ORDER OF BUSINESS

1. Roll call and determination of quorum

2. Approval of minutes from October 16, 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. Midco Aquatic Center Concessionaire Agreement – Sky Smothers
   b. Yankton Trail Park Master Plan - Mike Patten – David Locke
   c. Memorial Park Bench Donation – Kelby Mieras
   d. MJW Arboretum Management Agreement – Jackie Nelson
   e. 2020 Park Board Meeting Calendar – Jackie Nelson

7. Report of Director of Parks and Recreation
   a. Community Center report –October
   b. Aquatics report – October
   c. Golf Course Report – September

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 the November 20, 2019 meeting

October 16, 2019

A REGULAR MEETING OF THE SIOUX FALLS PARKS AND RECREATION BOARD was held on Wednesday, October 16, 2019, at 4 p.m. at the Great Bear Recreation Center.

Roll Call and Determination of Quorum
Members present: Lorrae Lindquist, Jim Stavenger, Mick Conlin, and Rick Weber.

Members absent: Ann Nachtigal, Todd Sundleaf, and Mike Begeman.

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

Others present: Karen Leonard, City Attorney’s Office; Jan Wood, Crystal Ice Concessions; Justin Arlt, Sioux Falls Golf; and Cat Clark, Sioux Falls Golf.

Approval of Minutes (September 18, 2019)
A motion to approve the minutes was made by Conlin and seconded by Stavenger. 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 met but no report was available. The Park System Planning and Development Committee met and discussed all items on this agenda. The Partnerships and Recreation Committee met and discussed all items on this agenda as well as non-Levitt event rentals and an update on the Arboretum.

Unfinished Business
No unfinished business.

Under New Business
Crystal Ice Agreement: Smothers shared details about the proposed agreement for concession services for Sherman and Harmodon complexes and all Family Aquatic Centers. A motion to recommend approval was made by Weber and seconded by Stavenger. Motion passed unanimously with all present Board members voting yes.
Van Eps Park Sculpture Placement: Patten shared details of the placement of a bronze sculpture of Dr. Martin Luther King, Jr. The sculpture recognizes Dr. King’s January 12, 1961, visit to the St. John Baptist Church in Sioux Falls, which stood near the present-day Van Eps Park. A motion to recommend approval was made by Stavenger and seconded by Weber. Motion passed unanimously with all present Board members voting yes.

Veterans’ Park Paver Donations: Nelson shared details of three recent paver donations received for the Veterans’ Memorial Park. A motion to recommend approval of the donations was made by Conlin and seconded by Stavenger. Motion passed unanimously with all present Board members voting yes.

2020 Golf Course Rates Proposal: Justin Artl shared details regarding the proposed 2020 Golf Course rates and answered questions from the Board. A motion to accept the proposal was made by Weber and seconded by Stavenger. Motion passed unanimously with all present Board members voting yes.

Report of Director of Parks and Recreation
Kearney shared details about work being done at Great Bear Recreation Park, including new roofing and new flooring. Patten shared details about the repair of the Buffalo Wall Sculpture at Sherman Park. Mieras shared details of EAB, storm damage, and recovery. All parks and trails are back open, but there is still much cleanup of damaged trees from Sertoma Park through Tufhill Park. There remains a lot of tree damage in areas that are still too wet to be able to get the necessary equipment into at this time. EAB tree removal is progressing, with approximately 800 trees left to remove in 2019. Mieras shared details about diversifying street trees and park trees with a goal of not more than five percent of any one species in our urban forest in the future.

Items Added After the Agenda Deadline
None.

There being no further business, a motion to adjourn was made by Stavenger. Meeting adjourned.

__________________________________________
Secretary

Approved by:

__________________________________________
President
Concession Agreement for the Midco® Aquatic Center

Agreement made ________________, 2019, between the City of Sioux Falls, SD (the “City”) and Stensland Enterprises, Inc., 3101 West 41st Street, Sioux Falls, SD 57105 (the “Concessionaire”).

WHEREAS, the City is the owner of the Midco Aquatic Center (the “Property”) located at 1601 South Western Avenue, Sioux Falls, SD;

WHEREAS, the Concessionaire is engaged in the business of providing food, non-alcoholic beverages, catering services, and vending machine sales;

WHEREAS, except as specifically provided otherwise in this Agreement, the City desires to grant to Concessionaire the sole and exclusive right to conduct the aforesaid business in the Property.

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

**Defined Terms**

**Defined Terms.** For purposes of this Agreement, the following terms have the meanings:

A. “Accounting Period” shall refer to a six-calendar-month period of which there must be two within each calendar year.

B. “Agreement” shall refer to the contract executed between the Concessionaire and the City, in accordance with these specifications and the Concessionaire’s proposal submitted and accepted by the City, all of which will be incorporated into the Agreement.

C. “Agreement Year” shall refer to the period between January 1 and December 31 every year of the Agreement until the Agreement terminates.

D. “Concessionaire” shall refer to that party selected by the City to provide the Concession Service(s).

E. “Concession Sales” shall refer to all food, non-alcoholic beverages, catering services (both subcontracted and self-performed), and vending machine sales sold by the Concessionaire at the Property.
F. “Concession Service(s)” shall refer to the exclusive sale of all food, non-alcoholic beverages, catering services, and vending machine sales at the Property. All other concession service categories, approved for sale by the Director, shall be non-exclusive to the concessionaire.

G. “Director” shall refer to the Director of Parks and Recreation, as from time to time appointed by the Mayor of the City of Sioux Falls, and shall include his or her designee(s) and such person or persons as may from time to time be authorized to represent the City with respect to any or all matters pertaining to this Agreement. Except as otherwise required by law or rules of the City, any matter under this Agreement that requires or permits the action or approval of the City may be acted upon or approved by the Director.

H. “Gross Receipts” shall refer to the total amount of money and service, charged or received by the Concessionaire, or any agent or any employee of the Concessionaire, for all sales, cash or credit (whether collected or not), including vending equipment services, made as a result of the service rights granted under the Agreement, excluding applicable sales taxes. Neither shortages in excess of one-quarter percent (1/4%) of concession sales or any bad debts, may be deducted from gross receipts. Gross receipts shall not include ordinary and customary credit card fees paid.

I. “Hospitality Room(s)” shall mean one or more room(s) designated primarily for use by officials, coaches, trainers, volunteers and team staff (but not the participants) of the User Groups of the Property for the purpose of providing free refreshments as authorized by the Director.

J. “Property” shall refer to the Midco Aquatic Center.

K. “Small Wares” shall refer to the service ware, utensils, crockery, non-breakable glassware, non-breakable dishware, and cutlery used in the concession service operation.

L. “User Group(s)” shall refer to the hosting or sponsoring organization such as the NCAA, NSIC, NAIA, swim teams, leagues, Special Olympics, synchronized swimming team, etc.

Section One
Scope of Concession

A. The City grants to the Concessionaire the exclusive right in the Property, which is owned by the City, for dispensing food, non-alcoholic beverages, offering or subcontracting catering services, and vending machine sales (hereinafter “Concession Services”). Notwithstanding the previous sentence, Concessionaire shall not be construed as to affect the privileges accorded to the Hospitality Rooms
as set forth in the terms of the Swim Meet Request Form (Exhibit D) and the Midco Aquatic Center Room Reservation Form (Exhibit E).

The Concession Services shall be within the area identified in Exhibit A, which is attached hereto and made a part of this Agreement for concession purposes (hereinafter “Concession Premises”). The Concessionaire shall also provide vending options and catering services, including subcontracted catering services, in other public areas of the Property as mutually agreed upon by the parties. Within the Concession Premises and the public areas which are mutually agreed upon, Concessionaire shall have the exclusive right of providing the Concession Services.

B. Concessionaire shall use the Concession Premises solely for the purpose set forth above and is prohibited from selling or permitting the sale of any alcoholic beverages thereon.

C. Concessionaire acknowledges that the Concession Premises are open to public use and the City authorizes others to use the Concession Premises so long as such uses do not unreasonably interfere with the Concession Services.

D. Concessionaire’s status will be that of a licensee. Concessionaire will not, in any way whatsoever, be granted or conveyed any permanent easement, lease, fee, or other interest in the Concession Premises.

E. Concessionaire accepts the Concession Premises as being in an “as is” condition and shall return the same in good working order, normal wear and tear excepted, in the event the Concessionaire shall cease operations in the Property.

Section Two
Engagement

The City hereby engages the Concessionaire to provide Concession Services during the Initial Term upon the terms and conditions set forth in this Agreement.

The Concessionaire shall provide Concession Services in accordance with industry standards. The Concessionaire shall provide the services necessary for the operation of the Concession Premises as set forth in Exhibit C, which is attached hereto and made a part of this Agreement. The City shall provide for the City’s responsibilities as set forth in Exhibit C, which is attached hereto and made a part of this Agreement. The Concessionaire shall refrain from any business practice or promotional activity that is injurious or detrimental to the City or the goodwill associated with the Property and the Parks and Recreation system of the City.

Section Three
Term

A. The “Initial Term” of the Concession Agreement (“Agreement”) shall be from January 6, 2020 and will continue in full force and effect through December 31, 2021, unless earlier terminated under the provisions of this Agreement. Upon expiration of the Initial Term, the Concessionaire may request, in writing, and the
City may at its discretion, based upon an evaluation of the Concessionaire’s compliance with the terms and conditions of the Agreement, grant no more than one (1) subsequent three (3) year renewal term ("Renewal Term"). The City reserves the right to terminate the Agreement for material breach in accordance with terms and conditions set forth in Section Nineteen. Further, failure on the part of the Concessionaire to submit quarterly reports or the annual reports when requested constitute a material breach of the Agreement subject to Termination in accordance with the terms and conditions set forth in Section Nineteen.

If the Concessionaire wishes to renew this Agreement for an additional three (3) year term, it must submit, in writing, the Concessionaire’s request for a three (3) year term renewal by June 30 of the year prior to the year being sought for renewal. The City, at its sole discretion, may allow an additional grace period for written notice of intent to renew up to 60 days. Should the Concessionaire fail to submit a written renewal request, the Agreement shall terminate at the conclusion of the Agreement’s current term.

B. Upon the termination of this Agreement, the Concessionaire will yield and deliver peaceably to the City possession of the Concession Premises (including any personal property belonging to the City) and any alterations, additions, or improvements thereto, promptly and in good condition, order, and repair, except for reasonable wear and tear. Further, the Concessionaire agrees to be responsible for cleaning the Concession Premises to the satisfaction of the City.

Section Four
Civil Rights and ADA

A. Civil Rights. The Concessionaire agrees to observe and fully comply with all non-discrimination and anti-harassment provisions of any federal, state, or local laws, which would include, but is not limited to:


Without limiting the foregoing, the Concessionaire will not discriminate against any person based on the individual’s race, religion, color, sex, national origin, ancestry, disability, age, or creed. Concessionaire will include the phrase “equal opportunity employer” or a similar phrase approved under South Dakota law in all solicitations or advertisements for employees.

