Falls
Attn: Russ Sorenson
City Hall, Second Floor
224 West Ninth Street
Sioux Falls, SD 57117
rsorenson@siouxfalls.org
t: 605-367-8896

Conservators: Christina Varvi, Senior Conservator
Rosa Lowinger, Principal Conservator
EIN: 26-1841204
cvarvi@rosalowinger.com
rlowinger@rosalowinger.com

Date of Report: October 2, 2018

RLA Conservation is pleased to submit the following conservation assessment to the City of Sioux Falls for Gary Hovey’s sculpture, Bear Lee Standing, recently selected as the 2018 Sioux Falls SculptureWalk People’s Choice Sculpture Award and slated for installation as part of the City’s permanent Public Art Collection.

Artist: Gary Hovey
Title: Bear Lee Standing
Date: Not available at this time.
Materials: Stainless steel knives, forks and spoons
Overall Dimensions: 6’ H x 3’ W x 2’-6” D

DESCRIPTION:
The sculpture depicts a male bear standing on its two hind legs in an upright position. Per the City’s SculptureWalk website, “Lee is an angry bear with intimidation in mind. Although on the small side for an adult male grizzly bear, he threatens power from his steely glare and barred teeth to his formidable claws.” The bear’s mouth is agape, displaying large fangs.
According to the artist, the work is comprised of welded stainless steel knives, forks, and spoons. The internal armature is made of welded stainless steel knives. The exact diameter/thickness and structure/shape of this armature could not be determined at this time from photographs. However, the artist describes the framework as similar to a dressmaker’s model frame. The forks are primarily used to make the fur. They are mostly oriented with the tines facing downward with the exception of the face. Aside from the internal armature, the knives are used to shape the snout and also add additional fur fringe on the back legs as well as form the toes. The spoons are used for the eyes and ears. The silverware is welded to the interior frame. It appears as though most of the welds are at the handle end of each piece of silverware, though smaller tack welds were observed in localized areas on fork tines.

There is no protective coating over the sculpture/elements. The alloy of stainless steel is not known at this time, though it is likely not 316 marine-grade. There may be a patina, dye, or paint applied locally to the nose, eyes, and/or eyes for more definition/contrast. The method of attachment to the mild steel base plates is not apparent (i.e. welds, posts, etc.), but there is an oval plate beneath each foot that has been welded to the larger base plate of the SculptureWalk base.

**CONDITION 2018:**

The City has provided RLA staff with multiple images of the sculpture while it was installed in downtown Sioux Falls for review. The work was not inspected by RLA staff in person, but from photographs taken in late September 2018. Upon inspection of the photographs, the sculpture appears to be in fair to good condition with no obvious structural conditions noted. There appears to be some tarnish and possibly ferrous corrosion at some of the welds. Internal surfaces are not wholly visible. Light atmospheric soiling is likely present on the top/horizontal surfaces of the sculpture and ferrous metal base to which the bear figure is attached. Though not visible in photographs, there is likely additional atmospheric soiling and/or possibly insect nests collecting in deeper recesses of the highly textured surface.

![Details of surface showing localized areas of tarnish and possibly corrosion at weld points.](image-url)
GENERAL OBSERVATIONS & RECOMMENDATIONS:

At this time, there is no designated location planned for this sculpture. If possible, this sculpture would be best suited for indoor installation due to its intricate construction, highly textured surface with deep recesses, as well as exposure of internal surfaces to moisture, etc. Though stainless steel is more corrosion resistant, it is not corrosion proof. Without access to all surfaces of the metal, it may be difficult to prevent corrosion as well as address any internal corrosion, should it begin to form. Atmospheric pollutants (such as vehicle exhaust), bird droppings, and de-icing chemicals/salts can cause stainless steel surfaces to tarnish and begin to corrode. This is particularly true at welds and areas that are scratched, as the protective coating becomes compromised. The deep recesses and surface texture may also be more inviting for insects to nest and for birds to perch on the sculpture, resulting in acidic/corrosive bird droppings on the artwork. It will also likely trap more surface soiling, plant debris (if installed by plantings or trees), and possibly refuse. Build-up of absorbent material in recesses can trap moisture against the metal and further promote corrosion.

Placed in an indoor setting, this sculpture will be best protected from the elements and corrosion of internal and inaccessible surfaces. Indoors, it can be easily cleaned with compressed air, vacuums, and/or damp cleaning. If the sculpture is to be placed outdoors, we highly recommend that the artwork be elevated high enough off of the ground so that it is not sprayed by sprinklers or in contact with de-icing chemicals at all. It would be good to elevate the artwork regardless of indoor or outdoor installation as people will gravitate towards this unique composition. The City should expect a lot of public interaction. The placement of the fork tines and knives is such that they should not pose a safety hazard (i.e. sharp surfaces). However, people will likely try to pull at the applied elements, resulting in some minor distortion of the tines, etc. Elevating the sculpture may help deter such behavior.

If placed outdoors, a sacrificial carnauba-based paste wax can and should be applied to the surfaces in an attempt to stave off tarnish and corrosion. However, due to limited access, internal surfaces will not be protected. The sculpture should be washed a minimum of annually to remove corrosive salts, bird droppings, and atmospheric pollutants. The stainless steel can be periodically polished at accessible surfaces to reduce dulling from tarnish due to weathering.

Prepared By:

Christina Varvi, Senior Conservator

Approved By:

Rosa Lowinger, Principal & Senior Conservator
NSP Purchase Agreement Bullet Points

1. **Summary.** Northern States Power Company proposes to convey about 5 acres of property to the City in various parcels. The City will pay NSP just under $27,000 and also grant various easements to NSP.

2. **History.** Most of the property was used for two electric substations. One parcel is the “Falls Substation” that abuts Falls Park along Weber Avenue. Another parcel is the “Morrell Substation” on the west side of the Big Sioux River, across from Smithfield’s Morrell facility. Recently NSP upgraded its transmission facilities and a new larger substation facility was constructed in the former Sioux Falls stockyards area. The Morrell Substation and Falls Substation facilities have been removed.

3. **Park Use.** The land is being conveyed to the City for park use. City utilities may also be installed on the property.

4. **Remaining Electric Lines.** Although the substation facilities were removed, NSP still maintains some underground lines, power poles and overhead power lines on the Morrell and Falls Substation properties. Under this proposal, City will grant easements back to NSP for continued use and maintenance of the currently existing lines and poles.

5. **Environmental Review.** Because the property held electric transformers and other similar facilities, the City hired an environmental consultant to review the environmental records for the property. The review does not demonstrate there is significant or unusual soil contamination at the site. The City will also be performing additional soil tests after the purchase and funds are available from an EPA grant. The City will be responsible for environmental clean-up if any is necessary. At this point the City does not expect to engage in significant subsurface work of any kind.

6. **Reversionary Rights.** As part of the package, NSP will convey certain “reversionary rights” to the City. This relates to a 25 foot strip where the Joint Industrial railroad track is currently located on the west side of Falls Substation. These tracks extend north to the John Morrell plant. If the railroad was abandoned, the 25 foot strip would revert to NSP. However, NSP is now conveying those reversionary rights to the City. The railroad has not been abandoned and no abandonment proceeding is pending or currently proposed. At this point the right is a potential for the future.
7. **Other Easements.** NSP and the City have engaged in cleanup involving easements and those items are rolled into this transaction. The City will grant a new easement to NSP for its underground facilities across Falls Park. In return, NSP will release a 1976 easement that that did not show the surveyed location of the underground facilities. In addition, the City will grant NSP an easement on other property where an NSP transmission line is located in the Veteran’s Parkway area. This matter is also a clean-up type matter and it is not on Parks property.

8. **Council Presentation.** This matter may go to the Council as early as April 2, depending on NSP’s schedule.
PURCHASE AGREEMENT  
FALLS SUBSTATION  
[NSP AS SELLER]

This PURCHASE AGREEMENT ("Agreement") is made as of the ___ day of May, 2019 ("Effective Date"), by and between Northern States Power Company, a Minnesota corporation ("Seller"), and the City of Sioux Falls, SD ("Purchaser").

Purchaser desires to purchase certain property owned by Seller, and Seller desires to sell such property to Purchaser pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser agree as follows:

**Article 1. Definitions.**

The following terms shall have the meanings set forth below:

1.1 **Agreement.** This Agreement, including the following exhibits attached hereto and hereby made a part hereof:

   - Exhibit A: Legal Description of Land
   - Exhibit B: Intentionally Deleted
   - Exhibit C: Permitted Exceptions
   - Exhibit D: Easements

1.2 **Broker.** There are no Brokers involved in this transaction.

1.3 **Closing.** Concurrently, the transfer of title to the Property to Purchaser, the payment to Seller of the Purchase Price, and the performance by each party of the other obligations on its part then to be performed, all in accordance with the article entitled "Closing".

1.4 **Closing Date.** The Closing shall occur on or about May 15, 2019. The Closing shall be held at 1:00 on the Closing Date at the office of First Dakota Title Company or at such other place, date and time as Seller and Purchaser may agree. Seller shall be entitled to deliver its documents to First Dakota Title Company in escrow.

1.5 **Commitment.** The title insurance commitment with respect to the Real Property described in Section entitled "Title Evidence".

1.6 **Earnest Money.** The earnest money deposit, together with any interest earned thereon, made by Purchaser and held by Title Company described in Section entitled "Purchase Price".

implementing regulations, all as amended from time-to-time, and all other comparable federal, state or local environmental, conservation or environmental protection laws, rules or regulations.

1.8  Feasibility Period. The time period commencing on the Effective Date and ending on the Closing Date.

1.9  Hazardous Material. Any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed, or identified under any Environmental Laws, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste, solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

1.10  Improvements. All buildings, structures, fixtures and improvements located on the Land, if any, excepting therefrom Seller’s equipment, structures or fixtures used in Seller’s normal course of business.

1.11  Land. The Real Property in the City of Sioux Falls, County of Minnehaha, State of South Dakota, said Real Property being legally described on Exhibit A, together with any reversionary rights as further described as “Reversionary Rights” in Exhibit A.

1.12  Personal Property. All equipment, machinery, furnishings and other personal property located on, or used in connection with the operation of the Real Property.

1.13  Property. The Real Property and the Personal Property collectively.

1.14  Purchase Price. The purchase price for the Property described in Article 3.

1.15  Real Property. The Land and the Improvements, collectively.

1.16  Survey. The survey of the Real Property described in Section entitled “Title Evidence”.

1.17  Title Company. First Dakota Title Company.

1.18  Title Evidence. The title commitment and copies of exceptions with respect to the Property described in Section entitled “Title Evidence”.

1.19  Title Policy. The Owner’s Policy of Title Insurance to be issued pursuant to the Title Commitment, obtained as part of the Title Evidence.

**Article 2. Purchase and Sale.**

Seller hereby agrees to sell, and Purchaser hereby agrees to purchase, upon and subject to the terms and conditions hereinafter set forth, the Property.

**Article 3. Purchase Price.**

3.1  Amount. Purchaser shall pay to Seller as and for the Purchase Price for the Property the sum of One Dollar ($1.00).

3.2  Manner of Payment. The Purchase Price shall be payable as follows:

One Dollar ($1.00) as Earnest Money, to be deposited by Purchaser in escrow with Title Company contemporaneously with the mutual execution and delivery of this Agreement and held
and disbursed pursuant to the terms of this Agreement. The Earnest Money shall be non-refundable to Purchaser except as otherwise provided herein. The Earnest Money shall be paid by the Title Company to Seller at Closing, or upon any termination of this Agreement except as provided herein. The Earnest Money will be credited against the Purchase Price at Closing. Purchaser acknowledges that the non-refundable character of the Earnest Money is to compensate Seller for its costs incurred in connection with this Agreement.

Article 4. Closing

4.1 Seller’s Closing Deliveries. At Closing, subject to delivery by Purchaser of the Purchase Price and performance of its other obligations under this Agreement, Seller shall execute, acknowledge (where appropriate), and deliver to Purchaser the following, each dated as of the Closing Date:

4.1.1 A quit claim deed conveying to Purchaser the Real Property, subject only to Permitted Exceptions, as set forth at Exhibit B (the “Permitted Exceptions”) and the Restricted Use Covenants as defined below (the “Deed”).

4.1.2 A bill of sale conveying to Purchaser the Personal Property subject only to Permitted Exceptions, but otherwise without warranty, express or implied.

4.1.3 An affidavit of Seller regarding liens, judgments, tax liens, bankruptcies, parties in possession, mechanics’ or materialmens’ liens and other matters affecting title to the Real Property in customary form as may be reasonably required by Title Company to delete the so-called “standard exceptions” from the Title Policy.

4.1.4 A non-foreign affidavit, properly executed and in recordable form, containing such information as required by IRC Section 1445(b) (2) and its regulations.

4.1.5 A Designation Agreement designating the “reporting person” for purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594.

4.1.6 All reasonable and customary documents and instruments which (a) Purchaser or Title Company may reasonably determine are necessary to transfer the Property to Purchaser subject only to the Permitted Exceptions, (b) Title Company may reasonably determine are necessary to evidence the authority of Seller to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant to this Agreement, (c) Title Company may require as a condition to issuing the Title Policy or (d) may be required of Seller under applicable law.

4.1.7 The easements, as further described in Article 13.

4.1.8 A settlement statement consistent with this Agreement.

4.2 Purchaser’s Closing Deliveries. At Closing, Purchaser shall cause the following to be delivered to Seller:

4.2.1 The Earnest Money shall be applied to and credited against the Purchase Price and shall be disbursed to Seller by Title Company at Closing.

4.2.2 The easements, as further described at Article 13.

4.2.3 A release of that certain easement granted to Purchaser, dated August 6, 1976 and recorded in Book 123 of Miscellaneous at pages 777-778.
4.2.4 All normal and customary documents and instruments, each executed and acknowledged (where appropriate) by Purchaser, which (a) Seller or Title Company may reasonably determine are necessary to evidence the authority of Purchaser to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Purchaser pursuant to this Agreement, or (b) may be required of Purchaser under applicable law.

4.2.5 A settlement statement consistent with this Agreement executed by Purchaser.

4.3 Closing Escrow. Purchaser and/or Seller at their option may deposit the respective Closing deliveries described in the Sections entitled “Seller’s Closing Deliveries” and “Purchaser’s Closing Deliveries” with Title Company with appropriate instructions for recording and disbursement consistent with this Agreement.

4.4 Closing Adjustments. The following adjustments shall be made at Closing:

4.4.1 General Real Property taxes for the Property due and payable in the year of Closing, together with all special assessments payable therewith, shall be paid by Seller. Assuming that the Closing takes place in 2019, the 2019 real estate taxes payable in 2020 shall be prorated between Seller and Purchaser on a daily basis as of the Closing Date based upon a calendar fiscal year, with Seller paying those allocable to the period prior to the Closing Date and Purchaser being responsible for those allocable subsequent thereto. The Seller’s share of the 2019 taxes shall be paid by Seller to Purchaser at closing calculated at the 2019 millage rate applied to the 2019 assessed value, to be held by the Purchaser until payable to the Treasurer of Minnehaha County. The allocation of 2019 real estate taxes payable in 2020 shall be final as of the Closing Date.

4.4.2 Personal property taxes applicable to any of the Personal Property due and payable in the year of Closing shall be prorated between Seller and Purchaser on a daily basis as of the Closing Date based upon a calendar fiscal year, with Seller paying those allocable to the period prior to the Closing Date and Purchaser being responsible for those allocable subsequent thereto.

4.4.3 Purchaser shall assume all special assessments (and charges in the nature of or in lieu of such assessments) levied, pending or constituting a lien with respect to any of the Real Property as of the Closing Date.

4.4.4 Purchaser shall pay all sales tax due regarding this transaction.

4.4.5 Seller shall pay all required transfer taxes due and payable as a result of the transfer and conveyance of the Real Property to Purchaser. Buyer shall pay all costs, expenses, and taxes due as a result of any mortgage or deed of trust it may grant against the Real Property. Seller shall pay the cost of recording any documents necessary to place record title to the Property in Seller in the condition required pursuant to the Section entitled “Correction of Title”. Purchaser will pay the cost of recording all other documents, including the Deed.

4.4.7 Purchaser will pay the premium for the Title Policy, and the cost of any lender’s policy of title insurance, and any endorsements desired by Purchaser or required by its lender.

4.4.8 Purchaser shall each pay any escrow fee and/or Closing fee payable to Title Company with respect to the transaction contemplated by this Agreement.
4.4.9 The charges for any utility expenses, including water, fuel, gas, electricity, telephone, sewer, trash removal, heat and other services furnished to or provided for the Property shall be prorated between Seller and Purchaser on a daily basis as of the Closing Date, with Seller paying those allocable to the period prior to the Closing Date and Purchaser being responsible for those allocable subsequent thereto. Seller agrees to have all meters with respect to any such utilities read as of the Closing Date and Purchaser agrees to transfer any meters located on the Property to Purchaser effective as of the Closing Date.

4.4.10 Except as provided in the Article entitled “Default”, Seller and Purchaser shall each pay its own attorneys’ fees incurred in connection with this transaction.

If any of the amounts allocated under this Section cannot be calculated with complete precision at Closing because the amount or amounts of one or more items included in such calculation are not then known, then such calculation shall be made on the basis of the reasonable estimates of Seller and Purchaser, subject to prompt adjustment (by additional payment or refund, as necessary) when the amount of any such item or items become known, except as set forth to the contrary herein.

4.5 Possession. Seller shall deliver possession of the Property to Purchaser on the Closing Date, subject to the Permitted Exceptions.

Article 5. Title Examination.

5.1 Title Evidence. Purchaser, within a reasonable time after mutual execution and delivery of this Agreement, at its sole cost and expense, shall have the option to obtain the following:

5.1.1 A commitment to insure title to the Real Property issued by Title Company in an amount equal to the Purchase Price and copies of all documents, instruments and matters shown as exceptions which are recorded in the office of the clerk and recorder of the county in which the Real Property is located.

5.1.2 A current survey of the Real Property prepared and certified by a land surveyor licensed in South Dakota. The survey shall (a) conform to the most recent effective version of “Minimum Standard Detail Requirements for Land Title Surveys” as adopted by the American Land Title Association and the National Society of Professional Surveyors, and (b) contain a certification to Purchaser, Title Company and/or lender designated by Purchaser, if any.

5.2 Purchaser’s Objections and Requirements. Intentionally Deleted.

Article 6. Representations and Warranties.

6.1 Seller’s Representations and Warranties. Seller represents and warrants, to the best of Seller’s actual knowledge, to Purchaser as of the date of this Agreement as follows:

6.1.1 Seller has not entered into any contracts for the sale of any of the Property other than this Agreement. Seller has received no notice of and has no knowledge of any rights of first refusal or first offer, options to purchase any of the Property or any other rights or agreements, which may delay or prevent consummation of this transaction.

6.1.2 Seller has received no notice of and has no knowledge of any pending or proposed special assessments affecting the Property or any proposed or pending public improvements which may give rise to any special assessments affecting the Property.
6.1.3 Seller has received no notice of and has no knowledge of any pending or threatened condemnation or transfer in lieu thereof affecting any of the Property, nor has Seller agreed or committed to dedicate any of the Property.

6.1.4 To Seller’s knowledge, there is no pending, threatened or contemplated, litigation, investigation, arbitration, condemnation or other proceedings of any kind affecting the Property. Seller has not received notice from any governmental or quasi-governmental agency requiring the correction of any condition with respect to the Property, or any part thereof.

6.1.5 Seller has been incorporated under, and is in good standing under, the laws of the State of Minnesota, is registered to do business in South Dakota as a foreign corporation, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto. Execution, delivery and performance of this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant hereto does and will not conflict with or result in a violation of Seller’s articles of incorporation or by-laws or any judgment, order or decree of any court or arbiter to which Seller is a party, or any agreement to which Seller and/or any of the Property is bound or subject.

6.1.6 Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller’s creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller’s assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller’s assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

Limitations in this section shall not apply to the extent Purchaser is damaged or otherwise incurs expenses to its detriment as a result of false or fraudulent statements, information, or omissions contained within Seller’s Representations and Warranties. In such case, the statutes of limitations and statutes of repose in South Dakota law apply.

6.2 Purchaser’s Representations and Warranties. Purchaser represents and warrants to Seller as of the date of this Agreement as follows:

6.2.1 Purchaser is a chartered municipality under the laws of the State of South Dakota and is in good standing under the laws of the jurisdiction in which the Property is located, is duly qualified to transact business in the jurisdiction in which the Property is located, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Purchaser pursuant hereto. This Agreement has been duly executed and delivered by Purchaser and is a valid and binding obligation of Purchaser enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed and delivered by Purchaser pursuant hereto have each been duly authorized by all necessary municipal action on the part of Purchaser and that such execution, delivery and performance does and will not conflict with or result in a violation of Purchaser’s charter, ordinances or applicable South Dakota Law or any judgment, order or decree of any court or arbiter to which Purchaser is a party, or any agreement to which Purchaser and/or any of the Property is bound or subject.

6.2.2 Purchaser has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition
by Purchaser’s creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Purchaser’s assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Purchaser’s assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

The foregoing representations and warranties are express representations and warranties, which Seller shall be entitled to rely on regardless of any investigation or inquiry made by, or any knowledge of, Seller. Consummation of this Agreement by Seller with knowledge of any such breach shall not constitute a waiver or release by Purchaser of any claims arising out of or in connection with such breach. The foregoing representations and warranties shall survive Closing or termination of this Agreement.

**Article 7. Feasibility Period.**

7.1 Purchaser has conducted a visual inspection of the Property and has completed a Phase I Environmental Assessment at its own expense. Seller acknowledges it has received a copy of the Phase I Report from Purchaser. Purchaser is unable to conduct further environmental testing during the Feasibility Period. Any Phase II Environmental Assessment or other testing Purchaser performs following closing will be at Purchaser’s sole expense.

7.2 During the Feasibility Period, Purchaser may request from the Seller material documents pertaining to or affecting the Property, such as copies of material surveys, engineering studies, soil and water test results, maps, plats, contracts, permits, and licenses, Purchaser shall submit a detailed list of requested documents to Seller. Seller shall use reasonable efforts to provide the requested documents, provided such documents are in Seller’s possession or reasonably available. In the event of termination of this Agreement for any reason after the Effective Date, Purchaser, without additional cost to Seller, shall promptly return to Seller all of the requested documents, which are in the Purchaser’s possession or under Purchaser’s control. To the extent permitted under South Dakota law, Purchaser shall keep all such materials confidential and shall not disclose such information or documents to any third party without the prior written consent of Seller.

7.3 Seller does not warrant the accuracy of any record, document or information made available to Purchaser or any of the records or documents. Statements of fact or opinion contained in any record, documents or information made available to Purchaser shall not be deemed to be a representation or warranty hereunder. The records, documents or information made available to Purchaser are being provided to Purchaser for informational purposes only and shall be read in the context that they were prepared by Seller or Seller’s consultants for intercompany use without expectation that such documents would be disseminated to third parties in connection with this transaction. Further, it is agreed that Purchaser is responsible for its own due diligence despite receiving information and documentation relating to the Property from Seller. Purchaser agrees that Purchaser shall independently verify such information provided by Seller and Purchaser releases Seller from any and all liability, damages and claims associated with Purchaser’s reliance thereon.

7.4 If either the Purchaser or Seller, in their sole discretion, is not satisfied with the results of said inspection, Purchaser or Seller shall deliver written notice thereof to the other party on or before the expiration of the Feasibility Period. If such notice is received by either party, as set forth above, and if Purchaser and Seller have not agreed, in writing, to a settlement thereof on
or before ten (10) days after the expiration of the Feasibility Period (Resolution Deadline), this Agreement shall terminate three (3) days following the Resolution Deadline; unless the party that received the termination notice receives written notice from the other party waiving objection to any unsatisfactory condition prior to the Resolution Deadline. If said written notice of such unsatisfactory condition(s) is not received on or before the date specified above, then this Agreement shall remain in full force and effect and the contingency as set forth in this paragraph shall be deemed to be waived.

7.5 Purchaser shall be responsible for any claim, liability, or cost, including attorneys’ fees which may be caused by Purchaser's inspections, and investigations of the Property, or as a result of Purchaser's entrance onto the Property prior to Closing, including without limitation, injury to persons or property and the assertion of any mechanic's liens or claims for payment for labor, materials, or other work undertaken by Purchaser; provided, however, that Purchaser shall have no liability relating to the mere discovery of adverse conditions on the Property not created by Purchaser. The foregoing provision is not intended to avoid or waive any liability of any contractor hired by the Purchaser. For inspections or investigations performed on behalf of the Purchaser prior to Closing, if any, the Purchaser shall require all such contractors to defend, indemnify and hold Seller harmless from and against any and all costs (including reasonable attorneys’ fees, consultant and expert witness fees), damages, claims, actions, suits, judgments, fines, penalties, or liabilities for person injury, death, property damage, environmental contamination, or natural resource damages arising as a result of any inspection or investigation or the contractors’ present on the Property. Purchaser shall require its contractor and third party laboratories to be responsible for the proper and legal treatment and disposal of all samples taken during such inspection or testing by such contractor from the Property. The provisions of this Section 7.5 shall not be construed to merge with the passage of title to the Property and shall survive Closing or other termination of this Agreement.

Article 8. “AS-IS”

The Property is sold by Seller and acquired by Purchaser, and Purchaser acknowledges and agrees that the Property is being accepted by Purchaser, “AS-IS, WHERE-IS, WITH ALL FAULTS” with no right of set-off or reduction in the Purchase Price, and that except as explicitly set forth in this Agreement and in the Deed (with respect to warranties of title) such sale shall be without representations or warranties, express or implied, either oral or written, made by Seller or any agent or representative of Seller with respect to the physical or structural condition of the Property as of the Closing Date, or with respect to the existence or absence of, Hazardous Materials, in, on, under, or affecting the Property as of the Closing Date or with respect to the compliance of the Property or its operation with any laws, ordinances or regulations of any government or other body as of the Closing Date. Purchaser acknowledges and agrees that Seller has not made and does not make any representations, warranties or covenants of any kind or character whatsoever, whether express or implied, with respect to warranty of income potential, operating expenses, uses, habitability, tenant-ability, or suitability for any purpose, merchantability, or fitness of the Property for a particular purpose, including current or historic environmental conditions of the Property. Purchaser is relying entirely upon information and knowledge obtained from its own investigation, experience, or personal inspection of the Property. Purchaser expressly assumes, at Closing, all existing environmental and other liabilities with respect to the Property and releases Seller from same, whether such liability is imposed by statute or derived from common law including, but not limited to, liabilities
arising under any Environmental Law. Purchaser assumes all responsibility for all liabilities and damages caused by, relating to or arising out of any condition of the Property or any liability relating thereof (including, without limitation, environmental investigation and remediation expenses), existing as of the Closing Date. Purchaser hereby covenants and expressly waives any right of rescission and all claims for damages relating to the condition of the Property. Purchaser hereby further releases and discharges Seller from any and all claims or causes of action which Purchaser may have against Purchaser or Seller in connection with, or arising out of, the condition of the Property at the time of Closing. All statements of fact or disclosures, if any, made in this Agreement or in connection with this Agreement, do not constitute warranties or representations of any nature.