The Concessionaire will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling any investigative agency, commission, or court, or its representatives, to ascertain compliance with the above provisions.

Notwithstanding any provision in this Agreement to the contrary, if Concessionaire is found liable under or to be in violation of any human rights or anti-discrimination laws under a final agency decision or court order, the Concessionaire will be deemed to have materially breached this Agreement and the Agreement may be immediately terminated, in whole or part, by the City and the Concessionaire shall be liable for any costs or expenses incurred by the City in obtaining from other sources the services to be rendered or performed under the contract so terminated or canceled.

Section Five
Compensation

A. For the Initial Term and the Renewal Term provided for under the terms of this Agreement, Concessionaire shall pay to the City the following sum as consideration for the concession, license, and privilege granted herein. The Concessionaire shall make an annual payment of eight percent (8%) of Concessionaire’s Gross Receipts (which includes all Concession Sales, as addressed separately below) to the City Finance Office. Such payment shall be due by January 30th of the following year.

B. If Concessionaire fails to pay said compensation at such time and in such manner as specified herein, such failure shall constitute a material breach of the Agreement and grounds for termination of the Agreement.

C. All past due payments shall be assessed a monthly penalty of five (5%) percent of the total amount due calculated after the twentieth (20th) day of each month.

D. In the event any check for payment is returned to the City, all future compensation must be made by certified or cashier check only.

E. Concessionaire shall collect and promptly disburse all taxes required by state and local authorities for any sales conducted by Concessionaire at the Property and shall pay any applicable taxes relating to food service operations, equipment or inventory (other than with respect to City owned/purchased equipment described in this Agreement).
Section Six
Reports and Records

A. Quarterly Financial Reports. The Manager shall provide the City with quarterly financial statements by the end of the month immediately following the end of each quarter. The report shall be signed by an authorized representative of Concessionaire and shall include, among other things as specified by the City: A Statement of Total Gross Receipts, excluding sales tax, derived by Concessionaire from operation of the Concession Service and any other Concession—related operation approved by the City during the previous quarter less any operating expenses. Failure on the part of Concessionaire to submit the quarterly financial report when due, constitutes a material breach of the Agreement subject to Termination, in accordance with the terms and conditions set forth in Section Nineteen.

B. Other Reports—Upon the written request of the City, Concessionaire agrees to provide any other financial reports to the City.

C. Retention of Records—The Concessionaire shall retain all records and reports required by law and under this Agreement for a period not less than five years following expiration or termination of this Agreement and its amendments. The City shall, pursuant to Section Twenty, subparagraph E of this Agreement and until five years after the expiration or termination of this Agreement, have access to and the right to examine any of the pertinent books, records, documents and papers of Concessionaire related to this Agreement, including state and federal income tax records and returns.

Section Seven
Hours of Operation and Limitations

The Concessionaire and the City agree that the intent is for the Concession to operate during those times when it is most beneficial to patrons and reflective of facility usage ("Business Hours"). The Concessionaire shall set the Business Hours for the Concession with approval of the Director. The Concessionaire shall be responsible for staffing and operation of the Concession during Business Hours. Notwithstanding the above paragraph, failure on the part of the Concessionaire to staff and operate the Concession during Business Hours shall be a material breach of the Agreement and cause for Termination at the City's discretion.

In addition to the terms set forth in Section Twenty-Two of this Agreement, The Director shall be the sole authority to determine whether the Concession Services will be closed due to inclement weather. The City is not responsible to the Concessionaire for any loss or damage caused by such determination.

Section Eight
Prices
Pricing for all Concession Services provided under the terms of this Agreement shall be competitive and consistent with the local market. The initial menu and pricing is set forth in Exhibit B which is attached hereto and made a part of this Agreement. All prices shall be professionally displayed in prominent places at all times.

Section Nine
Construction and Improvements

Concessionaire shall not erect any structures or additions to the Concession Premises without first obtaining written approval of the City. The City may impose conditions upon the installation of any improvements. Violation of any of the conditions shall constitute grounds for termination of this Agreement.

The City may expand and/or improve the Property as it, in its sole judgment, may deem necessary to serve the needs of the public and the City.

The City shall have the right to enter into Concession Premises at all reasonable times to inspect the premises and/or to take such actions as may, in the opinion of the City, be deemed necessary. Except for emergency situations, the City will make every reasonable effort to timely notify the Concessionaire of any pending work and to coordinate such work so as to minimize any disruption to the Concessionaire's delivery of services. Nothing in this section will impose or may be construed to impose upon the City any independent obligation to construct or maintain or make repairs, replacements, alterations, additions, or improvements nor create any independent liability for any failure to do so.

Section Ten
Compliance with Laws

The Concessionaire shall comply with all federal, state, local ordinances, statutes, rules, and regulations that may apply to the Concession Operation, including the Title Sponsorship Agreement between the City and Midco.

Section Eleven
Complying with Third Party Sponsored Events

Notwithstanding anything herein to the contrary, the City reserves the right, in its reasonable discretion, to require Concessionaire to cover or remove reference to brands or anything else that may be required in promotional materials or elsewhere during events that are not controlled by the City, if required to do so pursuant to any written contracts or agreements entered into by the City with any unrelated third parties for use of the Property. Examples of events not controlled by the City might include NCAA-sponsored events or Olympic trials.

Section Twelve
Insurance

A. City-Required Insurance. The City at its own expense shall procure and maintain property and liability insurance with insurance companies or pools licensed or
authorized to do business in South Dakota. Contents covered will not include the personal property of the Concessionaire. The Concessionaire shall comply with all requirements and conditions imposed by the insurer or Risk Manager of the City as a condition of coverage and shall cooperate with the City and the insurer in the event a claim for loss is made.

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

1. Workers' compensation insurance providing the statutory limits required by South Dakota law, if the Concessionaire has any employees. In addition, if the Concessionaire has any employees, it shall provide Coverage B, Employer's Liability Coverage, of not less than $100,000 each accident, $100,000 disease–policy limits. The required limit may be met by excess liability (umbrella) coverage.

2. Commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury, and a property damage liability coverage with limits of at least $1,000,000 per occurrence, $2,000,000 general aggregate, and $2,000,000 aggregate products and completed operations. The required limit may include excess liability (umbrella) coverage. The policy shall name the City and its representatives as an additional insured. If "occurrence form" insurance is not available, "claims made" insurance will be acceptable.

3. Other Insurance. Insurance to cover the Concessionaire's responsibility herein to the City for property in the Concessionaire's care, custody, and control, including but not limited to supplies and inventories. The parties agree that the City shall not be responsible or liable for any loss or theft of goods, supplies, or equipment, nor will the City be responsible for damage resulting from a power failure, flood, fire explosion and/or other causes.

5. At the City's request, Concessionaire shall obtain such other insurance that is customary and standard for protection against claims, liabilities, and losses connected with the Property.

The Concessionaire 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.

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 thereof.
C. **City as Additional Insured.** All insurance provided under this section shall name the City and its duly authorized representatives as an additional insured. The party procuring such insurance shall deliver to the other party policies or certified copies, signed by an authorized representative of the insurer, or in the case of blanket policies, certified abstract policies with respect to all policies so procured, including existing, additional, and renewal policies and, in the case of insurance about to expire, shall deliver evidence of renewal in binder form with respect to the renewal policies not less than 45 days prior to the respective dates of expiration, and thereafter shall deliver policies, as aforesaid, or as the case may be, within 60 days succeeding the expiration dates.

D. **Waiver of Subrogation.** For all coverages required under this Agreement, The Concessionaire's insurer shall waive subrogation rights against the City, it being the intention the required insurance policies shall protect both the parties and be primary coverage for all losses covered by the policies.

E. **Notice of Cancellation.** All policies of insurance provided for under this section shall, to the extent obtainable, 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, Concessionaire, and any additional insured.

F. **Claims.** Concessionaire and the City shall cooperate in a prompt manner in connection with the making of any claims and the collection of any insurance money that may be due and shall execute and deliver such proofs of loss and other instruments that may be required for the purpose of obtaining the recovery of any such insurance monies.

G. **Failure to Maintain Insurance.** If the Concessionaire fails to obtain and maintain the insurance required pursuant to this section or if any insurer cancels or modifies such insurance without the City's consent, at the City's election (but without any obligation to do so), the City may procure similar insurance coverage and Concessionaire shall reimburse the City for any premiums paid by the City within 10 days of demand therefor. Any amounts unpaid shall accrue interest at the New York Prime Rate plus 5 percent from the day incurred. Concessionaire shall not perform work during any period when any policy of insurance required hereunder is not in effect unless it gives evidence to the reasonable satisfaction of the City of the unavailability of such insurance.

H. **Risk Management.** The Concessionaire shall cooperate in the implementation of any loss control recommendations, insurance coverage reviews, and collection appraisals for insurance purposes of the City.

### Section Thirteen
**Independent Contractor Status/Employees**

A. **Personnel.** Concessionaire shall select, employ, and supervise any and all of the personnel necessary or required to carry out the services to be provided by the Concessionaire as set forth in Exhibit C ("Concessionaire employees"). All
personnel so employed shall be employees or independent contractors of the Concessionaire, and the terms of their employment or engagement, including compensation, shall be at the sole discretion of the Concessionaire. The salaries and all additional costs of engagement of the aforementioned personnel employed or contracted by Concessionaire shall be borne by Concessionaire.

B. **Not City Employees.** Concessionaire employees shall in every instance be deemed employees of Concessionaire and not of the City. The City shall have no right to supervise or direct such employees.

C. **Reports.** Concessionaire shall prepare and file punctually when due all forms, reports, and returns required by law relating to the employment of personnel of the Concession Operation.

D. **Independent Contractor.** Concessionaire will not represent to anyone that its relationship to the City is other than that of an independent contractor, and the City and Concessionaire may so inform any parties with whom they deal and may take any other reasonable steps to carry out the intent of this subsection.

**Section Fourteen**

**Indemnification**

A. **Protect Against Liability.** Concessionaire will use commercially reasonable efforts that are consistent with industry standards applicable to similar facilities to not do or permit any act or thing to be done on the Concession Premises that subjects the City to liability or responsibility for injury, damage to persons or property, or to any liability by reason of any violation of law or of any requirement. Concessionaire shall use its best efforts to exercise such control over the Concession Premises so as to fully protect the City against any such liability. In addition, to the fullest extent permitted by law, Concessionaire shall indemnify and save harmless the City and the City shall indemnify and save harmless the Concessionaire against and from all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and expenses, including, without limitation, attorneys’ fees and disbursements, which may be imposed upon or asserted against or reasonably incurred by the City or the Concessionaire or any agency or subdivision thereof or their respective agents, employees, officers, or directors (the “indemnities”) by reason of the acts or omissions of the other or its affiliates or the performance of each of their obligations hereunder, unless the same shall have been caused solely by the negligent or willful acts of such indemnities. If damage to the Concession Premises results from any removal made by the Concessionaire or its agents, the Concessionaire will repair the damage at its sole expense. The provisions of this Section shall survive the Term of this agreement.