The provisions of Article 8 shall survive Closing and shall not be deemed merged into any instrument of conveyance delivered at Closing.

Article 9. Indenture Release.

Seller shall apply for and obtain a release of the Property from Seller’s Corporate Trust Indenture within one hundred twenty (120) days after closing. This obligation shall survive Closing and shall not be deemed merged into any instrument of conveyance delivered at Closing.

Article 10. Restricted Use Covenant

Use of the property shall be restricted to park purposes (including but not limited to recreational events, competitions, art shows, craft fairs, food and beverage vendors, and other customary park uses), or other use for municipal purposes including but not limited to streets, street improvements such as curb and gutters, sidewalks, and streetlights, utilities, sewers, water and associated waterworks such as hydrants and water fountains. Any sale, lease or transfer of the property to an entity that plans to use it for commercial, residential or industrial uses is prohibited without the prior consent of Seller. The foregoing restriction shall be incorporated in the Deed and shall run with title to the Real Property.

Article 11. Removal of Equipment or Facilities

Seller shall have the right prior to closing to remove any equipment, structures, material, or facilities located on the property. Following closing the Purchaser will have the right to remove any and all remaining equipment, structures, material, and facilities on the Property.

Article 12. Lot Split.

If the sale and purchase of the Property requires a legal subdivision or lot split, Purchaser shall obtain the approval of the required governmental agencies for said lot split prior to the expiration of the Feasibility Period and shall complete the lot split at Purchaser’s sole cost and expense. The Closing Date shall occur after the necessary governing bodies have granted the lot split approvals. In the event said Purchaser has not obtained the lot split approvals by the date that is one hundred twenty (120) days following the Effective Date hereof, then in such event, Seller at its sole discretion may terminate this Purchase Agreement, and if terminated Seller shall have no further obligation to Purchaser hereunder and Seller shall retain the Earnest Money retained as liquidated damages.
**Article 13. Dedication of Easements**

Purchaser, as additional consideration provided to Seller for the Property, shall grant to Seller at Closing the easements in the form set forth at Exhibit D.

**Article 14. Condemnation.**

If prior to Closing, eminent domain proceedings are commenced against all or a material portion of the Property, Seller shall promptly give notice thereof to Purchaser, and Purchaser at its option (to be exercised within fifteen (15) days after Seller’s notice) may either (a) terminate this Agreement, or (b) proceed to Closing and receive at Closing either a credit against the Purchase Price in the amount of the award, in the case of a completed eminent domain proceeding, or an assignment of all rights in eminent domain, in the case of a pending eminent domain proceeding. Prior to Closing, upon written request from Purchaser, Seller shall not designate counsel, appear in, or otherwise act with respect to any eminent domain proceedings, or commence any repair or restoration resulting therefrom, without the consent of Purchaser, which consent shall not be unreasonably withheld.

**Article 15. Brokers.**

Each of the parties represents to the other that such party has not incurred any brokerage commission or finder’s fee as a result of this transactions and each party agrees to hold the other harmless from all liabilities incurred by the other relating to such brokerage commission or finder’s fee incurred as a result of the actions of such party. The provisions of this Article shall survive Closing or termination of this Agreement.

**Article 16. Default.**

If either party shall default in any of their respective obligations under this Agreement, the other party, by notice to such defaulting party specifying the nature of the default and the date on which this Agreement shall terminate (which date shall be not less than twenty (20) days after the giving of such notice), may terminate this Agreement, and upon such date, unless the default so specified shall have been cured, this Agreement shall terminate. Subject to the terms of this Agreement, in the case of any default by Purchaser, Seller’s sole and exclusive remedy, shall be termination of this Agreement and, upon any such termination, the Earnest Money shall be forfeited to Seller as liquidated damages. In the case of any default by Seller, upon Purchaser’s option, Purchaser may terminate this Agreement whereupon the Earnest Money shall be returned to Purchaser. Purchaser also shall have the right to specifically enforce this Agreement, provided that any action therefor is commenced within six (6) months after such right arises. Purchaser waives any right it may have to recover damages from Seller. In any action or proceeding to enforce this Agreement or any term hereof, and the prevailing party shall be entitled to recover its reasonable costs and attorneys’ fees.

**Article 17. Assignability.**

Purchaser may not assign its rights under this Agreement without the consent of Seller, which consent may be given or withheld by Seller in its discretion, provided, however that, one time only, without Seller’s consent, but upon notice to Seller, Purchaser may assign its rights under this Agreement to an entity owned and controlled by Purchaser which agrees to assume all of Purchaser’s duties and obligations under this Agreement.
**Article 18. Confidentiality.**  Intentionally Deleted.

**Article 19. Notices.**

Any notice, consent, waiver, request or other communication required or provided to be given under this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when delivered personally or when mailed by certified or registered mail, return receipt requested, postage prepaid, or when dispatched by nationally recognized overnight delivery service, in any event, addressed to the party's address as follows:

**If to Seller:**
Manager, Siting & Land Rights  
Xcel Energy  
414 Nicollet Mall, 414-06  
Minneapolis, MN  55401  
Attention: Brian Sullivan

**With copy to:**
Legal Department  
Xcel Energy  
401 Nicollet Mall,  
Minneapolis, MN  55401

**If to Purchaser:**
Roy Fletcher  
Real Estate Specialist City of Sioux Falls  
224 W. Ninth Street  
Sioux Falls, SD  57117

**With a copy to:**
Sioux Falls City Attorney  
224 W. Ninth Street  
Sioux Falls, SD  57117

or to such party at such other address as such party, by ten (10) days prior written notice given as herein provided, shall designate, provided that no party may require notice to be sent to more than two (2) addresses. Any notice given in any other manner shall be effective only upon receipt by the addressee.

**Article 20. Miscellaneous.**

20.1 **Entire Agreement; Modification.** This Agreement embodies the entire agreement and understanding between Seller and Purchaser, and supersedes any prior oral or written agreements, relating to this transaction. This Agreement may not be amended, modified or supplemented except in a writing executed by both Seller and Purchaser. No term of this Agreement shall be waived unless done so in writing by the party benefited by such term.

20.2 **Survival; No Merger.** The terms of this Agreement shall survive and be enforceable after the Closing and shall not be merged therein.

20.3 **Governing Law.** This Agreement shall be construed under and governed by the laws of the State of South Dakota.
20.4 Severability. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby.

20.5 Time of the Essence. Time is of the essence under this Agreement.

20.6 Construction. The rule of strict construction shall not apply to this Agreement. This Agreement shall not be interpreted in favor of or against either Seller or Purchaser merely because of their respective efforts in preparing it.

20.7 Captions, Gender, Number and Language of Inclusion. The article and section headings in this Agreement are for convenience of reference only and shall not define, limit or prescribe the scope or intent of any term of this Agreement. As used in this Agreement, the singular shall include the plural and vice versa, the masculine, feminine and neuter adjectives shall include one another, and the following words and phrases shall have the following meanings: (i) “including” shall mean “including but not limited to”, (ii) “terms” shall mean “terms, provisions, duties, covenants, conditions, representations, warranties and indemnities”, (iii) “any of the Property” or “any of the Real Property” shall mean “the Property or any part thereof or interest therein” or “the Real Property or any part thereof or interest therein”, as the case may be, (iv) “rights” shall mean “rights, duties and obligations”, (v) “liabilities” shall mean “liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, including reasonable attorneys’ fees”, (vi) “incurred by” shall mean “imposed upon or suffered or incurred or paid by or asserted against”, (vii) “applicable law” shall mean “all applicable Federal, state, county, municipal, local or other laws, statutes, codes, ordinances, rules and regulations”, (viii) “about the Property” or “about the Real Property” shall mean “in, on, under or about the Property” or “in, on under or about the Real Property”, as the case may be, (ix) “operation” shall mean “use, non-use, possession, occupancy, condition, operation, maintenance or management”, and (x) “this transaction” shall mean “the purchase, sale and related transactions contemplated by this Agreement”.

20.8 Binding Effect. This Agreement shall inure to the benefit of and shall bind the respective heirs, executors, administrators, successors and assigns of Seller and Purchaser.

20.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

20.10 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the end of the next day which is a business day. The last day of any period of time described in this Agreement shall be deemed to end at 5:00 p.m. local time of the state in which the Property is located. As used herein, the term “business day” means any day that is not a Saturday, Sunday or legal holiday for national banks in the state in which the Property is located.

Article 21. Recording.

Neither party shall record this Agreement. In the event Purchaser records this Agreement, this Agreement shall automatically terminate and Seller shall have the remedies set forth in the Section entitled “Default”.

Page 12 of 38
Article 22. Offer.

This proposal shall expire unless on or before noon on May 6, 2019 (Acceptance Deadline) (a) it is accepted in writing, by Purchaser and Seller, as evidenced by their signatures below, (b) the offering party receives notice of such acceptance, and (c) Purchaser deposits the Earnest Money. If the conditions set forth in the previous sentence are not satisfied prior to the Acceptance Deadline, this Agreement shall be void and without further force or effect.

[SIGNATURE PAGE Follows]
SIGNATURE PAGE
FOR
PURCHASE AGREEMENT
BETWEEN
Northern States Power Company, a Minnesota corporation ("Seller")
AND
City of Sioux Falls ("Purchaser")

Seller and Purchaser have caused this Agreement to be executed and delivered as of the date first above written.

SELLER:
NORTHERN STATES POWER COMPANY,
a Minnesota corporation

By: Peter D. Gitzen
Its: Manager of Siting and Land Rights
as Authorized Agent for Northern States
Power Company, a Minnesota corporation,
d/b/a Xcel Energy

PURCHASER:
CITY OF SIOUX FALLS

By: Paul TenHaken
Its: Mayor
EXHIBIT A

Legal Description of the Land

Parcel A
Lots 1 and 2 of County Auditor’s Subdivision of part of Tract 6, and Tract 7, all of which are within County Auditor’s Subdivision of the Northeast Quarter (NE1/4) of Section 16, Township 101 North, Range 49 West of the 5th P.M., Minnehaha County, South Dakota, according to the recorded plat thereof, except that part of said Lot 1 of Tract 6 and Tract 7 of the County Auditor’s subdivision of the Northeast Quarter (NE1/4) of Section 16, Township 101 North, Range 49 West, lying North and West of the center of what is known as the Joint Industrial Track now located and constructed across said Lot 1 of Tract 6 and Tract 7, and except the railroad the right of way through said tracts conveyed to the Illinois Central Railway Company by Deed dated October 30, 1909 and recorded in the Office of the Register of Deeds of Minnehaha County in Book 86 of Deeds on Page 451, and except that part of Tract 6 of the County Auditor’s Subdivision of the Northeast Quarter (NE1/4) of Section 16, Township 101 North, Range 49 West lying East of Lot 2 of Tract 6.

Parcel B:
County Auditor’s Lot One (1) of Tract Three (3), County Auditor’s Subdivision of the Southeast Quarter (SE 1/4) of Section Nine (9), Township One Hundred One (101), Range Forty-nine (49), West of the Fifth Principal Meridian, according to plat filed for record in the office of the Register of Deeds of Minnehaha County, South Dakota.

Reversionary Rights:
With respect to Parcels A and B, the reversionary rights reserved by the grantor in the Deed to the Illinois Central Railway Company dated October 30, 1909 and recorded July 1, 1910 in Book 86 of Deeds on page 451 in the records of Minnehaha County, South Dakota.
EXHIBIT B

(Intentionally Deleted)
EXHIBIT C

Permitted Exceptions

1. The lien for Real Property taxes not yet due and payable.

2. Utility and drainage easements of record.

3. Building and zoning laws, ordinances and state and federal regulations.

4. Restrictions relating to use or improvement of the Property.

5. Reservation of any mineral rights to the State of South Dakota.

6. The Easements as set forth at Exhibit D (other than the easement encumbering the Lined Snake Addition).


12. Railroad Right of Way contained in Quit Claim Deed executed by Illinois Central Railroad Company to Great Northern Railway Company, filed on November 6, 1917 and recorded in Book 104 of Deeds on page 339.


15. Reservation for electric utility purposes as contained in Quit Claim Deed executed by Northern States Power Company to Chicago, Saint Paul, Minneapolis and Omaha Railway Company, filed on October 16, 1929 and recorded in Book 130 of Deeds on page 596.

16. Resolution of the City of Sioux Falls, South Dakota, dated December 1, 1942, Granting to Northern States Power Company the Right to Construct, Maintain and Operate its Transmission Lines Over and Upon Certain Streets and Alleys Within the City of Sioux Falls, filed on March 4, 1943 and recorded in Book 36 of Miscellaneous on page 182.
EXHIBIT D

EASEMENTS

Purchaser shall execute and deliver to Seller at closing the following easements as set forth in this Exhibit D.

This Instrument was drafted by: BES
Northern States Power Company d/b/a Xcel Energy
414 Nicollet Mall, MP 7
Minneapolis, MN 55401

EASEMENT

The undersigned, City of Sioux Falls, SD, hereinafter called "Grantor", in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration to Grantor in hand paid by Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, hereinafter called "NSP", does hereby grant unto NSP, its successors and assigns, the perpetual right, privilege and easement to survey, construct, operate, maintain, use, rebuild, relocate, upgrade or remove electric lines with all towers, structures, poles, foundations, crossarms, cables, wires, guys, supports, counterpoises, fixtures, devices, and equipment appurtenant thereto (collectively referred to as the "Facilities"); said Facilities being necessary for the purposes of conducting electric energy, light, and communication impulses through, over, under and across the following described lands situated in the County of Minnehaha, State of South Dakota, to-wit:

As described on the attached Exhibit A and Exhibit B (hereinafter called "Premises")

Except for the right of access and any temporary construction area, said easement shall be limited to:

As described on the attached Exhibit A and Exhibit B (hereinafter called "the Easement Area")

The rights granted herein may be exercised at any time subsequent to the execution of this document.

The grant of easement herein contained shall also include the right to enter upon the Premises, to survey for and locate said lines and shall also include the right to trim or remove from said Easement Area any structures, trees (including tall or leaning trees located within the Premises adjacent to the Easement Area, which may endanger said lines by reason of falling thereon) or objects which in the opinion of NSP will interfere with said lines, except fences. Grantor agrees not to erect any buildings, structures or other objects, permanent or temporary (except fences, streets with curbs, and gutters upon the Easement Area which shall be permitted), unless approved by Grantor in writing
as provided below. Grantor further agrees not to plant any trees within the Easement Area without the prior express written approval from NSP, nor to not perform any act which will interfere with or endanger said lines.

The grant of easement herein contained shall also include the right of NSP to have reasonable access to said Easement Area across the Premises. The grant of easement herein contained shall also include the right of reasonable temporary use by NSP of Premises adjacent to said Easement Area during construction, repair or replacement of said transmission lines, for additional construction area,

Said electric lines and supporting structures from time to time may be reconstructed or relocated on said Easement Area with changed dimensions and to operate at different voltages.

Unless emergency circumstances apply, NSP will provide Grantor with at least ten (10) day’s notice prior to pruning or controlling trees, brush or other vegetation or undertaking construction, repair or replacement of Facilities within the Easement Area.

The grant herein contained shall also include the right of NSP to permit the attachment of wires of others to the structures supporting said lines.

Grantor reserves the right to dedicate and have or permit to be improved, maintained, and used for the purposes of streets, streetlights, light poles, curbs and gutters, sidewalks, and underground utilities (hereinafter called "Improvements"), within those portions of said Easement Area not occupied by the structures supporting Northern States Power Company's electric system, provided that said improvements do not, in the opinion of NSP, impair the structural or electrical integrity of or ability to maintain said electric system or materially alter the existing ground elevations; and provided further that all such improvements shall not result in a ground or other clearance of less than the minimum requirements specified by the National Electrical Safety Code. Grantor, its agents or assigns must submit plans of improvements or other installations, except fences, streets, curbs and gutters, within the Easement Area for review, compliance and written approval by NSP prior to installation of the Improvements. NSP shall use best efforts to complete its review of all such plans within ninety (90) days following Grantor's submission and to inform the Grantor of any delay.

Grantor also reserves the right to cultivate, use and occupy said Easement Area, in a manner that is not inconsistent with NSP’s rights granted herein.

NSP shall pay for all damages to landscaping, roads and driveways, fences, livestock, crops, fields and other property caused by the construction or maintenance of said lines. Claims on account of such damages may be referred to NSP's nearest office.

NSP assumes responsibility for all liabilities and damages caused by, relating to or arising out of its own operations through, over, under, across or near the Easement Area on and after the date of this Easement.
Grantor covenants with NSP, its successors and assigns, that Grantor is the owner of the above described premises and has the right to sell and convey an easement in the manner and form herein.

Grantor agrees to execute and deliver to NSP, at NSP's cost without additional compensation, any additional documents needed to correct the legal description of the Easement Area described herein, so that it describes the Easement Area within the Premises that was originally intended to be granted herein and which at a minimum provides conductor clearance meeting the requirements of the National Electrical Safety Code. NSP shall not relocate its Facilities or install Facilities through, over, under or across real property owned by the Grantor other than within the Easement Area without the express written consent of Grantor.

It is mutually understood and agreed that this instrument covers all the agreements and stipulations between the parties and that no representation or statements, verbal or written, have been made modifying, adding to or changing the terms hereof.

This instrument is exempt from the South Dakota - Transfer Fee as provided by SDCL 43-4-22.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed as of the _____ day of ________________, 2019.

GRANTOR:
City of Sioux Falls, SD

Name:

Name:
STATE OF SOUTH DAKOTA) ) ss. 
COUNTY OF MINNEHAHA )

The foregoing instrument was acknowledged before me this _____ day of ________________, 2019, by ____________________________
of the City of Sioux Falls, SD

______________________________
Notary Public
NORTHERN STATES POWER  
MINNESOTA

EXHIBIT A SHEET 1 OF 2

Easement Exhibit
Location: City of Sioux Falls, Minnehaha County, South Dakota
Grantor: City of Sioux Falls
See Sheet 2 of 2 for descriptions.

SEC. 16, T. 101 N., R. 49 W., 5TH P.M.
CO.: MINNEHAHA

SCALE: 1" = 80'
NORTHERN STATES POWER
MINNESOTA

EXHIBIT A SHEET 2 OF 2

Easement Exhibit
Location: City of Sioux Falls, Minnehaha County, South Dakota
Grantor: City of Sioux Falls

Premises
Tract 7, County Auditor's Subdivision of the Northeast Quarter (NE 1/4) of Section 16, Township 101 North, Range 49 West of the 5th P.M., Minnehaha County, South Dakota, and Lot 1, County Auditor's Subdivision of part of Tract 6, County Auditor's Subdivision of the Northeast Quarter (NE 1/4) of Section 16, Township 101 North, Range 49 West of the 5th P.M., Minnehaha County, South Dakota.

Easement Area:
A parcel of land for easement purposes over, under, and across that part of the herein described 'Premises,' being more particularly described as follows:

Beginning at the intersection of the eastern boundary of the Joint Industrial Railway Track and the North line of Tract 7, County Auditor's Subdivision of the NE 1/4 of section 16, Township 101 North, Range 49 West of the 5th P.M., Minnehaha County, South Dakota;

Thence N 88° 37' 42" E, along the North line of said Tract 7, for a distance of 27.65 feet to the Northeast corner thereof; thence S 1° 49' 32" E, along the East line of said Tract 7, for a distance of 330.69 feet to the Southeast corner thereof; thence continue S 1° 49' 32" E, along the East line of Lot 1, County Auditor's Subdivision of part of Tract 6, County Auditor's Subdivision of the Northeast Quarter (NE 1/4) of Section 16, Township 101 North, Range 49 West of the 5th P.M., Minnehaha County, South Dakota, for a distance of 134.96 feet; thence N 77° 18' 51" W, for a distance of 18.59 feet; thence N 1° 49' 32" W, for a distance of 130.45 feet to the North line of said Lot 1; thence continue N 1° 49' 32" W, for a distance of 185.69 feet; thence S 88° 37' 42" W, for a distance of 51.71 feet to said easterly boundary of the Joint Industrial Track; thence N 14° 23' 05" E along said easterly boundary, for a distance of 150.66 feet to the Point of Beginning of the Easement herein Described, containing 12, 718 square feet, more or less.

Surveyor's Certificate
I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of South Dakota.

[Signature]
Robert D. Kummer, PLS
Lic. No. 8298

3/2/18

SEC. 16, T.101 N., R 49 W., 5TH P.M.
CO.: MINNEHAHA
NORTHERN STATES POWER
MINNESOTA

EXHIBIT B SHEET 1 OF 2

Easement Exhibit
Location: City of Sioux Falls, Minnehaha County, South Dakota
Grantor: City of Sioux Falls
See Sheet 2 of 2 for descriptions.

Scale: 1" = 60'

SEC. 9, T.101 N., R 49 W., 5TH P.M.
CO.: MINNEHAHA
NORTHERN STATES POWER
MINNESOTA

EXHIBIT B SHEET 2 OF 2

Easement Exhibit
Location: City of Sioux Falls, Minnehaha County, South Dakota
Grantor: City of Sioux Falls

Premises

Tract 3, County Auditor's Subdivision of the Southeast Quarter (SE 1/4) of Section 9, Township 101 North, Range 49 West of the 5th P.M., Minnehaha County, South Dakota.

Easement Area:

A parcel of land for easement purposes over, under, and across that part of the herein described "Premises," being more particularly described as follows:

That part of Tract 3, County Auditor's Subdivision of the Southeast Quarter (SE 1/4) of Section 9, Township 101 North, Range 49 West of the 5th P.M. Minnehaha County, South Dakota, lying East of the Joint Industrial Railroad Track Right of Way, containing 1,317 square feet, more or less.

Surveyor's Certificate

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of South Dakota.

[Signature]
Robert D. Kummer, PLS
Lic. No. 8298
Date: 3/2/18

SEC. 9, T.101 N., R. 49 W., 5TH P.M.
CO.: MINNEHAHA

Page 26 of 38
UNDERGROUND ELECTRIC EASEMENT

THIS UNDERGROUND ELECTRIC EASEMENT ("Easement") is made between the undersigned, City of Sioux Falls, SD, hereinafter called "Grantor", in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration to Grantor in hand paid by Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, hereinafter called "NSP", does hereby grant unto NSP, its successors and assigns, the perpetual right, privilege and easement to survey, construct, operate, maintain, use, rebuild, relocate, upgrade or remove electric lines cables, wires, supports, counterpoises, fixtures, devices, and all necessary structures and equipment appurtenant thereto (collectively referred to as the "Facilities"); said Facilities being necessary for the purposes of conducting electric energy, light, and communication impulses through, over, under and across the following described lands situated in the County of Minnehaha State of south Dakota, to-wit:

RECITALS

A. Grantor owns real property in Minnehaha County, South Dakota described as follows:

    Refer to the attached Exhibit A and Exhibit B

    (the “Premises”)

B. NSP wishes to locate within the Premises facilities described as follows:

    An underground electric easement for the transmission and distribution of electrical energy, including the necessary structures, cables, wires, supports, counterpoises, fixtures, cabinets, and devices related and appurtenant thereto.

    (the “Facilities”)

C. Grantor agrees to grant to NSP, its successors and assigns, the right, privilege and easement to construct, operate, maintain, use, rebuild or remove the Facilities over, under and upon the following described portions of the Premises:

    Refer to the attached Exhibit A and Exhibit B
(the "Easement Area")

**NOW THEREFORE,** in consideration of the foregoing Recitals, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor and NSP agree as follows:

Grantor hereby grants to NSP a perpetual, non-exclusive easement to construct, install, operate, repair, remove, replace, reconstruct, alter, relocate, patrol, inspect, improve, enlarge, remove, and maintain the Facilities described above within the Easement Area. Grantor also grants to NSP the full right and authority to (1) reasonably access the Easement Area and the Facilities over and across the Premises for the purpose of maintaining, replacing and constructing the Facilities; (2) the right of reasonable temporary use by NSP of the Premises adjacent to the Easement Area during construction, repair or replacement of the Facilities; and (3) to cut, remove, prune or otherwise control, all trees, brush, and other vegetation on or overhanging the Easement Area. Unless emergency circumstances apply, NSP will provide Grantor with ten (10) days notice prior to pruning or otherwise controlling trees, brush or other vegetation or undertaking construction, repair or replacement of Facilities in the Easement Area.

Grantor agrees that it will not perform any act on the Easement Area which will interfere with or endanger the Facilities. Grantor shall not locate any structure or obstruction, nor plant any trees, shrubs, bushes or plants of any kind (other than turf), nor change the ground elevation within the Easement Area without the express written consent of NSP, which will not be unreasonably withheld.

After installation of the Facilities or after the exercise of any of the rights granted herein, NSP agrees to restore the Premises and the Easement Area to as near their original condition as is reasonably possible and remove therefrom all debris, spoils, and equipment resulting from the use of the Premises and Easement Area.

NSP assumes responsibility for all liabilities and damages caused by, relating to or arising out of its own operations through, over, under, across or near the Easement area on and after the date of this Easement.

Grantor covenants with NSP, its successors and assigns, that Grantor is the owner of the above described Premises and has the right to sell and convey an easement in the manner and form aforesaid.

The Grantor agrees to execute and deliver to NSP, at NSP’s cost, without additional compensation any additional documents needed to correct the legal description of the Easement Area to conform to the area actually occupied by the Facilities on the date of signature below, if necessary.

NSP may relocate its Facilities or install Facilities in, on, or above the Easement Area without the express written consent of Grantor.
It is mutually understood and agreed that this instrument covers all the agreements and stipulations between the parties and that no representation or statements, verbal or written, have been made modifying, adding to or changing the terms hereof.

The rights granted herein may be exercised at any time subsequent to the execution of this document and said rights shall continue until such time as NSP, its successors or assigns have notified Grantor, its successors or assigns, that NSP has abandoned and relinquishes its easement rights. Following such notification by NSP, Grantor, its successors or assigns may require by written notification that NSP remove all equipment from the Easement Area at NSP’s expense, or if no notification is given, then NSP may decide to abandon such facilities in place. NSP shall deliver a recordable release of easement.

All provisions of this Easement Agreement, including the benefits and burdens, shall be deemed to run with title to the Premises and shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties hereto as fully as upon themselves.

This instrument is exempt from the South Dakota Transfer Fee as provided by SDCL 43-4-22.

IN TESTIMONY WHEREOF, the Grantor has executed this Easement as of this ___ day of __________________, 2019.