B. **Insurance.** The obligation of Concessionaire under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Concession Premises.
C. **Indemnification.** Subject to Section Twenty, subparagraph F, of this Agreement, if any claim, action, or proceeding is made or brought against any indemnitee by reason pursuant to this section, then, upon demand by such indemnitee, the City or the Concessionaire at its sole cost and expense, shall resist or defend such claim action or proceeding in such indemnitee’s name, if necessary, by the attorneys for the City or the Concessionaire’s insurance carrier (if such claim, action, or proceeding is covered by insurance), otherwise by such attorneys as the other party shall approve. The parties agree that if the other party is named as party to an action, the other party will reasonably cooperate in the conduct of the proceedings.

**Section Fifteen**
**Patents, Trademarks, and Copyrighted Products**

If Concessionaire requires the use of or desires to use any patented design, device, material, process, mark, copyright, trademark, name, slogan, or other legally protected property right, or to sell, vend or distribute any item or product, which is subject to a copyright, patent, trademark, license, or other form of legal protection, it shall provide for such use, sale or distribution in an approved legal manner by making a proper agreement with the patentee, owner or lessee or such design, device, material, process, mark, copyright, trademark, name, slogan, or other legally protected property right, for such use. Concessionaire shall protect, defend and save harmless City, its officers, agents, and employees, against any and all claims for damages or otherwise by reason of infringement of such design, device, material, process, mark, copyright, trademark, name, slogan, or other legally protected property right, and shall indemnify City, its officers, agents, and employees for any loss it or they may sustain due to such infringement. Concessionaire shall not sell, vend, or distribute items or products deceptively similar to those subject to copyright, patent, trademark, or license to avoid payment of appropriate royalties or fees.

**Section Sixteen**
**Accounting**

A. **Collection of Receipts/Payment of Expenses.**

1. Concessionaire shall maintain complete, accurate, and detailed accounting records of all transactions pertaining to the Concession Services covered by this Agreement that will allow Concessionaire to prepare financial statements in accordance with generally accepted accounting principles. Concessionaire shall make such records available to the City upon request, as often as it is deemed necessary by the City, to determine the effectiveness of the financial management system and internal procedures that have been established by Concessionaire to ensure compliance with the terms and conditions of the Agreement and the financial statements, and that reports present fairly the results of the Concessionaire’s operation pursuant to this Agreement. Said records shall be maintained a period of five (5) years after the termination or expiration of the Agreement.

B. All sales shall be recorded by means of Point of Sale that publicly display the amount of each sale and automatically issue a customer’s receipt or certify the
amount recorded on the sales slip.

C. **Remittance of Tax Due.** The Concessionaire, unless it has subcontracted with other agencies to do so, shall collect, account for, and remit promptly to the proper governmental authority all applicable excise, sales, and use taxes or similar governmental charges collected at the Property directly from the patrons or guests, or as a part of the sales price of any goods, services, gross receipts, or similar or equivalent taxes.

D. **Accounting System.** Concessionaire shall establish, implement, and supervise the accounting, inventory, and cost control systems necessary to carry out the services to be provided by the Concessionaire as set forth in Exhibit C. Concessionaire shall maintain adequate control over the records of the Concession Operation and the acquisition and disposition of all personal property and all fixed assets used in the Concession Operation. (See Exhibit C.)

E. **Advertising and Promotion.** Except as otherwise expressly provided herein, Concessionaire shall at its sole cost and expense pay the administrative and general expenses and the cost of Concession Operation advertising, business promotions, and public relations.

**Section Seventeen**  
**Daily Receipts**

A. Under the Agreement, Concessionaire is required to maintain a daily record of all gross receipts derived from the Concession Operation. This record shall be available at all times. Concessionaire shall upon request by the City provide a breakdown and accounting of all sales activity for each day.

B. All cash received by Concessionaire shall be deposited into a single bank account maintained solely for the Concession Operation described in this Agreement, through which all financial transactions (including but not limited to deposits, withdrawals, and purchases) must pass.

**Section Eighteen**  
**Liens**

Concessionaire shall use its best efforts to prevent any liens from being filed against the Concession Premises, which arise from any maintenance, repairs, alterations, improvements, additions, or replacements in or to the Concession Premises. If any liens are filed as a result of the Concessionaire’s actions, Concessionaire shall prevent any liens from becoming delinquent. Any costs associated with the lien shall be the expense of the Concessionaire.

**Section Nineteen**  
**Ownership and Maintenance of Assets/Repairs**

The Concessionaire shall retain ownership of and repair and replace as necessary all Concessionaire-owned equipment, and any other property the Concessionaire is
required to supply to support the delivery of services to be provided by the
Concessionaire under Exhibit C. The City shall be the exclusive owner of all other
property at the Property.

Upon expiration or termination of this Agreement, the Concessionaire will retain all
intangible property including, but not limited to, websites, domain names, and social
media. The ownership of inventory including food, beverage, and supplies, along with
data and software utilized by the Concessionaire in providing services under this
Agreement will remain with the Concessionaire. Notwithstanding the previous sentence,
the City shall retain ownership of any and all records pertaining to commitments for
Concession Services made by Concessionaire which extend beyond the expiration or
termination of the Agreement.

Section Twenty
Expiration, Termination, Remedies, and Exculpation

A. **Grounds for Termination by the City.** The City may terminate this Agreement by
notice to Concessionaire if any one or more of the following events occur:

1. If Concessionaire applies for or consents to the appointment of a receiver,
trustee, or liquidator of all or a substantial part of its assets or makes a
general assignment for the benefit of its creditors, or files a voluntary petition
in bankruptcy or a petition seeking reorganization, composition, arrangement
with creditors, liquidation, or similar relief under any present or future statute,
law, or regulation, or files an answer admitting the material allegations of a
petition filed against it in any proceeding under the Bankruptcy Code, or is
adjudicated bankrupt or insolvent.

2. If any petition or complaint is filed without the application, approval, or
consent of the City seeking reorganization, composition, arrangement with
creditors, liquidation, or similar relief under any present or future statute, law,
or regulation with respect to Concessionaire seeking appointment of a
receiver, trustee, or liquidator thereof of all or a substantial part of such
party's assets, and such petition of complaint is pending and not withdrawn
or dismissed for an aggregate of ninety (90) days (excluding any days during
which such petition or complaint shall be stayed), whether or not
consecutive.

3. If Concessionaire breaches or fails to perform any term, covenant, or
condition contained in this Agreement and fails to cure the alleged breach
within thirty (30) days following written notice specifying the alleged default
and the action required to cure the default.

B. **Grounds for Termination by the Concessionaire.** The Concessionaire may
terminate this Agreement by notice to the City if the City breaches or fails to
perform any term, covenant, or condition contained in this Agreement and fails to
cure the alleged breach within thirty (30) days following written notice specifying the
alleged default and the action required to cure the default.
C. **Extension of Cure Period.** In the event a default, other than a default in the payment of money, is not reasonably susceptible to being cured within the thirty-(30-) day period, the defaulting party will not be considered in default if, within the allowed thirty-(30-) day period, the defaulting party will have commenced with due diligence to cure the noticed default and thereafter completes as soon as practicably possible the cure of the noticed default.

D. **Accounting Upon Termination or Expiration.** If this Agreement expires or is terminated as provided in this section, Concessionaire shall prepare or cause to be prepared financial statements in accordance with the applicable provisions of Section Six for the period between the end of the last preceding accounting period and the termination date, and Concessionaire shall account to the City as of the date of termination for all amounts due and payable specified in such financial statements (such accounting shall be subject to post-termination adjustment to correct any errors in such statements; the obligation to make any such adjustment shall survive the expiration or sooner termination of this Agreement). In addition, as of the date of any such termination, Concessionaire shall release, transfer, or remit to the City copies of all commitments pursuant to Section Nineteen of this Agreement, books, records, licenses, and property of the City held or controlled by Concessionaire other than materials containing personnel records and shall take all other necessary measures to effectuate the orderly and prompt termination of the relationship contemplated by this Agreement.

E. **Remedies.** With or without terminating this Agreement, upon the occurrence of a default and a failure to cure within the cure period, if any, the party not in default will be entitled to all remedies available under applicable law. All remedies will be cumulative and nonexclusive of any other remedy.

F. **Officials Not Liable.** No official, director, officer, agent, or employee of the City shall be charged personally or held contractually liable by or to the Concessionaire under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval, or attempted execution of this Agreement.

G. **Waiver of Breach.** The waiver by the City or Concessionaire of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same or any other term, covenant, or condition herein contained. Any failure on the part of the City or Concessionaire to require or exact full and complete compliance with any of the covenants, conditions, or agreements of this Agreement shall not be construed as in any manner changing the terms hereof or to prevent the City or Concessionaire from enforcing the full provisions hereof, nor shall the terms of this Agreement be changed or altered in any manner whatsoever other than by written agreement of the City and the Concessionaire.

H. **Payment obligation remain Intact.** Termination of this Agreement by either party as herein provided shall not release or discharge any payment obligations or
liability owed to the other party under the terms and conditions of this Agreement as of the date of such termination.

I. **Entry of Premises.** Upon the expiration or any termination of this Agreement, the City may at once re-enter and remove any and all persons occupying the Concession Premises. If Concessionaire fails to remove any property lawfully belonging to and removable by the Concessionaire upon any notice of termination thereof, or before the stated expiration of this Agreement, the City may appropriate the same to its own use without allowing any compensation therefor, or may remove same at the expense of the Concessionaire. In the event that the Concessionaire removes any personal property, Concessionaire hereby covenants to pay any and all damages which may be caused to the property of the City by this removal.

**Section Twenty-One**

**Audit**

A. **City Inspection.** Concessionaire, upon reasonable notice by the City to Concessionaire, shall permit the City, acting through its employees and/or representatives, to make inspections, audits, examination, or abstracts of all records and books of account, including such records as may be reasonably required by the City to be maintained by Concessionaire and information required to be maintained pursuant to any provision of this Agreement. Any such inspection or audit shall be conducted during the reasonable business hours of Concessionaire, and Concessionaire shall make all of the aforesaid records, books of account, and other documentation available within seven days of the written request by the City.

B. **No Removal.** Except as otherwise provided herein, no books and records, including, without limitation, books of account, and front office records, shall be removed from the Concession Premises or its regular place of business without the City’s prior written approval. However, if books and records are of a digital nature, the Concessionaire shall be allowed to remove from the premises without pre-approval from the Director. Upon any termination of this Agreement, all such books and records, including digital, shall be the property of the Concessionaire and shall be maintained by the Concessionaire, provided that the City shall have the continuing right to review or copy all such books and records.

C. **Discrepancies.** Notwithstanding anything to the contrary contained in this Agreement, the City may terminate this Agreement if any inspection or audit by the City or its agents discloses (i) an intentional material discrepancy on the part of Concessionaire; or (ii) an intentional material discrepancy made by a person other than those set forth in (i) above about which Concessionaire had knowledge, did not disclose in writing to the City, and did not take such corrective action as Concessionaire should deem reasonably necessary to avoid any further discrepancy. If any inspection or audit discloses an intentional material discrepancy of Concessionaire, the City shall inform Concessionaire and Concessionaire shall (i) make such monetary adjustments including payment to the City as may be
required because of such discrepancy; and (ii) take such actions as Concessionaire
deems reasonably necessary to avoid any further intentional discrepancy.

D. **Fees.** If it is necessary that the City retain counsel to collect any sums ultimately
determined to be owing to it from Concessionaire arising from a breach of this
Agreement, Concessionaire will pay to the City the sums reasonably expended by
the City, including reasonable attorneys' fees.

E. **Obligations Survive Termination.** The obligations of Concessionaire under this
section shall survive the termination of this Agreement.

**Section Twenty-Two**
Suspension of Operation

Concessionaire shall, at the direction of the Director, immediately suspend, delay or
interrupt Concessionaire's Operation of all or part of the Concession Premises for such
period of time as the City may determine to be appropriate to protect the Concession
Premises and/or public health, safety and welfare due to the occurrence of hazardous
work conditions, emergency conditions, and/or any other cause including, but not limited
to, Concessionaire’s failure to perform any of the covenants, agreements and conditions
contained in this Agreement on its part to be performed provided that the City has
determined that the continuance of the operation of the Concession may detrimentally
impact the Concession Premises and/or health, safety, and welfare of persons onsite.
Concessionaire hereby waives any claim and the City shall not be liable to any party
claiming through the Concessionaire, for damages, payment abatement, or
compensation as result of the City's actions under this Section. City's suspension of
Concessionaire's Operations shall be in addition to any other right or remedy available
by law or in equity.

**Section Twenty-Three**
Websites, Social Media, and Logos

The Concessionaire may maintain social media and one (1) website dedicated to the
Concession Services at the Property. The Concessionaire's social media and website
shall not link to any web pages, social media or internet sites that are political,
religious, indecent, scandalous, immoral or illegal in nature or could reasonably be
deemed offensive or not compliant with community standards of good taste or
applicable law.

The Concessionaire shall cross-link its website to the City's website. The
Concessionaire will maintain its website. The City will allot the Concessionaire banner
presence on the City's website. The City's website (siouxfalls.org) will not be used for
the sale and display of commercial advertising in any form including banner
advertisements, shopping carts, buttons, and text advertisements. The City will use an
exit box notification whenever a visitor chooses to use a hypertext link to the
Concessionaire's website, stating the user is leaving the City's website.
The Concessionaire agrees that it will at no time reference or picture any City employees in uniform in its marketing materials or on its website and/or social media and that the materials shall not in any way, directly or indirectly, infer that the City endorses the product offered by the Concessionaire. In no event shall the Concessionaire represent or indicate by the particular use of a name or logo, that the City is engaged in any joint venture with the Concessionaire.

The Concessionaire may not use the name of Midco or any logos, trademarks, or tradenames owned or licensed to Midco without the prior written approval of Midco, which such approval may be withheld as Midco deems appropriate. The Concessionaire will make the request to the Director who, in turn, will relay the request to Midco pursuant to the Title Sponsorship Agreement. In no event shall the Concessionaire represent or indicate, by the particular use of a name or logo, that the Concessionaire is a partner with Midco or engaged in any joint venture with Midco in association with and use of the Property.

Section Twenty-Four
Voluntarily Enter into Agreement

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 Twenty-Five
Assignment

This Agreement and the rights and obligations hereunder shall not be assigned or transferred by either party without the prior express written consent of the other. Subject to that restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

This Agreement is intended solely for the benefit of the City and the Concessionaire and shall not be enforceable by or create any claim or right of action in favor of any other party.

Section Twenty-Six
Notices

All notices, demands, and other communications required or permitted under the provisions of this Agreement ("notice") shall, unless otherwise specified, be in writing, sent by hand delivery, or by certified first class mail, postage prepaid, with return receipt required, to the following addresses:
As to the City:

City of Sioux Falls, South Dakota
Office of the Mayor
224 West Ninth Street
P.O. Box 7402
Sioux Falls, SD 57117-7402
Phone: 605-367-8800

As to the Concessionaire:

Stensland Enterprises, Inc.
3101 West 41st Street
Sioux Falls, SD 57105

Or to such other address in the United States as the party to whom the notice is sent shall have designated in writing in accordance with the provisions of this section. Any such notice sent by mail shall be deemed effective when received. Any party to this Agreement may change its address by giving the other party written notice of its new address as herein provided.

Section Twenty-Seven
No Waiver

If any one or more of the provisions of this Agreement shall be determined to be invalid, illegal, or unenforceable in any respect, the remaining provisions of this Agreement shall not be in any way impaired.

The failure of either party to insist upon a strict performance of any of the terms or provisions of the Agreement, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such terms, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

Section Twenty-Eight
Applicable Laws

This Agreement shall be governed by and interpreted under the substantive laws of the state of South Dakota without regard to principles of conflicts of law.

The section headings in this Agreement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Agreement.
Section Twenty-Nine
Counterparts

This Agreement may be executed in two or more counterparts, each of which will be
deemed an original copy of this Agreement, and all of which, when taken together, will
be deemed to constitute one and the same Agreement.

Section Thirty
Entire Agreement

This Agreement represents the entire and integrated agreement between the City and
the Concessionaire with respect to the subjects described herein and supersedes all
prior negotiation, representations, or agreements, oral or written. This Agreement may
be amended or modified only in writing signed by the party to be bound by such
amendment or modification of this Agreement. The parties waive their rights to amend
or modify this Agreement in any other manner.

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

______________________________  ________________________________
MAYOR                        STENSLAND ENTERPRISES, INC.

Printed Name

ATTEST:

______________________________  ________________________________
City Clerk                     Printed Name

FEDERAL TAX ID NO. ______________

SALES TAX ID NO. ______________
EXHIBIT B
PRICING FOR FOOD AND PARTY ROOM CATERING

Stensland
FAMILY FARMS

@ Midco Aquatic Center

ice cream
SERVING LOCAL FARM, FRESH
STENSLAND ICE CREAM
- check cabinets for current flavors -
- dairy free option available -

HARD DIPPED ICE CREAM
dips are served in a dish
mini (1.5 oz) - 1.68 single (4 oz) - 3.68
double (8 oz) - 5.48 triple (12 oz) - 7.28
ADD a homemade waffle cone - 1.48

OLD FASHIONED FLOAT - 4.98
classic rootbeer - orange creamicle - cherry coke - coke
- served with Francesco Original -

browned cow - coke
- served with Hear Now Brown Cow -

ICE CREAM COOKIE SANDWICH - 3.98

CHOCOLATE COVERED FROZEN BANANA - 2.98

snacks
TAOS GRANOLA BAR - 2.98
GAYLAN'S POPCORN - 4.98
DOT'S PRETZELS - 1.98
CHIPS - 1.98
MA NUTS - 5.98
cashews - almonds - pecans
KAKOOKIE - 2.98
FRUIT & VEGGIE STRIP - 0.98
TRAIL MIX - 2.98
peanut - puppy chow - pb&j
CANDY - 0.98
gummy mix - jelly beans - licorice
FRESH CHEESE CURDS - 5.38
white cheddar - ranch - taco

fresh cats
CHEESE & MEAT - 3.98
YOUGURT, FRUIT & GRANOLA - 3.98
VEGGIES & HUMMUS - 1.98
KIDS LUNCH PACK - 4.98
WRAPS - 4.98
CROISSANT SANDWICH - 4.98
HOT DOG - 1.98
NACHOS - 4.98

CLASSIC GARDEN SALAD (c) (g) - 8.98
mixed greens - shredded carrots - edamame - cucumbers
cherry tomatoes - shallots - served with dressing of choice

BBQ CHICKEN (g) - 9.98
mixed greens - roasted corn, red pepper & black beans
cherry tomatoes - black olives - shallots
grilled chicken breast - served with ranch dressing and BBQ

MIDWEST COBB (g) - 9.98
mixed greens - Stensland shredded colby/monterey jack cheese
cherry tomatoes - hard boiled egg - black olives - edamame - bacon
grilled chicken breast - served with dressing of choice

PIZZA SLICE - 2.98
FRIED CHEESE CURDS - 6.98

drinks
BOTTLED WATER - SODA - JUICE
- available in cooler -

COFFEE - 12 oz - 2.98
brewed with fresh ground Coffee Montana coffee beans
- add a dip of ice cream $2 -

ICED CHAI TEA - 20 oz - 4.98
- served over ice with Stensland 2% milk -

HOT TEA - 12 oz - 2.98
- served over ice with Stensland 2% milk -

HOT CHOCOLATE - 12 oz - 2.98
- homemade Stensland blend -
EXHIBIT C
SERVICES PROVIDED BY PARTIES

City Responsibilities:

1. Provide, at City's expense, all utilities necessary, including garbage, building security system, water, sewer, and electricity, to carry out the Concession Services.

2. Provide janitorial/custodial service to the Property except for the Concession Premises.

3. Provide limited cleaning supplies for the Concession Premise.

4. Provide pest control to the Concession Premises.

5. Provide an ice machine.

6. Preapprove all social media and websites associated with the Concession Services.

7. Allot banner presence on the City's website (siouxfalls.org) pursuant to Section Twenty-Three of this Agreement.

8. Coordinate with Concessionaire a delivery schedule of inventory necessary to carry out the Concession Services.

Concessionaire Responsibilities:

1. Employ, supervise, and direct employees for the successful delivery of Concession Operations. Uniforms displaying the Concessionaire's name and logo only should be worn by all employees, along with identification name tags, at all times during hours of operation.

2. All personnel employed by Concessionaire shall be neat, clean, groomed and courteous at all times. Concessionaire shall employ sufficiently trained personnel to staff and meet the reasonable demands of the patrons.

3. Coordinate the subcontracting of catering services, if any.

4. Collect all revenues generated by the Concession Sales.

5. All taxes, if any, arising out of the use and occupancy of the Concession Premises and the operation of the Concession shall be paid by the Concessionaire. In the event the whole amount thereof is not paid prior to the expiration of the Agreement, payment shall remain a continuing obligation of Concessionaire after the expiration or termination of the Agreement.

6. Repair and maintain all assets that are the property of the Concessionaire.
7. All food and beverages acquired and distributed by the Concessionaire shall be stored and handled at all times consistent with applicable standards of sanitation, preservation, and purity.

8. Rent, lease, or purchase the equipment, along with any replacement equipment necessary to support the delivery of services by Concessionaire. Such shall include vending machines for use in the Property. Any expenditure of funds for equipment and replacement equipment will be an expense of the Concessionaire.