Grantor Name: City of Sioux Falls, SD

Name:

Name:

STATE OF SOUTH DAKOTA)
COUNTY OF MINNEHAHA )

The foregoing instrument was acknowledged before me this ___ day of __________________, 2019, by __________________ of the City of Sioux Falls, SD

NOTARY PUBLIC
Easement Exhibit
Location: City of Sioux Falls, Minnehaha County, South Dakota
Grantor: City of Sioux Falls
See Sheet 4 of 5 for descriptions.
Easement Exhibit
Location: City of Sioux Falls, Minnehaha County, South Dakota
Grantor: City of Sioux Falls
See Sheet 4 of 5 for descriptions.
Easement Exhibit
Location: City of Sioux Falls, Minnehaha County, South Dakota
Grantor: City of Sioux Falls

Premises

Lot 3 of The Equitable Realty Company Subdivision of a Part of the NE 1/4 of the NW 1/4 of Section 16, T 101 N, R 49 W of the 5th P.M., Minnehaha County, South Dakota, as recorded in Book 5 of Plats on Page 64. And;

Lot 4 of Sioux Falls Light and Power Co’s Subdivision of all that part of the NW 1/4 of Section 16, T 101 N, R 49 W of the 5th P.M., lying East of the Big Sioux River, Minnehaha County, South Dakota, as recorded in Book 5 of Plat on Page 66. And;

Lots 1 and 2 of County Auditor’s Subdivision of Part of Tract 6, County Auditor’s Subdivision of the NE 1/4 of Section 16, T 101 N, R 49 W of the 5th P.M., Minnehaha County, South Dakota, as recorded in Book 10 of Plats on Page 50.

Easement Area:

A 20 foot wide easement over, under, and across that part of the herein before described ‘Premises,’ with the extents being 10 feet on each side of the centerline more particularly described as follows:

Commencing from the Northwest Corner of Tract 3 of Phillips To The Falls Addition to the City of Sioux Falls, Minnehaha County, South Dakota, as recorded in Book 68 on Page 266, Thence N 88°28′36″ E along the North line of said Tract 3, for a distance of 64.03 feet to the center of the railroad tracks located in Lot 4 of said The Equitable Realty Company Subdivision;

Thence along the arc of a curve concave to the Northeast, for a distance of 57.16 feet, said curve having a radius of 1096.59 feet, and a chord bearing and distance of S 28°11′07″ E, 57.15 feet;

Thence N 60°19′27″ E, for a distance of 40.00 feet to the East line of said Lot 4 and the Point of Beginning;

Thence N 44°20′44″ E, for a distance of 91.52 feet;

Thence N 76°37′52″ E, for a distance of 245.34 feet;

Thence N 89°5′10″ E, for a distance of 250.01 feet;

Thence N 78°30′54″ E, for a distance of 246.36 feet;

Thence N 89°27′36″ E, for a distance of 72.85 feet;

Thence S 41°17′24″ E, for a distance of 165.50 feet;

Thence S 29′42′51″ E, for a distance of 247.67 feet;

Thence S 77°47′56″ E, for a distance of 174.31 feet;

Thence N 81°46′24″ E, for a distance of 31.15 feet;

Thence N 23°47′48″ E, for a distance of 24.59 feet;

Thence N 14°23′05″ E, for a distance of 154.12 feet;

Thence S 77°18′51″ E, for a distance of 211.23 feet to the East line of said Lot 2 of County Auditor’s Subdivision of Part of Tract 6, being the Point of Terminus and excluding the Joint Industrial Track Railroad Right of Way thereof.

Easement herein described contains 38,035 square feet, or 0.873 acres, more or less.

The sidelines of the herein described easement shall be shortened and/or extended as needed to adjoin adjacent property and easement lines.

SEC. 16, T.101 N., R 49 W., 5TH P.M.
CO.: MINNEHAHA
# NORTHERN STATES POWER MINNESOTA

## EXHIBIT A SHEET 5 OF 5

Easement Exhibit  
Location: City of Sioux Falls, Minnehaha County, South Dakota  
Grantor: City of Sioux Falls

### CURVE TABLE

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**Surveyor's Certificate**

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of South Dakota.

Robert D. Kummer, PLS  
Lic. No. 8298  
2/1/2018  
Date

SEC. 16, T.101 N., R 49 W., 5TH P.M.  
CO.: MINNEHAHA

Page 34 of 38
Easement Exhibit
Location: City of Sioux Falls, Minnehaha County, South Dakota
Grantor: City of Sioux Falls
See Sheet 2 of 3 for descriptions.

SEC. 16, T. 101 N., R 49 W., 5TH P.M.
CO.: MINNEHAHA
Easement Exhibit
Location: City of Sioux Falls, Minnehaha County, South Dakota
Grantor: City of Sioux Falls

Premises

Tract 3 of Phillips to The Falls Addition to the City of Sioux Falls, Minnehaha County, South Dakota, as recorded in Book 68 on Page 266.

Easement Area:

A parcel of land for easement purposes over, under, and across that part of the herein before described 'Premises,' being more particularly described as follows:

Commencing from the Northwest Corner of Tract 3 of Phillips To The Falls Addition to the City of Sioux Falls, Minnehaha County, South Dakota, as recorded in Book 68 on Page 268, Thence along the arc of a curve concave to the East, being the West line of said Tract 3, for a distance of 211.93 feet, said curve having a radius of 210.00 feet, a Delta Angle of 57°49'25", and a Chord Bearing and Distance of S 28°32'36" W, 203.05 feet; Thence N 58°53'02" E, for a distance of 11.74 feet to a corner on the South line of an existing Electric Easement recorded in Book 249 of Miscellaneous on Page 258, said corner also being the Point of Beginning; Thence continue N 58°53'02" E along said south line, for a distance of 31.00 feet; Thence S 00°08'32" W, for a distance of 45.05 feet; Thence N 90°00'00" W, for a distance of 25.00 feet to the East line of said existing Electric Easement; Thence along said East line, being the arc of curve concave to the East, for a distance of 29.09 feet, said curve having a radius of 200.00 feet, a Delta Angle of 08°20'04", and a Chord Bearing and Distance of N 02°48'58" W, 29.07 feet, to the Point of Beginning of the Easement herein described, containing 970 square feet, more or less.
Easement Exhibit
Location: City of Sioux Falls, Minnehaha County, South Dakota
Grantor: City of Sioux Falls
See Sheet 2 of 3 for descriptions.

### CURVE TABLE

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### LINE TABLE

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<td>L4</td>
<td>N 90°00'00&quot; W</td>
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</table>

Surveyor's Certificate

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly licensed Land Surveyor under the laws of the State of South Dakota.

[Signature]
Robert D. Kummer, PLS
Lic. No. 8298

Date: 2/8/18

SEC. 16, T.101 N., R 49 W., 5TH P.M.
CO.: MINNEHAHA
EASEMENT FOR LINED SNAKE TRACT DOES NOT INVOLVE PARKS AND RECREATION PROPERTY. IT WILL BE FINALIZED AND PRESENTED TO THE CITY COUNCIL SEPARATELY.
PURCHASE AGREEMENT
MORRELL SUBSTATION

This PURCHASE AGREEMENT ("Agreement") is made as of the ___ day of May, 2019 ("Effective Date"), by and between Northern States Power Company, a Minnesota corporation ("Seller"), and the City of Sioux Falls, SD ("Purchaser").

Purchaser desires to purchase certain property owned by Seller, and Seller desires to sell such property to Purchaser pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser agree as follows:

Article 1. Definitions.

The following terms shall have the meanings set forth below:

1.1 Agreement. This Agreement, including the following exhibits attached hereto and hereby made a part hereof:

   Exhibit A: Legal Description of Land
   Exhibit B: Permitted Exceptions
   Exhibit C: Easement

1.2 Broker. There are no Brokers involved in this transaction.

1.3 Closing. Concurrently, the transfer of title to the Property to Purchaser, the payment to Seller of the Purchase Price, and the performance by each party of the other obligations on its part then to be performed, all in accordance with the article entitled “Closing”.

1.4 Closing Date. The Closing shall occur on or about May 15, 2019. The Closing shall be held at 1:00 on the Closing Date at the office of First Dakota Title Company or at such other place, date and time as Seller and Purchaser may agree. Seller shall be entitled to deliver its documents to First Dakota Title Company in escrow.

1.5 Commitment. The title insurance commitment with respect to the Real Property described in Section entitled “Title Evidence”.

1.6 Earnest Money. The earnest money deposit, together with any interest earned thereon, made by Purchaser and held by Title Company described in Section entitled “Purchase Price”.


1.8  **Feasibility Period.** The time period commencing on the Effective Date and ending on the Closing Date.

1.9  **Hazardous Material.** Any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed, or identified under any Environmental Laws, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste, solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

1.10 **Improvements.** All buildings, structures, fixtures and improvements located on the Land, if any, excepting therefrom Seller’s equipment, structures or fixtures used in Seller’s normal course of business.

1.11 **Land.** The Real Property in the City of Sioux Falls, County of Minnehaha, State of South Dakota, said Real Property being legally described on Exhibit A.

1.12 **Personal Property.** All equipment, machinery, furnishings and other personal property located on, or used in connection with the operation of the Real Property.

1.13 **Property.** The Real Property and the Personal Property collectively.

1.14 **Purchase Price.** The purchase price for the Property described in Article 3.

1.15 **Real Property.** The Land and the Improvements, collectively.

1.16 **Survey.** The survey of the Real Property described in Section entitled “Title Evidence”.

1.17 **Title Company.** First Dakota Title Company.

1.18 **Title Evidence.** The title commitment and copies of exceptions with respect to the Property described in Section entitled “Title Evidence”.

1.19 **Title Policy.** The Owner’s Policy of Title Insurance to be issued pursuant to the Title Commitment, obtained as part of the Title Evidence.

**Article 2. Purchase and Sale.**

Seller hereby agrees to sell, and Purchaser hereby agrees to purchase, upon and subject to the terms and conditions hereinafter set forth, the Property.
Article 3. Purchase Price.

3.1 Amount. Purchaser shall pay to Seller as and for the Purchase Price for the Property the sum of Twenty Six Thousand Eight Hundred Forty Seven Dollars and 82/100 ($26,847.82).

3.2 Manner of Payment. The Purchase Price shall be payable as follows:

One Thousand and no/100 Dollars ($1,000.00) as Earnest Money, to be deposited by Purchaser in escrow with Title Company contemporaneously with the mutual execution and delivery of this Agreement and held and disbursed pursuant to the terms of this Agreement. The Earnest Money shall be non-refundable to Purchaser except as otherwise provided herein. The Earnest Money shall be paid by the Title Company to Seller at Closing, or upon any termination of this Agreement except as provided herein. The Earnest Money will be credited against the Purchase Price at Closing. Purchaser acknowledges that the non-refundable character of the Earnest Money is to compensate Seller for its costs incurred in connection with this Agreement.

Article 4. Closing.

4.1 Seller’s Closing Deliveries. At Closing, subject to delivery by Purchaser of the Purchase Price and performance of its other obligations under this Agreement, Seller shall execute, acknowledge (where appropriate), and deliver to Purchaser the following, each dated as of the Closing Date:

4.1.1 A quit claim deed conveying to Purchaser the Real Property, subject only to Permitted Exceptions, as set forth at Exhibit B (“Permitted Exceptions”), and the Restricted Use Covenants as defined below (the “Deed”).

4.1.2 A bill of sale conveying to Purchaser the Personal Property subject only to Permitted Exceptions, but otherwise without warranty, express or implied.

4.1.3 An affidavit of Seller regarding liens, judgments, tax liens, bankruptcies, parties in possession, mechanics’ or materialmen’s liens and other matters affecting title to the Real Property in customary form as may be reasonably required by Title Company to delete the so-called “standard exceptions” from the Title Policy.

4.1.4 A non-foreign affidavit, properly executed and in recordable form, containing such information as required by IRC Section 1445(b) (2) and its regulations.

4.1.5 A Designation Agreement designating the “reporting person” for purposes of completing Internal Revenue Form 1099 and, if applicable, Internal Revenue Form 8594.

4.1.6 All reasonable and customary documents and instruments which (a) Purchaser or Title Company may reasonably determine are necessary to transfer the Property to Purchaser subject only to the Permitted Exceptions, (b) Title Company may reasonably determine are necessary to evidence the authority of Seller to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Seller pursuant to this Agreement, (c) Title Company may require as a condition to issuing the Title Policy or (d) may be required of Seller under applicable law.
4.1.7 The easements, as further described in Article 13.

4.1.8 A settlement statement consistent with this Agreement.

4.2 **Purchaser’s Closing Deliveries.** At Closing, Purchaser shall cause the following to be delivered to Seller:

4.2.1 The Earnest Money shall be applied to and credited against the Purchase Price and shall be disbursed to Seller by Title Company at Closing.

4.2.2 The easements, as further described at Article 13.

4.2.3 All normal and customary documents and instruments, each executed and acknowledged (where appropriate) by Purchaser, which (a) Seller or Title Company may reasonably determine are necessary to evidence the authority of Purchaser to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Purchaser pursuant to this Agreement, or (b) may be required of Purchaser under applicable law.

4.2.4 A settlement statement consistent with this Agreement executed by Purchaser.

4.3 **Closing Escrow.** Purchaser and/or Seller at their option may deposit the respective Closing deliveries described in the Sections entitled “Seller’s Closing Deliveries” and “Purchaser’s Closing Deliveries” with Title Company with appropriate instructions for recording and disbursement consistent with this Agreement.

4.4 **Closing Adjustments.** The following adjustments shall be made at Closing:

4.4.1 General Real Property taxes for the Property due and payable in the year of Closing, together with all special assessments payable therewith, shall be paid by Seller. Assuming that the Closing takes place in 2019, the 2019 real estate taxes payable in 2020 shall be prorated between Seller and Purchaser on a daily basis as of the Closing Date based upon a calendar fiscal year, with Seller paying those allocable to the period prior to the Closing Date and Purchaser being responsible for those allocable subsequent thereto. The Seller’s share of the 2019 taxes shall be paid by Seller to Purchaser at closing calculated at the 2019 millage rate applied to the 2019 assessed value, to be held by the Purchaser until payable to the Treasurer of Minnehaha County. The allocation of 2019 real estate taxes payable in 2020 shall be final as of the Closing Date.

4.4.2 Personal property taxes applicable to any of the Personal Property due and payable in the year of Closing shall be prorated between Seller and Purchaser on a daily basis as of the Closing Date based upon a calendar fiscal year, with Seller paying those allocable to the period prior to the Closing Date and Purchaser being responsible for those allocable subsequent thereto.

4.4.3 Purchaser shall assume all special assessments (and charges in the nature of or in lieu of such assessments) levied, pending or constituting a lien with respect to any of the Real Property as of the Closing Date.
4.4.4 Purchaser shall pay all sales tax due regarding this transaction.

4.4.5 Seller shall pay all required transfer taxes due and payable as a result of the transfer and conveyance of the Real Property to Purchaser. Buyer shall pay all costs, expenses, and taxes due as a result of any mortgage or deed of trust it may grant against the Real Property. Seller shall pay the cost of recording any documents necessary to place record title to the Property in Seller in the condition required pursuant to the Section entitled “Correction of Title”. Purchaser will pay the cost of recording all other documents, including the Deed.

4.4.7 Purchaser will pay the premium for the Title Policy, and the cost of any lender’s policy of title insurance, and any endorsements desired by Purchaser or required by its lender.

4.4.8 Purchaser shall each pay any escrow fee and/or Closing fee payable to Title Company with respect to the transaction contemplated by this Agreement.

4.4.9 The charges for any utility expenses, including water, fuel, gas, electricity, telephone, sewer, trash removal, heat and other services furnished to or provided for the Property shall be prorated between Seller and Purchaser on a daily basis as of the Closing Date, with Seller paying those allocable to the period prior to the Closing Date and Purchaser being responsible for those allocable subsequent thereto. Seller agrees to have all meters with respect to any such utilities read as of the Closing Date and Purchaser agrees to transfer any meters located on the Property to Purchaser effective as of the Closing Date.

4.4.10 Except as provided in the Article entitled “Default”, Seller and Purchaser shall each pay its own attorneys’ fees incurred in connection with this transaction.

If any of the amounts allocated under this Section cannot be calculated with complete precision at Closing because the amount or amounts of one or more items included in such calculation are not then known, then such calculation shall be made on the basis of the reasonable estimates of Seller and Purchaser, subject to prompt adjustment (by additional payment or refund, as necessary) when the amount of any such item or items become known, except as set forth to the contrary herein.

4.5 Possession. Seller shall deliver possession of the Property to Purchaser on the Closing Date, subject to the Permitted Exceptions.

**Article 5. Title Examination.**

5.1 Title Evidence. Purchaser, within a reasonable time after mutual execution and delivery of this Agreement, at its sole cost and expense, shall have the option to obtain the following:

5.1.1 A commitment to insure title to the Real Property issued by Title Company in an amount equal to the Purchase Price and copies of all documents, instruments and matters shown as exceptions which are recorded in the office of the clerk and recorder of the county in which the Real Property is located.
5.1.2 A current survey of the Real Property prepared and certified by a land surveyor licensed in South Dakota. The survey shall (a) conform to the most recent effective version of “Minimum Standard Detail Requirements for Land Title Surveys” as adopted by the American Land Title Association and the National Society of Professional Surveyors, and (b) contain a certification to Purchaser, Title Company and/or lender designated by Purchaser, if any.

5.2 Purchaser’s Objections and Requirements. Intentionally Deleted.

Article 6. Representations and Warranties.

6.1 Seller’s Representations and Warranties. Seller represents and warrants, to the best of Seller’s actual knowledge, to Purchaser as of the date of this Agreement as follows:

6.1.1 Seller has not entered into any contracts for the sale of any of the Property other than this Agreement. Seller has received no notice of and has no knowledge of any rights of first refusal or first offer, options to purchase any of the Property or any other rights or agreements, which may delay or prevent consummation of this transaction.

6.1.2 Seller has received no notice of and has no knowledge of any pending or proposed special assessments affecting the Property or any proposed or pending public improvements which may give rise to any special assessments affecting the Property.

6.1.3 Seller has received no notice of and has no knowledge of any pending or threatened condemnation or transfer in lieu thereof affecting any of the Property, nor has Seller agreed or committed to dedicate any of the Property.

6.1.4 To Seller’s knowledge, there is no pending, threatened or contemplated, litigation, investigation, arbitration, condemnation or other proceedings of any kind affecting the Property. Seller has not received notice from any governmental or quasi-governmental agency requiring the correction of any condition with respect to the Property, or any part thereof.

6.1.5 Seller has been incorporated under, and is in good standing under, the laws of the State of Minnesota, is registered to do business in South Dakota as a foreign corporation, and has the requisite power and authority to enter into and perform this Agreement and all documents and instruments required to be executed and delivered by Seller pursuant hereto. Execution, delivery and performance of this Agreement and all documents and instruments required to be executed and delivered by Seller pursuant hereto does and will not conflict with or result in a violation of Seller’s articles of incorporation or by-laws or any judgment, order or decree of any court or arbiter to which Seller is a party, or any agreement to which Seller and/or any of the Property is bound or subject.

6.1.6 Seller has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller’s creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Seller’s assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Seller’s assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.
Limitations in this section shall not apply to the extent Purchaser is damaged or otherwise incurs expenses to its detriment as a result of false or fraudulent statements, information, or omissions contained within Seller’s Representations and Warranties. In such case, the statutes of limitations and statutes of repose in South Dakota law apply.

6.2 Purchaser’s Representations and Warranties. Purchaser represents and warrants to Seller as of the date of this Agreement as follows:

6.2.1 Purchaser is a chartered municipality under the laws of the State of South Dakota and is in good standing under the laws of the jurisdiction in which the Property is located, is duly qualified to transact business in the jurisdiction in which the Property is located, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Purchaser pursuant hereto. This Agreement has been duly executed and delivered by Purchaser and is a valid and binding obligation of Purchaser enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed and delivered by Purchaser pursuant hereto have each been duly authorized by all necessary municipal action on the part of Purchaser and that such execution, delivery and performance does and will not conflict with or result in a violation of Purchaser’s charter, ordinances or applicable South Dakota Law or any judgment, order or decree of any court or arbiter to which Purchaser is a party, or any agreement to which Purchaser and/or any of the Property is bound or subject.

6.2.2 Purchaser has not (i) made a general assignment for the benefit of creditors, (ii) filed any involuntary petition in bankruptcy or suffered the filing of any involuntary petition by Purchaser’s creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Purchaser’s assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Purchaser’s assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

The foregoing representations and warranties are express representations and warranties, which Seller shall be entitled to rely on regardless of any investigation or inquiry made by, or any knowledge of, Seller. Consummation of this Agreement by Seller with knowledge of any such breach shall not constitute a waiver or release by Purchaser of any claims arising out of or in connection with such breach. The foregoing representations and warranties shall survive Closing or termination of this Agreement.

Article 7. Feasibility Period

7.1 Purchaser has conducted a visual inspection of the Property and has completed a Phase I Environmental Assessment at its own expense. Seller acknowledges it has received a copy of the Phase I Report from Purchaser. Purchaser is unable to conduct further environmental testing during the Feasibility Period. Any Phase II Environmental Assessment or other testing Purchaser performs following closing will be at Purchaser’s sole expense.

7.2 During the Feasibility Period, Purchaser may request from the Seller material documents pertaining to or affecting the Property, such as copies of material surveys, engineering studies, soil and water test results, maps, plats, contracts, permits, and licenses, Purchaser shall
submit a detailed list of requested documents to Seller. Seller shall use reasonable efforts to provide the requested documents, provided such documents are in Seller’s possession or reasonably available. In the event of termination of this Agreement for any reason after the Effective Date, Purchaser, without additional cost to Seller, shall promptly return to Seller all of the requested documents, which are in the Purchaser’s possession or under Purchaser’s control. To the extent permitted under South Dakota law, Purchaser shall keep all such materials confidential and shall not disclose such information or documents to any third party without the prior written consent of Seller.

7.3 Seller does not warrant the accuracy of any record, document or information made available to Purchaser or any of the records or documents. Statements of fact or opinion contained in any record, documents or information made available to Purchaser shall not be deemed to be a representation or warranty hereunder. The records, documents or information made available to Purchaser are being provided to Purchaser for informational purposes only and shall be read in the context that they were prepared by Seller or Seller’s consultants for intercompany use without expectation that such documents would be disseminated to third parties in connection with this transaction. Further, it is agreed that Purchaser is responsible for its own due diligence despite receiving information and documentation relating to the Property from Seller. Purchaser agrees that Purchaser shall independently verify such information provided by Seller and Purchaser releases Seller from any and all liability, damages and claims associated with Purchaser’s reliance thereon.

7.4 If either the Purchaser or Seller, in their sole discretion, is not satisfied with the results of said inspection, Purchaser or Seller shall deliver written notice thereof to the other party on or before the expiration of the Feasibility Period. If such notice is received by either party, as set forth above, and if Purchaser and Seller have not agreed, in writing, to a settlement thereof on or before ten (10) days after the expiration of the Feasibility Period (Resolution Deadline), this Agreement shall terminate three (3) days following the Resolution Deadline; unless the party that received the termination notice receives written notice from the other party waiving objection to any unsatisfactory condition prior to the Resolution Deadline. If said written notice of such unsatisfactory condition(s) is not received on or before the date specified above, then this Agreement shall remain in full force and effect and the contingency as set forth in this paragraph shall be deemed to be waived.

7.5 Purchaser shall be responsible for any claim, liability, or cost, including attorneys’ fees which may be caused by Purchaser’s inspections, and investigations of the Property, or as a result of Purchaser’s entrance onto the Property prior to Closing, including without limitation, injury to persons or property and the assertion of any mechanic’s liens or claims for payment for labor, materials, or other work undertaken by Purchaser; provided, however, that Purchaser shall have no liability relating to the mere discovery of adverse conditions on the Property not created by Purchaser. The foregoing provision is not intended to avoid or waive any liability of any contractor hired by the Purchaser. For inspections or investigations performed on behalf of the Purchaser prior to Closing, if any, the Purchaser shall require all such contractors to defend, indemnify and hold Seller harmless from and against any and all costs (including reasonable attorneys’ fees, consultant and expert witness fees), damages, claims, actions, suits, judgments, fines, penalties, or liabilities for person injury, death, property damage, environmental contamination, or natural resource damages arising as a result of any inspection or investigation.
or the contractors’ present on the Property. Purchaser shall require its contractor and third party laboratories to be responsible for the proper and legal treatment and disposal of all samples taken during such inspection or testing by such contractor from the Property. The provisions of this Section 7.5 shall not be construed to merge with the passage of title to the Property and shall survive Closing or other termination of this Agreement.

Article 8. "AS-IS"

The Property is sold by Seller and acquired by Purchaser, and Purchaser acknowledges and agrees that the Property is being accepted by Purchaser, “AS-IS, WHERE-IS, WITH ALL FAULTS” with no right of set-off or reduction in the Purchase Price, and that except as explicitly set forth in this Agreement and in the Deed (with respect to warranties of title) such sale shall be without representations or warranties, express or implied, either oral or written, made by Seller or any agent or representative of Seller with respect to the physical or structural condition of the Property as of the Closing Date, or with respect to the existence or absence of, Hazardous Materials, in, on, under, or affecting the Property as of the Closing Date or with respect to the compliance of the Property or its operation with any laws, ordinances or regulations of any government or other body as of the Closing Date. Purchaser acknowledges and agrees that Seller has not made and does not make any representations, warranties or covenants of any kind or character whatsoever, whether express or implied, with respect to warranty of income potential, operating expenses, uses, habitability, tenant-ability, or suitability for any purpose, merchantability, or fitness of the Property for a particular purpose, including current or historic environmental conditions of the Property. Purchaser is relying entirely upon information and knowledge obtained from its own investigation, experience, or personal inspection of the Property. Purchaser expressly assumes, at Closing, all existing environmental and other liabilities with respect to the Property and releases Seller from same, whether such liability is imposed by statute or derived from common law including, but not limited to, liabilities arising under any Environmental Law. Purchaser assumes all responsibility for all liabilities and damages caused by, relating to or arising out of any condition of the Property or any liability relating thereof (including, without limitation, environmental investigation and remediation expenses), existing as of the Closing Date. Purchaser hereby covenants and expressly waives any right of rescission and all claims for damages relating to the condition of the Property. Purchaser hereby further releases and discharges Seller from any and all claims or causes of action which Purchaser may have against Purchaser or Seller in connection with, or arising out of, the condition of the Property at the time of Closing. All statements of fact or disclosures, if any, made in this Agreement or in connection with this Agreement, do not constitute warranties or representations of any nature.

The provisions of Article 8 shall survive Closing and shall not be deemed merged into any instrument of conveyance delivered at Closing.

Article 9. Indenture Release.

Seller shall apply for and obtain a release of the Property from Seller’s Corporate Trust Indenture within one hundred twenty (120) days after closing. This obligation shall survive Closing and shall not be deemed merged into any instrument of conveyance delivered at Closing.
Article 10. Restricted Use Covenant

Use of the property shall be restricted to park purposes (including but not limited to recreational events, competitions, art shows, craft fairs, food and beverage vendors, and other customary park uses), or other use for municipal purposes including but not limited to streets, street improvements such as curb and gutters, sidewalks, and streetlights, utilities, sewers, water and associated waterworks such as hydrants and water fountains. Any sale, lease or transfer of the property to an entity that plans to use it for commercial, residential or industrial uses is prohibited without the prior consent of Seller. The foregoing restriction shall be incorporated in the Deed and shall run with title to the Real Property.