9. Obtain and maintain all licenses and permits necessary for the Concessionaire to perform the Concession Services.

10. Provide office equipment, supplies, and uniforms as necessary for daily staff functions.

11. Establish and adjust menu, vending and catering prices in accordance with Section Eight of this Agreement. In determining prices, the Concessionaire shall evaluate comparable charges for similar goods at similar and competing facilities.

12. Provide concession signage as pre-approved by the Director. Such signage shall not conflict with any sponsorship arrangement entered into by the City and shall be expressly used to advertise a product for sale in the Concession Premises.

13. Be responsible for maintaining the cleanliness of the Concession Premises, including, but not limited to, wiping and bussing tables, along with floor cleaning in the Concession Premises. Concessionaire shall ensure placement of all garbage and trash generated by the Concession Operation in designated containers and that said containers are emptied at a minimum daily to dumpster bins located outside of the Property.

14. No glass containers of any kind shall be used in the dispensing of food and/or beverages.

15. Develop, maintain, and manage websites and social media and utilize other current and subsequently available internet-based technologies to market, promote, and advertise the Concession Services. Obtain pre-approval from the Director before launching any of the sites described in the previous sentence.

16. Pay when due all operating expenses.

17. Maintain accurate and complete records with respect to its operations, equipment, and concession maintenance and commitments to third parties.

18. Include the City Parks and Recreation logo in all promotional materials, including posters, flyers, and advertisements.

19. Honor and abide by all agreements between the City and third parties, including but not limited to Midco, affecting the Property and/or the services to be provided pursuant to this Agreement.
20. Comply with all applicable laws, rules, regulations, and orders of the federal government, the state of South Dakota, Minnehaha County, and the City of Sioux Falls, as well as all rules, regulations, and directives prescribed by the City.

21. Work with Sioux Falls Parks and Recreation to provide concession services for special events sponsored or scheduled by the City within the Property.

22. Give notice to the City in the event of mechanical or facility failure, damage, etc. within the concession premises.
Exhibit D – Swim Meet Request Form

MIDCO
AQUATIC CENTER

Swim Meet Request Form

User Group: ____________________________

User Group Contact: ____________________________

Date Request Submitted: ____________________________

Swim Meet Request

Beginning Date: ___________  End Date: ___________

Days of Week:  

- Sun
- Mon
- Tue
- Wed
- Thu
- Fri
- Sat

Anticipated No. of Swimmers: ___________

Anticipated No. of Spectators: ___________

Type of Swim Meet

- Invitational
- Inter-squad
- Conference
- State
- Dual

- Short Course  No. of 25 Yard Lanes Requested: ___________

- Long Course  No. of 50 Meter Lanes Requested: ___________

- Starting Blocks  No. of Starting Blocks Requested: ___________

- Touch Pads  No. of Touch Pads Requested: ___________

Additional Support Needs

- Warm-Up and Cookdown Lanes Needed  No. of Lanes Requested: ___________

Additional bleacher seating needed  

- Yes
- No
Swim Meet Bidding Information

Bidding Time Frame: ___________________ to ___________________

Deadline for Approval Confirmation from City of SF: ____________________________

Swim Meet Part of Rotation: ☐ Yes  ☐ No  No. of Year Rotation: _____________

Swim Meet Schedule Information:

Day 1
Meet Setup Start Time/Staff Arrival:

Meet Start Time:               Meet End Time:  

Day 2
Meet Setup Start Time/Staff Arrival:

Meet Start Time:               Meet End Time:  

Day 3
Meet Setup Start Time/Staff Arrival:

Meet Start Time:               Meet End Time:  

☐ Not Requested

Day 4
Meet Setup Start Time/Staff Arrival:

Meet Start Time:               Meet End Time:  

☐ Not Requested

Day 5
Meet Setup Start Time/Staff Arrival:

Meet Start Time:               Meet End Time:  

☐ Not Requested

Vendor Information:

☐ Merchandise Vendors  No. of Vendors: ___________  No. of Point of Sale: __________

Meeting Room No. 1 (Cannot be used as a team camp space.)

☐ Monday–Friday (after 4 p.m.): $100
☐ Saturday (all day): $300
☐ Sunday (all day): $200

Total Cost: $ __________

Room will be opened to the public for reservations if full payment has not been received 45 days in advance of event.

No refunds will be issued.
Fuel Bag Policy:

Requesting Fuel Bags  □ Yes  □ No  The Dive In: 605-212-4624

In an effort to accommodate energy needs for athletes, the following policy has been developed to allow certain food and beverage on the pool deck during approved swim meets for participating athletes only. Other than the approved items below, the facility policy of No Outside Food & Beverage remains in effect.

This policy is subject to change at the discretion of Sioux Falls Parks and Recreation.

- Fuel bags must be coordinated and purchased through the Midco® Aquatic Center contracted concessionaire, The Dive In. The Dive In is the exclusive provider of food and beverage at the Midco Aquatic Center.
- Consumables will be provided in a transparent, re-sealable bag.
- Fuel bags are for participating athletes only.
- Approved list of fuel bag items are available through The Dive In.
- Consumables purchased at the concession stand during a meet must be consumed in the lobby or mezzanine, even if one of the consumables is listed above.
- User groups who have rented the facility will be solely responsible for ensuring that all trash has been picked up and removed following the conclusion of each session of the swim meet on all applicable days.

Spectator Fee Information:

□ Fees will be charged  Fee Amount: ____________________________
□ *Application for Permit to Charge Entry Fees must be completed in entirety and submitted with the Swim Meet Request Form (See page 6 of this document.)
□ Fees will not be charged

Room Rental Requests:

*Standard rental fees will apply to the rental of Meeting Rooms 1 and 2 if not being utilized by a vendor.

□ Meet Management Rooms 3 and 4 (included with swim meet)
   Beginning Date:  End Date:

□ Meeting Room 1 at a rate of $50/hour
   Beginning Date:  End Date:
   Planned Usage: ____________________________________________

□ Meeting Room 2 at a rate of $50/hour
   Beginning Date:  End Date:
   Planned Usage: ____________________________________________
User Group Responsibilities:

- Setup, operation, and takedown of Daktronics equipment.
- Provide volunteers for the following for the duration of the meet: (Must be 18 years of age or older.)
  - Operation of meet management computer system—1 volunteer required.
  - Meet announcements—1 volunteer required.
  - Management of meet entrance—2 volunteers are required at all times.
    - Must arrive 30 minutes prior to doors open to public.
    - Knowledgeable about recreational swim procedures (wristbands).
    - Track attendance with clicker (provided by SFPR).
    - Answer questions (must be knowledgeable about meet and facility).
    - Enforce facility policy on NO OUTSIDE FOOD OR BEVERAGE.
    - Distribution of swim meet information.
    - Collect meet entry fees (must have prior approval and submit Application for Permit to Charge Entry Fees).
- Monitors for internal pool entrances—1 volunteer required at each location
  - Locker room main corridor entrance.
  - Locker room corridor entrance from 50 Meter Pool.
  - Recreation Pool entrance from 50 Meter Pool.
    - Monitors at these locations are to prevent patrons from using the facility free of charge.
    - Advise these individuals that recreational swimmers will need to enter through main entrance of facility in order to use facility for recreational use.
- Monitors to ensure facility rules are being followed—3 volunteers required.
  - Patrol the mezzanine and the pool deck to ensure swimmers and spectators are observing facility rules.
  - Ensure NO OUTSIDE FOOD OR BEVERAGE is brought into facility.
  - Bottled water is allowed on pool deck; NO OUTSIDE FOOD on pool deck.
  - No shoes that were worn outside are allowed to be worn on bulk heads.
- Parking Management (will be determined by estimated number of swimmers).
  - Midco® Aquatic Center—2 volunteers required.
    - Direct to alternate parking locations when lot is at capacity.
  - Park Ridge—1 volunteer required not allowing swim meet parking.
  - Children’s Care Hospital—1 volunteer required not allowing swim meet parking.
  - VA Hospital—1 volunteer required not allowing swim meet parking.
- Dive In—concession operations (If needed).
  - Work directly with contracted concessionaire for the Midco® Aquatic Center.
  - Contact information for concessionaire will be provided when requested.
- Event communication to participants and volunteers prior to event date(s) to include the following:
  - Parking Plan (reviewed and finalized with SFPR staff).
    - Off-site parking w/ shuttle service (if needed due to size of meet).
    - Parking map to include:
      - Midco® Aquatic Center parking lot.
      - Off-street parking options.
      - Notice of no parking in Park Ridge, Children’s Care, or VA Hospital lots.
    - Facility rules and guidelines. (No outside food and beverage flyer to be provided by SFPR.)
    - Swim meet entrance information.
- Provide session report on first day to Midco® Aquatic Center staff lead.
- Any additional equipment needed will be purchased by user group and must first be agreed upon by
  SFPR staff (bleachers, shuttle service, tents, chairs, staging, etc.).
- Walk-through of facility at the end of night must occur ensuring that the facility is free of litter and debris.
Sioux Falls Parks and Recreation Responsibilities:

- Configure 50 Meter Pool to accommodate the meet setup desired.
- Installation and removal of the starting blocks.
- Installation and removal of the timing pads (does not include hookup to computer).
- Installation and removal of the lap lanes.
- Provide, set up, and take down tables and chairs for Rooms 3 and 4.
- Provide, set up, and take down table, chairs, and clickers for swim meet entry (east doors).
- Provide Daktronics computer equipment.
- Provide microphone and iPad to use for announcements.
- Provide cones for starting blocks (if needed).
- Provide lap counters with pole extensions.
- Provide coat racks (weather dependent).
- Provide additional green benches.
- Reserve Rooms 3 and 4 for dates/times listed on request form.
- Reserve Room 1 for vendor(s) use for fee as stated on form.
- Provide, set up, and take down tables and chairs for Room 1 (if needed).
- Reserve Room 2 and established hourly rate for hours needed (if available).
- Provide, set up, and take down tables and chairs for Room 2 (if needed).
- Provide additional trash and recycling receptacles.
- Provide wristbands for all swimmers entering the Midco® Aquatic Center in order to participate in recreational swimming.
- Provide facility maintenance support during event (trash removal, spills, etc.).

User Group Signature: __________________________________________

Date: _________________________________

☐ Swim Meet is approved by City of Sioux Falls Parks and Recreation

☐ Swim Meet is not approved by City of Sioux Falls Parks and Recreation

SFPR Representative Signature: _______________________________________

Date: _________________________________
Sioux Falls Parks and Recreation

Application for Permit to Charge Entry Fees

Sponsor of Event

Name of Event

Date(s) of Event

Location(s) of Event

Event Contact Names(s)   Day Phone   Evening Phone
1. ______________________  ____________  ____________
2. ______________________  ____________  ____________

Location(s) where entrance fees will be collected
1. ______________________  2. ______________________
3. ______________________  4. ______________________

List of fees—please indicate how fee is collected, such as per day, per weekend, per event, per vehicle, etc.
1. $_______ per ____________  2. $_______ per ____________
3. $_______ per ____________  4. $_______ per ____________

Fee recipient

Fee purpose

A permit card must be posted at each location where an entrance fee is charged. Please provide an address for permit card(s) to be mailed to your organization.