Article 11. Removal of Equipment or Facilities

Seller shall have the right prior to closing to remove any equipment, structures, material, or facilities located on the property. Following closing the Purchaser will have the right to remove any and all remaining equipment, structures, material, and facilities on the Property.

Article 12. Lot Split.

If the sale and purchase of the Property requires a legal subdivision or lot split, Purchaser shall obtain the approval of the required governmental agencies for said lot split prior to the expiration of the Feasibility Period and shall complete the lot split at Purchaser’s sole cost and expense. The Closing Date shall occur after the necessary governing bodies have granted the lot split approvals. In the event said Purchaser has not obtained lot split approvals by the date that is one hundred twenty (120) days following the Effective Date hereof, then in such event, Seller at its sole discretion may terminate this Purchase Agreement, and if terminated Seller shall have no further obligation to Purchaser hereunder and Seller shall retain the Earnest Money retained as liquidated damages.

Article 13. Dedication of Easements

Purchaser, as additional consideration provided to Seller for the Property, shall grant to Seller at Closing the easements in the form set forth at Exhibit C.


If prior to Closing, eminent domain proceedings are commenced against all or a material portion of the Property, Seller shall promptly give notice thereof to Purchaser, and Purchaser at its option (to be exercised within fifteen (15) days after Seller’s notice) may either (a) terminate this Agreement, or (b) proceed to Closing and receive at Closing either a credit against the Purchase Price in the amount of the award, in the case of a completed eminent domain proceeding, or an assignment of all rights in eminent domain, in the case of a pending eminent domain proceeding. Prior to Closing, upon written request from Purchaser, Seller shall not designate counsel, appear in, or otherwise act with respect to any eminent domain proceedings, or commence any repair or restoration resulting therefrom, without the consent of Purchaser, which consent shall not be unreasonably withheld.
Article 15. Brokers.

Each of the parties represents to the other that such party has not incurred any brokerage commission or finder's fee as a result of this transactions and each party agrees to hold the other harmless from all liabilities incurred by the other relating to such brokerage commission or finder's fee incurred as a result of the actions of such party. The provisions of this Article shall survive Closing or termination of this Agreement.


If either party shall default in any of their respective obligations under this Agreement, the other party, by notice to such defaulting party specifying the nature of the default and the date on which this Agreement shall terminate (which date shall be not less than twenty (20) days after the giving of such notice), may terminate this Agreement, and upon such date, unless the default so specified shall have been cured, this Agreement shall terminate. Subject to the terms of this Agreement, in the case of any default by Purchaser, Seller's sole and exclusive remedy, shall be termination of this Agreement and, upon any such termination, the Earnest Money shall be forfeited to Seller as liquidated damages. In the case of any default by Seller, upon Purchaser's option, Purchaser may terminate this Agreement whereupon the Earnest Money shall be returned to Purchaser. Purchaser also shall have the right to specifically enforce this Agreement, provided that any action therefor is commenced within six (6) months after such right arises. Purchaser waives any right it may have to recover damages from Seller. In any action or proceeding to enforce this Agreement or any term hereof, and the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees.

Article 17. Assignability.

Purchaser may not assign its rights under this Agreement without the consent of Seller, which consent may be given or withheld by Seller in its discretion, provided, however that, one time only, without Seller's consent, but upon notice to Seller, Purchaser may assign its rights under this Agreement to an entity owned and controlled by Purchaser which agrees to assume all of Purchaser's duties and obligations under this Agreement.


Any notice, consent, waiver, request or other communication required or provided to be given under this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when delivered personally or when mailed by certified or registered mail, return receipt requested, postage prepaid, or when dispatched by nationally recognized overnight delivery service, in any event, addressed to the party's address as follows:

If to Seller: Manager, Siting & Land Rights
Xcel Energy
414 Nicollet Mall, 414-06
Minneapolis, MN 55401
Attention: Brian Sullivan
With copy to: Legal Department
Xcel Energy
401 Nicollet Mall,
Minneapolis, MN  55401

If to Purchaser: Roy Fletcher
Real Estate Specialist City of Sioux Falls
224 W. Ninth Street
Sioux Falls, SD 57117

With a copy to: Sioux Falls City Attorney
224 W. Ninth Street
Sioux Falls, SD 57117

or to such party at such other address as such party, by ten (10) days prior written notice given as herein provided, shall designate, provided that no party may require notice to be sent to more than two (2) addresses. Any notice given in any other manner shall be effective only upon receipt by the addressee.

Article 20. Miscellaneous.

20.1 Entire Agreement; Modification. This Agreement embodies the entire agreement and understanding between Seller and Purchaser, and supersedes any prior oral or written agreements, relating to this transaction. This Agreement may not be amended, modified or supplemented except in a writing executed by both Seller and Purchaser. No term of this Agreement shall be waived unless done so in writing by the party benefited by such term.

20.2 Survival; No Merger. The terms of this Agreement shall survive and be enforceable after the Closing and shall not be merged therein.

20.3 Governing Law. This Agreement shall be construed under and governed by the laws of the State of South Dakota.

20.4 Severability. If any term of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby.

20.5 Time of the Essence. Time is of the essence under this Agreement.

20.6 Construction. The rule of strict construction shall not apply to this Agreement. This Agreement shall not be interpreted in favor of or against either Seller or Purchaser merely because of their respective efforts in preparing it.

20.7 Captions, Gender, Number and Language of Inclusion. The article and section headings in this Agreement are for convenience of reference only and shall not define, limit or prescribe the scope or intent of any term of this Agreement. As used in this Agreement, the singular shall include the plural and vice versa, the masculine, feminine and neuter adjectives shall
include one another, and the following words and phrases shall have the following meanings: (i) “including” shall mean “including but not limited to”, (ii) “terms” shall mean “terms, provisions, duties, covenants, conditions, representations, warranties and indemnities”, (iii) “any of the Property” or “any of the Real Property” shall mean “the Property or any part thereof or interest therein” or “the Real Property or any part thereof or interest therein”, as the case may be, (iv) “rights” shall mean “rights, duties and obligations”, (v) “liabilities” shall mean “liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, including reasonable attorneys’ fees”, (vi) “incurred by” shall mean “imposed upon or suffered or incurred or paid by or asserted against”, (vii) “applicable law” shall mean “all applicable Federal, state, county, municipal, local or other laws, statutes, codes, ordinances, rules and regulations”, (viii) “about the Property” or “about the Real Property” shall mean “in, on, under or about the Property” or “in, on under or about the Real Property”, as the case may be, (ix) “operation” shall mean “use, non-use, possession, occupancy, condition, operation, maintenance or management”, and (x) “this transaction” shall mean “the purchase, sale and related transactions contemplated by this Agreement”.

20.8 Binding Effect. This Agreement shall inure to the benefit of and shall bind the respective heirs, executors, administrators, successors and assigns of Seller and Purchaser.

20.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

20.10 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the end of the next day which is a business day. The last day of any period of time described in this Agreement shall be deemed to end at 5:00 p.m. local time of the state in which the Property is located. As used herein, the term “business day” means any day that is not a Saturday, Sunday or legal holiday for national banks in the state in which the Property is located.

Article 21. Recording.

Neither party shall record this Agreement. In the event Purchaser records this Agreement, this Agreement shall automatically terminate and Seller shall have the remedies set forth in the Section entitled “Default”.

Article 22. Offer.

This proposal shall expire unless on or before noon on May 6, 2019 (Acceptance Deadline) (a) it is accepted in writing, by Purchaser and Seller, as evidenced by their signatures below, (b) the offering party receives notice of such acceptance, and (c) Purchaser deposits the Earnest Money. If the conditions set forth in the previous sentence are not satisfied prior to the Acceptance Deadline, this Agreement shall be void and without further force or effect.

[SIGNATURE PAGE FOLLOWS]
SIGNATURE PAGE

FOR

PURCHASE AGREEMENT

BETWEEN

Northern States Power Company, a Minnesota corporation ("Seller")

AND

City of Sioux Falls ("Purchaser")

Seller and Purchaser have caused this Agreement to be executed and delivered as of the date first above written.

SELLER:

NORTHERN STATES POWER COMPANY,
a Minnesota corporation

By: Peter D. Gitzen
Its: Manager of Siting and Land Rights
as Authorized Agent for Northern States Power Company, a Minnesota corporation,
d/b/a Xcel Energy

PURCHASER:

CITY OF SIOUX FALLS

By: Paul TenHaken
Its: Mayor
EXHIBIT A
Legal Description of the Land

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 in Block 1 of Syndicate Addition to Sioux Falls, Minnehaha County, South Dakota.
EXHIBIT B

Permitted Exceptions

1. The lien for Real Property taxes not yet due and payable.

2. Utility and drainage easements of record.

3. Building and zoning laws, ordinances and state and federal regulations.

4. Restrictions relating to use or improvement of the Property.

5. Reservation of any mineral rights to the State of South Dakota.

6. The Easement as set forth at Exhibit C.

7. Sanitary sewer easement over part of the subject property, in favor of the City of Sioux Falls, South Dakota, dated July 13, 1993, filed July 13, 1993 in Book 210 of Misc., page 656.
EXHIBIT C

EASEMENT

This Instrument was drafted by: BES
Northern States Power Company d/b/a Xcel Energy
414 Nicollet Mall, MP 7
Minneapolis, MN 55401

EASEMENT

The undersigned, City of Sioux Falls, SD, hereinafter called "Grantor", in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration to Grantor in hand paid by Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy, hereinafter called "NSP", does hereby grant unto NSP, its successors and assigns, the perpetual right, privilege and easement to survey, construct, operate, maintain, use, rebuild, relocate, upgrade or remove electric lines with all towers, structures, poles, foundations, crossarms, cables, wires, guy supports, counterpoises, fixtures, devices, and equipment appurtenant thereto (collectively referred to as the “Facilities”); said Facilities being necessary for the purposes of conducting electric energy, light, and communication impulses through, over, under and across the following described lands situated in the County of Minnehaha, State of South Dakota, to-wit:

As described on the attached Exhibit A and Exhibit B (hereinafter called “Premises”)

Except for the right of access and any temporary construction area, said easement shall be limited to:

As described on the attached Exhibit A and Exhibit B (hereinafter called “the Easement Area”)

The rights granted herein may be exercised at any time subsequent to the execution of this document.

The grant of easement herein contained shall also include the right to enter upon the Premises, to survey for and locate said lines and shall also include the right to trim or remove from said Easement Area any structures, trees (including tall or leaning trees located within the Premises adjacent to the Easement Area, which may endanger said lines by reason of falling thereon) or objects which in the opinion of NSP will interfere with said lines, except fences. Grantor agrees not to erect any buildings, structures or other objects, permanent or temporary (except fences, streets with curbs, and gutters upon the Easement Area which shall be permitted), unless approved by Grantor in writing as provided below. Grantor further agrees not to plant any trees within the Easement Area without the prior express written approval from NSP, nor to not perform any act which will interfere with or endanger said lines.
The grant of easement herein contained shall also include the right of NSP to have reasonable access to said Easement Area across the Premises. The grant of easement herein contained shall also include the right of reasonable temporary use by NSP of Premises adjacent to said Easement Area during construction, repair or replacement of said transmission lines, for additional construction area, and said electric lines and supporting structures from time to time may be reconstructed or relocated on said Easement Area with changed dimensions and to operate at different voltages.

Unless emergency circumstances apply, NSP will provide Grantor with at least ten (10) day’s notice prior to pruning or controlling trees, brush or other vegetation or undertaking construction, repair or replacement of Facilities within the Easement Area.

The grant herein contained shall also include the right of NSP to permit the attachment of wires of others to the structures supporting said lines.

Grantor reserves the right to dedicate and have or permit to be improved, maintained, and used for the purposes of streets, streetlights, light poles, curbs and gutters, sidewalks, and underground utilities (hereinafter called "Improvements"), within those portions of said Easement Area not occupied by the structures supporting Northern States Power Company’s electric system, provided that said improvements do not, in the opinion of NSP, impair the structural or electrical integrity of or ability to maintain said electric system or materially alter the existing ground elevations; and provided further that all such improvements shall not result in a ground or other clearance of less than the minimum requirements specified by the National Electrical Safety Code. Grantor, its agents or assigns must submit plans of improvements or other installations, except fences, streets, curbs and gutters, within the Easement Area for review, compliance and written approval by NSP prior to installation of the Improvements. NSP shall use best efforts to complete its review of all such plans within ninety (90) days following Grantor's submission and to inform the Grantor of any delay.

Grantor also reserves the right to cultivate, use and occupy said Easement Area, in a manner that is not inconsistent with NSP’s rights granted herein.

NSP shall pay for all damages to landscaping, roads and driveways, fences, livestock, crops, fields and other property caused by the construction or maintenance of said lines. Claims on account of such damages may be referred to NSP’s nearest office.

NSP assumes responsibility for all liabilities and damages caused by, relating to or arising out of its own operations through, over, under, across or near the Easement Area on and after the date of this Easement.

Grantor covenants with NSP, its successors and assigns, that Grantor is the owner of the above described premises and has the right to sell and convey an easement in the manner and form herein.
Grantor agrees to execute and deliver to NSP, at NSP's cost without additional compensation, any additional documents needed to correct the legal description of the Easement Area described herein, so that it describes the Easement Area within the Premises that was originally intended to be granted herein and which at a minimum provides conductor clearance meeting the requirements of the National Electrical Safety Code. NSP shall not relocate its Facilities or install Facilities through, over, under or across real property owned by the Grantor other than within the Easement Area without the express written consent of Grantor.