Organization

Attention

Street/P.O. Box

City/State/Zip

Applicant Signature

Application Date

Park Board Approval Date

Permit Issued Date

Please submit application at least 60 days in advance of the event.
Exhibit E – Midco Aquatic Center Room Reservation Form

MIDCO® AQUATIC CENTER
ROOM RESERVATION FORM

Name: ___________________________ Phone Number: ___________________________

Date of Reservation: _______________ Time: ___________________________

GENERAL RULES AND INFORMATION

1. Meeting room(s) may be reserved via telephone or in person at the Midco® Aquatic Center.

2. Reservation fees are to be paid in full at the time of reservation. All rooms are reserved on an hourly basis at a rate of $50 per hour.

3. Refunds will be given for reservations that are canceled a minimum of five (5) working days prior to the reservation date, or if the facility is closed due to inclement weather or other unforeseen circumstances out of the control of the reservation party. Cancellations received fewer than five (5) working days prior to the event will not be refunded.

4. Rooms available/estimated capacities:
   - Meeting Room 1—Capacity: 30–40 people
   - Meeting Room 2—Capacity: 30–40 people
   - Meeting Room 3—Capacity: 10–20 people (located in 50M Pool by the diving boards)
   - Meeting Room 4—Capacity: 10–20 people (located in 50M Pool by the diving boards)

5. All party guests, swimmers, and nonswimmers need to have an active swim pass or purchase a daily admission when entering the facility. Children under 2 are free.

6. All decorating and postevent cleanup will need to take place within the reservation time frame. Decorations are strictly limited to tables.

7. Parties are required to provide adequate supervision for their guests. A minimum of one (1) adult/guardian per ten (10) children ages 7–10 and one (1) adult per five (5) children ages 6 and under is required. Lifeguards are on duty; however, adults/guardians are responsible for providing active supervision of children at all times, including when using the pool area.

8. No outside food or beverage is allowed in the Midco Aquatic Center. Those reserving rooms will be provided with the Midco Aquatic Center concession vendor contact information.

9. Room reservation customers are financially responsible for any damage to the facility or equipment that occurs as a result of their event.

10. Smart TVs are available in all meeting rooms. Arrangements can be made for use of these devices.

11. The User shall comply with all applicable laws, rules, regulations, and ordinances of the state of South Dakota, the City of Sioux Falls, and the Midco Aquatic Center. A complete list of pool rules is available at the front desk and online at www.midcoaquaticcenter.org.

I HAVE READ AND UNDERSTAND THE RULES ASSOCIATED WITH RESERVING A ROOM AT THE MIDCO AQUATIC CENTER AND I AGREE TO ABIDE BY THE MIDCO AQUATIC CENTER RULES AND REGULATIONS.

_________________________________________  ________________________________________
Signature                                                      Date

Document created August 2016
YANKTON TRAIL PARK
MASTER PLAN

Park Board Committee Meetings
November 2019

STOCKWELL

CITY OF SIOUX FALLS
PARKS & RECREATION
Project Approach

01 inventory & ANALYSIS
  - Site visits
  - Special events attendance

02 stakeholder INPUT
  - Dakota Alliance / JazzFest / Cross Country / City staff

03 Initial concept DESIGN & review
  - Brainstorming & idea generation

04 final master PLAN
  - Revision and combining ideas into final plan

05 master plan PHASING
PHASE ONE COMPONENTS

- SIDEWALK, 10' WIDE
- SIDEWALK, 8' WIDE
- SOCCER FIELD LIGHTED - REPLACEMENT
- PARKING LOT LIGHTED
- PICNIC SHELTER AND COLORED CONCRETE PAVEMENT (ALTERNATE NO. 1)
- PLAY STRUCTURE (ALTERNATE NO. 2)
- PLAZA SPACE WITH SHELTERS (DONOR OPTION NO. 1)
- SYNTHETIC TURF FIELD (DONOR OPTION NO. 2)
## Preliminary Project Cost Estimate

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<tr>
<th>GENERAL ITEMS</th>
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**TOTAL BASE BID PROJECT COST** $ 2,667,267.00  
*BASED ON 2019 PRICING

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<td>- SYNTHETIC FIELD TURF</td>
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Donor Information:

- Company or Organization Donor
- Contact Name
- Individual Donor: Tara DeBelts
- Mailing address: 908 S. Jay Circle
- City/State/Zip: Sioux Falls, South Dakota 57103
- Phone number: 605-321-2138
- Email: tdebelts@gmail.com
- Monetary donation amount: $ __________________
- Description of donation if other than monetary: Bench and plaque

Donor's valuation of a nonmonetary gift: $ 2,005 *
Purpose of donation: Memorial bench with plaque to be located at Great Bear Park

Tara DeBelts 10-18-19
Donor signature

Bryan Sargent
Sioux Falls Parks and Recreation signature

Thank You

On behalf of the City of Sioux Falls, thank you for your generous gift.
Your contribution helps fund the programs and services of the City of Sioux Falls.

Your gift may qualify as a tax deductible donation as the City of Sioux Falls is a qualified charitable donee under IRS Code 170 (c)(1).

A signed copy of this form will be returned to you to serve as your receipt.

Park Office Use Only

Date receipt sent __________________ U.S. Mail _____ Email _____ Staff initials _____

*The City of Sioux Falls in no way partakes in the valuation of the gift. Any valuation listed in this document has been solely provided by the Donor. The listing of the value in this document should not be construed to mean that the City endorses the accuracy of such valuation.

AN EQUAL OPPORTUNITY EMPLOYER/SERVICE PROVIDER
In Loving Memory
Riley James DeBelts
04.16.1997 - 09.07.2019
Deep in our hearts
you'll always stay
Loved and missed every day
Management Agreement for Operation of the
Mary Jo Wegner Arboretum and East Sioux Falls Historic Site

Agreement made ______________, 2019, between the City of Sioux Falls, SD (the “City”) and Wegner Arboretum Society, a nonprofit organization organized under the laws of the state of South Dakota (the “Manager”).

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

RECITALS

WHEREAS, the City and the Manager acknowledge that they, along with Minnehaha County, are parties to a certain Cooperative Agreement for the Development and Operation of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site (the “Cooperative Agreement”) dated as June 12, 2008, and filed as City Agreement No. 08-0077. Nothing herein is intended to amend or terminate the Cooperative Agreement, which shall remain in full force and effect. The parties acknowledge that in this Agreement the City is delegating to the Manager certain responsibilities under the Cooperative Agreement, but this Agreement shall otherwise be subject to the Cooperative Agreement; and

WHEREAS, the City owns and maintains assets held at the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site; and

WHEREAS, the City and Manager will work collaboratively to ensure the long-term viability of Mary Jo Wegner Arboretum and East Sioux Falls Historic Site for the public’s enjoyment; and

WHEREAS, the City desires the Manager to manage and operate the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site, including the Mabel and Judy Jasper Educational Center (the “Educational Center”), Jasper Family Garden, and all other amenities consistent with the most current master plan as approved by the Parks and Recreation Board;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:
Defined Terms

**Defined Terms.** For purposes of this Agreement, the following terms have the meanings:

**ADA** means the American with Disabilities Act, 42 U.S.C. Sections 12101-12213, as amended, as it now exists, and as it may be amended in the future.

**Budget** means a projection of revenues and expenses for a specified purpose and period of time.

**Capital Equipment** means any and all furniture, fixtures, and equipment including supplies, rental equipment, televisions, computers, printers, software, sound equipment, office equipment, and any other property the Manager is required to supply to support the delivery of services to be provided by the Manager as set forth in Exhibit A.

**Capital Improvements** mean any additions, alterations, renovations, repairs, and improvements to the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site with an initial dollar cost of not less than $2,500.00 per project. Capital improvements will not include routine maintenance and repair projects, which in the aggregate do not exceed $2,500.00 per project. Capital improvement items may or may not be capitalized as capital assets on the City’s balance sheets depending upon the City’s asset capitalization policy in effect at the time of acquisition.

**Laws** mean all federal, state, local, and municipal regulations, ordinances, statutes, rules, laws, and constitutional provisions.

**Operating Account** is as defined in Section Eleven, subparagraph 14, of this Agreement.

**Operating Expenses** mean the expenses and expenditures incurred by the Manager in promoting, operating, maintaining, and managing the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site that are required to be accounted for in the operating account, all as determined in accordance with generally accepted accounting principles. Operating expenses include, but are not limited to, employee compensation including bonuses, benefits; operating supplies, materials, and parts costs; costs of any independent contractors; advertising, marketing, group sales, and public relations costs; commissions, data processing costs. The Manager’s costs of procuring, administering, and maintaining the insurance policies required pursuant to this Agreement; printing and stationery costs; postage costs; banking services fees; equipment rental costs; computer equipment purchase and lease costs, Internet, cable and telephone charges, telephone line(s) which have not been provided by the City; copier/printer/facsimile equipment lease charges, software costs, and website construction, maintenance, and hosting costs; repairs and maintenance; safety and medical expenses; point-of-sale charges. Operating expenses do not include (i) the cost of property taxes for the Facilities; (ii) telephone lines provided by the City; (iii) utility charges that are the City’s responsibility as set forth in Section Eleven, subparagraph 13.
Section One
Management

1. **General.** The City grants to the Manager the exclusive right to operate, manage, market, and promote the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site as set forth in this Agreement including, but not limited to, the day-to-day operations of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site and all activities therein, provided that the Manager must follow all applicable laws and the City’s policies and guidelines involving the expenditure of City funds.

2. **Property Condition.** The Manager accepts the premises as being in an “as is” condition and shall return the premises in good working order, normal wear and tear excepted, in the event the Manager shall cease to manage the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site.

3. **City Access to Premises.** The City may enter upon the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site premises at any reasonable time for the purpose of inspecting the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site, trash collection and disposal, making repairs, or for any other reasonable purpose.

4. **Public Access.** Subject to the approved Operational Plan as set forth in Section Fourteen, Manager shall ensure that the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site is available to all members of the public and that it will not enter into any leases or other agreements providing for the exclusive use of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site by any person other than on a temporary basis.

5. **Contract Manager.** The Director of Parks and Recreation (the “Director”) or his designee(s) will serve as contract manager. The contract manager will represent the City’s interests to the Manager and will oversee the performance of the Manager. The Manager shall report to and be responsible to the contract manager.

6. **Execution of Contracts.** The Manager shall have the right to negotiate, execute (in Manager’s own name), deliver, and administer any and all service contracts and any other contracts involving the day-to-day operations of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site. Any such material agreement shall contain standard indemnification and insurance obligations on the part of each vendor, licensee, or service provider, as is customary for the type of service or obligation being provided or performed by such parties. All donor and sponsorship agreements the Manager enters into, and any agreements entered into by the Manager involving the expenditure of funds exclusively from the accounts of the Manager described in Section Eleven, subparagraph 15, shall be in the name of the Manager and are exempt from the requirements of this section as long as the Manager agrees to not bind the City to any conditions, stipulations, or terms that would commit the City to doing an act in the event the Manager no longer manages the operations of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site.
In addition, all donor agreements entered into by the Manager after the date of this Agreement shall contain a statement indicating the donor’s intended disposition of funds donated under such agreement in the event this Agreement terminates and the Manager ceases to manage the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site. In connection with any contracts involving the day-to-day operation of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site (except for contracts that are terminable upon 30 days notice or less), the Manager will include in such documents:

(i) the right of Manager to assign, without cost, all of its rights and obligations to the City or to any successor management company retained by the City upon the expiration or termination of this Agreement; and

(ii) the right of the City to assign, without cost, its rights and obligations to any successor management company retained by the City.

Section Two
Term

This Agreement will commence on January 1, 2020 (the “Effective Date”), and will continue in full force and effect through December 31, 2020, unless earlier terminated under the provisions of this Agreement.

Upon the termination of this Agreement, the Manager will yield and deliver peaceably to the City possession of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site (including any personal property belonging to the City) and any alterations, additions, or improvements thereto, promptly and in good condition, order, and repair, except for reasonable wear and tear.

Section Three
Civil Rights and ADA

1. **ADA Requirements.** With respect to the Americans with Disabilities Act (ADA), the Manager will comply with Title III of the ADA and the provisions of auxiliary aids or alternate services as may be required by the ADA. The Manager is obligated to ensure the accessibility of any and all events taking place within the facility’s structures and on the facility’s property. The Manager is required to comply and be financially responsible for compliance with Title III of the ADA in connection with any event or activity held at the facility or on its property. Furthermore, the Manager will require every licensee, lessee, tenant, promoter, or user of any portion of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site to comply and to be financially responsible for compliance with Title III of the ADA in connection with any activities of such licensee, tenant, promoter, or user at the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site.

Nothing in this section or elsewhere in this Agreement will require the Manager to undertake any of the foregoing compliance activities, nor will the Manager have any
liability under this Agreement if compliance requires any capital improvements or capital equipment purchases, unless the City provides funds for the needed capital improvements and capital equipment purchases.

2. **Civil Rights.** In addition to the undertaking required above, the Manager agrees to observe and fully comply with all nondiscrimination and antiharassment provisions of any federal, state, or local laws, which would include, but is not limited to:


Without limiting the foregoing, the Manager will not discriminate against any person based on the individual’s race, religion, color, sex, national origin, ancestry, disability, age, genetic information, or creed. Manager will include the phrase “equal opportunity employer” or a similar phrase approved under South Dakota law in all solicitations or advertisements for employees.

The Manager will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling any investigative agency, commission, or court, or its representatives, to ascertain compliance with the above provisions.

Notwithstanding any provision in this Agreement to the contrary, if Manager is found liable under or to be in violation of any human rights or antidiscrimination laws under a final agency decision or court order, the Manager will be deemed to have materially breached this Agreement and the Agreement may be immediately terminated, in whole or part, by the City and the Manager shall be liable for any costs or expenses incurred by the City in obtaining from other sources the services to be rendered or performed under the contract so terminated or cancelled.
Section Four
Compensation

The Manager shall receive no fees or other compensation for its services and shall pay to the City no rent or other charges for the use of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site assets.

Section Five
Scope of Services

The Manager shall provide services necessary for the operation and management of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site as set forth in Exhibit A. The City shall provide for the City’s responsibilities as set forth in Exhibit A. The Manager shall refrain from any business practice or promotional activity that is injurious or detrimental to the City or the goodwill associated with the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site and the parks and recreation system of the City.

The Manager shall not make any material changes in the general purposes for which it was organized as currently set forth in its Articles of Incorporation without the prior consent of the Director.

Section Six
Improvements

Any improvements made shall be done in accordance with Section Thirteen of this Agreement. The City may impose conditions upon the installation of any improvements. Violation of any of the conditions shall constitute grounds for termination of this Agreement.

Section Seven
Compliance with Laws

The Manager shall comply with all applicable federal, state, local ordinances and resolutions, statutes, rules, and regulations that may apply to the operation of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site, including any state competitive bid laws when City funds are expended. The Manager shall also comply with the City’s Parks and Recreation Policies and Guidelines to the extent applicable to the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site, except in the event such policies or guidelines conflict with the terms of this Agreement.

Section Eight
Insurance

1. City-Required Insurance. The City at its own expense shall procure and maintain property and liability insurance with insurance companies or pools licensed or authorized to do business in South Dakota, or self-insure for an equivalent amount.
2. **Manager-Required Insurance.** The Manager, at its cost, shall secure the insurance specified below. All insurance secured by the Manager 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.

   a. **Workers’ compensation insurance** providing the statutory limits required by South Dakota law, if the Manager has any employees. In addition, if the Manager has any employees, it shall provide Coverage B, Employer’s Liability Coverage, of not less than $100,000 each accident, $100,000 disease–policy limits. The required limit may be met by excess liability (umbrella) coverage.

   b. **Commercial general liability insurance** providing occurrence form contractual, personal injury, bodily injury, and a property damage liability coverage with limits of at least $1,000,000 per occurrence, $2,000,000 general aggregate, and $2,000,000 aggregate products and completed operations. The required limit may include excess liability (umbrella) coverage. The policy shall 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 Agreement.

   c. **Automobile liability insurance** covering all owned, nonowned, 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.

   d. **Liquor liability insurance** naming the City as an additional insured with single-limit coverage for personal and bodily injury and property damage of at least one million dollars ($1,000,000) for each occurrence.

   e. At the City’s request, Manager shall obtain such other insurance that is customary and standard for protection against claims, liabilities, and losses connected with the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site. The insurance required in subsection “d” above shall be provided as specifically directed by the City.

   The Manager 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.

   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 therefor.

3. **Blanket Policies.** All insurance may be obtained by Manager or the City by endorsement or equivalent means under blanket insurance policies, provided that
such blanket policies fulfill the requirements specified herein. All blanket insurance policies shall be in form and substance with deductible limits and self-insured retention, which are consistent with those that are generally accepted by the City.

4. **City as Additional Insured.** All insurance provided under this section shall name the City and its duly authorized representatives as an additional insured. The party procuring such insurance shall deliver to the other party policies or certified copies, signed by an authorized representative of the insurer, or in the case of blanket policies, certified abstract policies with respect to all policies so procured, including existing, additional, and renewal policies and, in the case of insurance about to expire, shall deliver evidence of renewal in binder form with respect to the renewal policies not less than 45 days prior to the respective dates of expiration, and thereafter shall deliver policies, as aforesaid, or as the case may be, within 60 days succeeding the expiration dates.

5. **Notice of Cancellation.** All policies of insurance provided for under this Section shall, to the extent obtainable, 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, Manager, and any additional insured.

6. **Claims.** Manager and the City shall cooperate in a prompt manner in connection with the making of any claims and the collection of any insurance money that may be due and shall execute and deliver such proofs of loss and other instruments that may be required for the purpose of obtaining the recovery of any such insurance monies.

7. **Failure to Maintain Insurance.** If the Manager fails to obtain and maintain the insurance required pursuant to this section or if any insurer cancels or modifies such insurance without the City's consent, at the City's election (but without any obligation to do so), the City may procure similar insurance coverage and Manager shall reimburse the City for any premiums paid by the City within ten days of demand therefor. Any amounts unpaid shall accrue interest at the New York Prime Rate plus 5 percent from the day incurred. Manager shall not perform work during any period when any policy of insurance required hereunder is not in effect unless it gives evidence to the reasonable satisfaction of the City of the unavailability of such insurance.

8. **Risk Management.** The Manager shall cooperate in the implementation of any loss control recommendations, insurance coverage reviews, and collection appraisals for insurance purposes of the City.

**Section Nine**

**Independent Contractor Status/Employees**

1. **Personnel.** Excluding City employees, Manager shall select, employ, and supervise any and all of the personnel necessary or required to carry out the services to be provided by the Manager as set forth in Exhibit A ("Mary Jo Wegner Arboretum and East Sioux Falls Historic Site Employees"). All personnel so
employed shall be employees or independent contractors of the Manager, and the
terms of their employment or engagement, including compensation, shall be at the
sole discretion of the Manager. The salaries and all additional costs of engagement
of the aforementioned personnel employed or contracted by Manager shall be
borne by Manager.

2. **Not City Employees.** Mary Jo Wegner Arboretum and East Sioux Falls Historic
Site employees shall in every instance be deemed employees of Manager and not
of the City. The City shall have no right to supervise or direct such employees.

3. **Reports.** Manager shall prepare and file punctually when due all forms, reports,
and returns required by law relating to the employment of personnel of the Mary Jo
Wegner Arboretum and East Sioux Falls Historic Site or the operation of the Mary
Jo Wegner Arboretum and East Sioux Falls Historic Site.

4. **Independent Contractor.** Manager will not represent to anyone that its relationship
to the City is other than that of an independent contractor, and the City and
Manager may so inform any parties with whom they deal and may take any other
reasonable steps to carry out the intent of this subsection.

**Section Ten**

**Indemnification**

1. **Protect Against Liability.** Manager will use its commercially reasonable efforts
that are consistent with industry standards applicable to similar facilities to not do or
permit any act or thing to be done on the Mary Jo Wegner Arboretum and East
Sioux Falls Historic Site premises that subjects the City to liability or responsibility
for injury, damage to persons or property, or to any liability by reason of any
violation of law or of any requirement. Manager shall use its best efforts to exercise
such control over the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site
so as to fully protect the City against any such liability. In addition, to the fullest
extent permitted by law, Manager shall indemnify and save harmless the City and
the City shall indemnify and save harmless the Manager against and from all
liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and
expenses, including, without limitation, attorneys’ fees and disbursements, which
may be imposed upon or asserted against or reasonably incurred by the City or the
Manager or any agency or subdivision thereof or their respective agents,
employees, officers, or directors (the “indemnities”) by reason of the acts or
omissions of the other or its affiliates or the performance of each of their obligations
hereunder, unless the same shall have been caused solely by the negligent or
willful acts of such indemnities. If damage to the Mary Jo Wegner Arboretum and
East Sioux Falls Historic Site results from any removal made by the Manager or its
agents, the Manager or tenant will repair the damage at its sole expense.

2. **Insurance.** The obligation of Manager under this section shall not in any way be
affected by the absence in any case of covering insurance or by the failure or
refusal of any insurance carrier to perform any obligation on its part under
insurance policies affecting the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site.