It is mutually understood and agreed that this instrument covers all the agreements and stipulations between the parties and that no representation or statements, verbal or written, have been made modifying, adding to or changing the terms hereof.

This instrument is exempt from the South Dakota - Transfer Fee as provided by SDCL 43-4-22.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed as of the _____ day of ________________, 2019.

GRANTOR:
City of Sioux Falls, SD

Name:

Name:

STATE OF SOUTH DAKOTA) ) ss.
COUNTY OF MINNEHAHA )

The foregoing instrument was acknowledged before me this _____ day of ________________, 2019, by __________________________

of the City of Sioux Falls, SD

Notary Public

66182622.1

Page 19 of 20
Note: Morrell Substation Easement Exhibit is being drafted and will be finalized prior to City Council Consideration
<table>
<thead>
<tr>
<th></th>
<th>January 2019</th>
<th>February 2019</th>
<th>2019 YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Community Center Attendance</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weekday Open Gym</td>
<td>8,908</td>
<td>8,427</td>
<td>17,335</td>
</tr>
<tr>
<td>Weeknight Open Gym</td>
<td>99</td>
<td>111</td>
<td>210</td>
</tr>
<tr>
<td>Weekend Open Gym</td>
<td>2,881</td>
<td>2,580</td>
<td>5,461</td>
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<tr>
<td>Walking Club</td>
<td>328</td>
<td>232</td>
<td>560</td>
</tr>
<tr>
<td>Playgroup</td>
<td>514</td>
<td>343</td>
<td>857</td>
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<tr>
<td>SFPR Special Events</td>
<td>0</td>
<td>153</td>
<td>153</td>
</tr>
<tr>
<td><strong>Total Attendance</strong></td>
<td>12,730</td>
<td>11,846</td>
<td>24,576</td>
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<tr>
<td><strong>Operational Days</strong></td>
<td>28</td>
<td>26</td>
<td>54</td>
</tr>
<tr>
<td><strong>Average Daily Attendance</strong></td>
<td>455</td>
<td>456</td>
<td>455</td>
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<tr>
<td><strong>Computer Lab Attendance</strong></td>
<td>2,435</td>
<td>2,221</td>
<td>4,656</td>
</tr>
<tr>
<td><strong>Court Rentals Attendance</strong></td>
<td>285</td>
<td>248</td>
<td>533</td>
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<tr>
<td><strong>Athletic Events Attendance</strong></td>
<td>10,665</td>
<td>7,808</td>
<td>18,473</td>
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<tr>
<td><strong>Meeting Room Rentals</strong></td>
<td>98</td>
<td>103</td>
<td>201</td>
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<tr>
<td><strong>Meeting Room Attendance</strong></td>
<td>2,267</td>
<td>3,356</td>
<td>5,623</td>
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<tr>
<td><strong>TOTAL CC VISITS</strong></td>
<td>25,947</td>
<td>23,258</td>
<td>49,205</td>
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</table>

*Computer lab attendance isn't included in total as they are accounted for in CC attendance.*
## Statistics

<table>
<thead>
<tr>
<th></th>
<th>January 2019</th>
<th>February 2019</th>
<th>YTD Total 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attendance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daily Fee Attendance</td>
<td>5,235</td>
<td>5,227</td>
<td>10,462</td>
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<tr>
<td>Swim Pass Attendance</td>
<td>4,929</td>
<td>3,873</td>
<td>8,802</td>
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<tr>
<td>Swim Lesson Attendance</td>
<td>3,170</td>
<td>1,249</td>
<td>4,419</td>
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<tr>
<td>Swim Team Attendance</td>
<td>2,482</td>
<td>1,419</td>
<td>3,901</td>
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<tr>
<td>Swim Meet Attendance</td>
<td>3,162</td>
<td>9,467</td>
<td>12,629</td>
</tr>
<tr>
<td>Other Attendance</td>
<td>508</td>
<td>351</td>
<td>859</td>
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<tr>
<td>Total Attendance</td>
<td><strong>19,486</strong></td>
<td><strong>21,586</strong></td>
<td><strong>41,072</strong></td>
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<tr>
<td>Average Daily Attendance</td>
<td>677</td>
<td>777</td>
<td>726</td>
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<tr>
<td>Passes</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Fall, Winter, Spring Passes Sold</td>
<td>1</td>
<td>-</td>
<td>1</td>
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<tr>
<td>Annual Passes Sold</td>
<td>134</td>
<td>72</td>
<td>206</td>
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<tr>
<td>Total Passes Sold</td>
<td><strong>135</strong></td>
<td><strong>72</strong></td>
<td><strong>207</strong></td>
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<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lesson Registrations</td>
<td>54</td>
<td>365</td>
<td>419</td>
</tr>
<tr>
<td>Class Registrations</td>
<td>42</td>
<td>20</td>
<td>62</td>
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<tr>
<td>Meeting Room Reservations</td>
<td>16</td>
<td>20</td>
<td>36</td>
</tr>
<tr>
<td>Meeting Room Hours Reserved</td>
<td>22</td>
<td>63</td>
<td>85</td>
</tr>
<tr>
<td>Swim Lane Hours Reserved</td>
<td>1,174</td>
<td>958</td>
<td>2,131</td>
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</table>

## Revenue

<table>
<thead>
<tr>
<th></th>
<th>January 2019</th>
<th>February 2019</th>
<th>YTD Total 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily Admission</td>
<td>$23,482</td>
<td>$23,683</td>
<td>$47,165</td>
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<tr>
<td>Passes</td>
<td>$20,086</td>
<td>$11,487</td>
<td>$31,573</td>
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<tr>
<td>Programming Registrations</td>
<td>$8,737</td>
<td>$26,970</td>
<td>$35,706</td>
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<tr>
<td>Meeting Room Reservations</td>
<td>$1,033</td>
<td>$892</td>
<td>$1,925</td>
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<tr>
<td>Swim Lane Reservations</td>
<td>$9</td>
<td>$5,590</td>
<td>$5,599</td>
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<tr>
<td>Other</td>
<td>$22,579</td>
<td>$5,118</td>
<td>$27,697</td>
</tr>
<tr>
<td>Total Revenue</td>
<td>$75,926</td>
<td>$73,740</td>
<td>$149,665</td>
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## Expenses

<table>
<thead>
<tr>
<th></th>
<th>January 2019</th>
<th>February 2019</th>
<th>YTD Total 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel*</td>
<td>$34,349</td>
<td>$77,388</td>
<td>$111,737</td>
</tr>
<tr>
<td>Building R&amp;M</td>
<td>$7,112</td>
<td>$7,112</td>
<td>$7,112</td>
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<tr>
<td>Supplies &amp; Materials</td>
<td>$7,386</td>
<td>$7,386</td>
<td>$7,386</td>
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<tr>
<td>Utilities</td>
<td>$13,905</td>
<td>$48,493</td>
<td>$62,398</td>
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<tr>
<td>Other</td>
<td>$488</td>
<td>$23,630</td>
<td>$24,118</td>
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<tr>
<td>Total Expenses</td>
<td>$48,741</td>
<td>$164,011</td>
<td>$212,752</td>
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</table>

*March, Aug, and Dec have 3 pay periods.

## Summary

<table>
<thead>
<tr>
<th></th>
<th>January 2019</th>
<th>February 2019</th>
<th>YTD Total 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Revenue</td>
<td>$75,926</td>
<td>$73,740</td>
<td>$149,665</td>
</tr>
<tr>
<td>Total Expenses</td>
<td>$48,741</td>
<td>$164,011</td>
<td>$212,752</td>
</tr>
<tr>
<td>Operating Surplus/(Loss)</td>
<td>$27,185</td>
<td>$(90,271)</td>
<td>$(63,086)</td>
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# 2018-2019
## Ice Rinks

### Statistics

<table>
<thead>
<tr>
<th></th>
<th>December 2018</th>
<th>January 2019</th>
<th>February 2019</th>
<th>March 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Attendance</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Campus</td>
<td>NA</td>
<td>557</td>
<td>248</td>
<td>44</td>
</tr>
<tr>
<td>Frank Olson</td>
<td>NA</td>
<td>384</td>
<td>204</td>
<td>44</td>
</tr>
<tr>
<td>McKennan</td>
<td>NA</td>
<td>746</td>
<td>434</td>
<td>58</td>
</tr>
<tr>
<td>Memorial</td>
<td>NA</td>
<td>1,196</td>
<td>700</td>
<td>114</td>
</tr>
<tr>
<td>Sherman</td>
<td>NA</td>
<td>725</td>
<td>453</td>
<td>91</td>
</tr>
<tr>
<td>Tuthill</td>
<td>NA</td>
<td>1,375</td>
<td>769</td>
<td>155</td>
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<tr>
<td><strong>Total Attendance</strong></td>
<td>-</td>
<td>4,983</td>
<td>2,808</td>
<td>506</td>
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<tr>
<td><strong>Average Daily Attendance</strong></td>
<td>NA</td>
<td>198</td>
<td>76</td>
<td>43</td>
</tr>
<tr>
<td><strong>Ice Skate Rentals</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Campus</td>
<td>NA</td>
<td>335</td>
<td>129</td>
<td>23</td>
</tr>
<tr>
<td>Frank Olson</td>
<td>NA</td>
<td>207</td>
<td>94</td>
<td>12</td>
</tr>
<tr>
<td>McKennan</td>
<td>NA</td>
<td>430</td>
<td>214</td>
<td>19</td>
</tr>
<tr>
<td>Memorial</td>
<td>NA</td>
<td>743</td>
<td>374</td>
<td>19</td>
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<tr>
<td>Sherman</td>
<td>NA</td>
<td>189</td>
<td>144</td>
<td>48</td>
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<tr>
<td>Tuthill</td>
<td>NA</td>
<td>756</td>
<td>536</td>
<td>52</td>
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<tr>
<td><strong>Total Ice Skate Rentals</strong></td>
<td>-</td>
<td>2,660</td>
<td>1,491</td>
<td>173</td>
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### Revenue

<table>
<thead>
<tr>
<th></th>
<th>Net Skate</th>
<th>Net Concessions</th>
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<tr>
<td><strong>Net Skate</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Campus</td>
<td>$456</td>
<td>$66.50</td>
</tr>
<tr>
<td>Frank Olson</td>
<td>$228</td>
<td>$57.50</td>
</tr>
<tr>
<td>McKennan</td>
<td>$576</td>
<td>$66.00</td>
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<tr>
<td>Memorial</td>
<td>$624</td>
<td>$132.50</td>
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<tr>
<td>Sherman</td>
<td>$245</td>
<td>$39.50</td>
</tr>
<tr>
<td>Tuthill</td>
<td>$590</td>
<td>$170.50</td>
</tr>
<tr>
<td><strong>Total Ice Skate Revenue</strong></td>
<td>$2,719</td>
<td>$2,157</td>
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<tr>
<td><strong>Net Concessions</strong></td>
<td></td>
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<tr>
<td>Campus</td>
<td>$216</td>
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</tr>
<tr>
<td>Frank Olson</td>
<td>$138</td>
<td>$22.50</td>
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<tr>
<td>McKennan</td>
<td>$335</td>
<td>$32.50</td>
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<tr>
<td>Memorial</td>
<td>$484</td>
<td>$89.50</td>
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<tr>
<td>Sherman</td>
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<tr>
<td>Tuthill</td>
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<td>$103.00</td>
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<tr>
<td><strong>Total Concession Revenue</strong></td>
<td>$532.50</td>
<td>$309.50</td>
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<tr>
<td><strong>Total Revenue</strong></td>
<td>$3,251.50</td>
<td>$2,466.50</td>
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## City of Sioux Falls Golf Courses
### Income Statement
January 31, 2019

<table>
<thead>
<tr>
<th></th>
<th>Current Month</th>
<th></th>
<th>Year To Date</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Prairie Green</td>
<td>Elmwood</td>
<td>Kuehn Park</td>
<td>Consolidated</td>
</tr>
<tr>
<td><strong>Revenues</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greens Fees</td>
<td>1,396</td>
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<tr>
<td>Pro Shop</td>
<td>1,396</td>
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<td>-</td>
<td>(80)</td>
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<tr>
<td>Driving Range'</td>
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<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Carts</td>
<td>1,841</td>
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<td>-</td>
<td>1,841</td>
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<tr>
<td>Food &amp; Beverage</td>
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<td>-</td>
<td>1,841</td>
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<tr>
<td>Annual Passes</td>
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<tr>
<td><strong>Total Revenues</strong></td>
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<tr>
<td><strong>Cost of Goods Sold</strong></td>
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<tr>
<td>Merchandise</td>
<td>746</td>
<td>0</td>
<td>131</td>
<td>878</td>
</tr>
<tr>
<td>Food &amp; Beverage</td>
<td>746</td>
<td>0</td>
<td>131</td>
<td>878</td>
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<tr>
<td><strong>Gross Profit</strong></td>
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<td>940</td>
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<tr>
<td><strong>Operating Expenses</strong></td>
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<td>Pro Shop</td>
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<td>15,177</td>
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<td>2,130</td>
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<td>5,788</td>
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<tr>
<td>Course Maintenance</td>
<td>25,522</td>
<td>24,084</td>
<td>9,792</td>
<td>56,998</td>
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<tr>
<td><strong>Total Operating Expenses</strong></td>
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</tr>
<tr>
<td><strong>EBITDA</strong></td>
<td>53,044</td>
<td>56,069</td>
<td>11,037</td>
<td>120,149</td>
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<tr>
<td><strong>Other Income (Expense)</strong></td>
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<td></td>
</tr>
<tr>
<td>Property Taxes - Equipment</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Other Income (Expense)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>