3. **Indemnification.** Subject to Section Seventeen, subparagraph 6, of this Agreement, if any claim, action, or proceeding is made or brought against any indemnitee by reason pursuant to this section, then, upon demand by such indemnitee, the City or the Manager at its sole cost and expense, shall resist or defend such claim action or proceeding in such indemnitee’s name, if necessary, by the attorneys for the City or the Manager’s insurance carrier (if such claim, action, or proceeding is covered by insurance), otherwise by such attorneys as the other party shall approve. The parties agree that if the other party is named as party to an action, the other party will reasonably cooperate in the conduct of the proceedings.

**Section Eleven**

**Accounting**

1. **Collection of Receipts/Payment of Expenses.** The Manager shall be responsible for the collection of all receipts generated by business operations at the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site, and the payment of all operating expenses incurred in the business operations associated with providing the services to be rendered by the Manager as set forth in Exhibit A, and the Manager shall account for the same consistent with the terms of this Agreement.

2. **Use of Income.** The Manager will use all income received from the operation of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site and concessions for the services to be rendered by the Manager as set forth in Exhibit A. It will expend all operating income in a manner it deems to be in the best interests of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site. The Manager will remain a nonprofit corporation. All operating income in excess of expenditures shall be placed in a fund or a reserve account to meet unexpected expenditures of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site.

3. **Rent of Facilities.** The Manager shall have the exclusive right to rent or otherwise make the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site facilities available for use by the public for performances, educational activities, meetings, or other uses that may be developed for the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site by the Manager.

Subject to availability, the City shall have the right to use the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site rent-free for meetings, seminars, training classes, or other noncommercial uses, provided that the City shall promptly reimburse Manager for deposit into the operating account for any out-of-pocket expenses incurred by Manager in connection with such use. Such noncommercial use of the facility by the City shall (i) not compete with or conflict with the dates previously booked by Manager for paying events, and (ii) be booked in advance upon reasonable notice to Manager. Upon request of the City, the Manager shall
provide to the City a list of available dates for City use of the Arboretum. To the extent that Manager has an opportunity to book a revenue-producing event on a date that is otherwise reserved for use by the City, Manager may propose alternative dates for the City’s event, and the City shall use best efforts to reschedule its event to allow Manager to book the revenue-producing event.

4. **Rental Proceeds.** Subject to the conditions set forth in Section 16 below, all proceeds from the renting of Mary Jo Wegner Arboretum and East Sioux Falls Historic Site facilities set forth in this section shall be collected by Manager and be the property of the Manager during the time the Manager manages the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site.

5. **Concession Revenue.** Subject to the conditions set forth in Section Sixteen below, the Manager shall have the exclusive right, if it chooses to exercise such right, to operate and conduct a concession business at the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site through manual service and other methods for the sale of commodities, including foods, beverages, vending machines, novelties, promotional items, souvenirs, and other items.

6. **Advertising Revenue.** Subject to the conditions set forth in Section Sixteen below and after obtaining the Director’s approval as to content, all advertising revenue collected shall be the property of the Manager during the time the Manager manages the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site.

7. The Manager shall have the exclusive right (not the obligation) to operate or subcontract food services and other revenue opportunities.

8. The City shall not authorize or permit any other person or entity and shall not on its own behalf sell, or offer for sale, at the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site any of the commodities for which the Manager has concession rights. This section is not applicable to separate City-sponsored catering events that may occur at the site.

9. The Manager may on terms agreeable to it permit sublessees of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site to operate concessions.

10. **Remittance of Tax Due.** The Manager, unless it has subcontracted with other agencies to do so, shall collect, account for, and remit promptly to the proper governmental authority all applicable excise, sales, and use taxes or similar governmental charges collected at the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site directly from the patrons or guests, or as a part of the sales price of any goods, services, or displays such as admission, gross receipts, or similar or equivalent taxes.

11. **Accounting System.** Manager shall establish, implement, and supervise the accounting, inventory, and cost control systems necessary to carry out the services to be provided by the Manager as set forth in Exhibit A. Manager shall maintain
adequate control over the records of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site and the acquisition and disposition of all personal property and all fixed assets used in the operation of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site. (See Exhibit A.)

12. Advertising and Promotion. Except as otherwise expressly provided herein, Manager shall at its sole cost and expense pay the administrative and general expenses and the cost of Mary Jo Wegner Arboretum and East Sioux Falls Historic Site advertising, business promotions, and public relations out of the operating account.

13. Utilities. Except for utilities that have been deemed to be the responsibility of the Manager, the City shall pay all utility charges assessed to the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site, including fire alarms, security alarms, and any associated lines to operate such security/fire systems, electricity, water, and sewer.

Telephone(s), internet, point of sales, any additional telephone line(s) that are needed which have not been provided by the City, Cable expenses, if any, shall be the responsibility of the Manager as set forth in Exhibit A.

14. Operating Account(s). The Manager shall create and maintain one or more separate commercial bank accounts (the "Operating Accounts") using Manager's tax identification number in the City of Sioux Falls, which shall be for the exclusive use of all receipts and disbursements related to this Agreement. Subject to the terms of this Agreement, all revenues and monies received by the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site shall be deposited by Manager into the Operating Accounts as soon as practicable upon receipt. The City may at any time obtain information and records from the bank concerning such accounts and inspect the same. The parties specifically agree that Manager shall have authority to sign checks and make withdrawals from such accounts, subject to the limitations set forth in this Agreement, without needing to obtain the co-signature of a City employee or representative. Notwithstanding the above, City shall have all rights to the Operating Accounts upon expiration or termination of this Agreement.

The City acknowledges that the Manager may maintain other bank accounts in addition to the Operating Accounts; provided, however, that the Manager may not commingle with such accounts or the funds therein any receipts or disbursements to be maintained in the Operating Accounts as set forth above.

15. Endowment and Trust Funds. Notwithstanding any provisions in this Agreement, the Manager will own or have an interest in one or more accounts: (a) for endowment funds, trust funds, unitrust funds, or other split-interest agreements or similar accounts that have been restricted or limited in use by the donor; or (b) that have been established by the Manager solely to maintain funds donated to the Manager. Such accounts may be used by the Manager, if so elected by the Manager, for operational costs and expenses of the Mary Jo Wegner Arboretum
and East Sioux Falls Historic Site and/or the Manager. The Manager shall provide an accounting of such accounts in its financial reports and audit statements. In the event that this Agreement is terminated, all such accounts and funds therein will be and remain the property of and be administered by the Manager, except if and to the extent such accounts contain donations specifically designated for improvements on the physical site of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site or donations which, by the terms of the applicable donor agreement, are to become the property of the City upon termination of this Agreement, in which case such designated funds will become the property of the City.

Section Twelve  
Inventory

The Manager shall provide the City, at the end of each calendar year, with an annual inventory of Manager’s assets valued in excess of $2,500.00 per item including, but not limited to, all furniture, fixtures, office equipment, supplies, and donated items at the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site, and deliver a written report of the foregoing to the City. The City may review and audit any other inventory for reasonableness. Manager shall document all major damage to, or loss of, such inventory during the term of this Agreement as soon as such damage or loss is discovered by Manager, and Manager shall promptly notify City of any such damage or loss.

Section Thirteen  
Budget

1. **Budget.** The Manager shall each year submit to the City an annual budget no later than October 31 for the coming calendar year which shall be January through December of each year. The annual budget shall include projected gross revenue and expenses for the next calendar year.

2. **Supplemental Appropriation.** If extraordinary events occur during any operating year that could not reasonably be contemplated at the time of the corresponding annual budget was prepared, the Manager may submit a request for a supplemental appropriation for approval by the City.

3. **Schedule of Capital Improvements.** The Manager may annually, at the time of submission of the annual budget to the City, provide to the City a schedule of proposed capital improvements to be made at the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site, for the purpose of allowing the City to consider such projects and to prepare and update a long-range Capital Improvement Program.

4. **Responsibility for Capital Improvements and Capital Equipment.** While nothing shall preclude Manager from partaking in fund-raising for Capital Improvements and Capital Equipment, the City will have the sole discretion to determine whether and to what level to fund Capital Improvements at the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site; provided, however, the City shall be under no
obligation to make any capital improvement proposed by the Manager, and provided further, pursuant to Section Ten, subparagraph 1, of this Agreement, that the Manager shall have no liability for any claims, costs, or damages arising out of a failure by the City to make any capital improvements which were determined to be necessary for the safety, health, and welfare of the people; and provided further, that the Manager shall be solely responsible for all Capital Equipment expenditures in accordance with the terms set forth in Section Sixteen of this Agreement. Notwithstanding the foregoing, the Manager shall have the right (not the obligation) upon notice to the City and with the City’s consent, to make Capital Expenditures at the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site for Emergency Repairs in accordance with the procedure for declaration of an Emergency under Section 5.07 of the City’s Home Rule Charter.

5. Debt. No City real property assets shall be encumbered by the Manager without City consent or approval.

6. Liens. Manager and the City shall use their best efforts to prevent any liens from being filed against the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site which arise from any maintenance, repairs, alterations, improvements, additions, or replacements in or to the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site. Manager shall act for itself and the City in this regard unless the City directs otherwise, and if any liens are filed as a result of the Manager’s actions, Manager shall prevent any liens from becoming delinquent. The cost thereof, if the lien was not occasioned by the fault of either party, shall be treated the same as the cost of the matter to which it relates. If the lien arises as a result of the fault of one party, then the party at fault shall bear the out-of-pocket cost of obtaining the lien release.

Section Fourteen
Operational Plan

The Manager will prepare and maintain an operational plan for the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site activities by October 31 each year. The operational plan shall establish operational policies and procedures for services offered including but not limited to public use, fee collection, volunteer training programs, facility usage requirements, sponsorship/naming rights policies, permit requirements, etc. Implementation of the plan shall be upon concurrence of the Director.

Section Fifteen
Fees

All fee schedules of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site shall be approved by the Parks and Recreation Board or by any other method established by the City Council whether through ordinance or resolution.
Section Sixteen
Ownership of Assets/Repairs

During the term of this Agreement, the Manager shall retain ownership of and repair and replace as necessary all Capital Equipment, including supplies, rental equipment, televisions, computers, printers, software, sound equipment, office equipment, and any other property the Manager is required to supply to support the delivery of services to be provided by the Manager under Exhibit A. The City shall be the exclusive owner of all other property at the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site. No Capital Equipment or gifts to be gifted to the City shall be purchased or acquired by Manager without consent and approval of the Director. Any assets gifted to the City for use at or in connection with the Arboretum shall remain the property of the City but may be used or managed by the Manager to the extent necessary or appropriate in filling the Manager’s responsibilities as set forth in Exhibit A.

Upon expiration or termination of this Agreement, the City shall own all Capital Equipment previously owned by Manager and used in connection with the operation of the Arboretum or the performance of the Manager’s services as set forth in Exhibit A and any and all funds in the Operating Accounts, inclusive of rental, concession, and advertising revenues, if any. The Manager shall not take for its own purposes customer lists. The City will further retain exclusive ownership of all intangible property including but not limited to websites, domain names, Facebook pages, suppliers’ lists, and customer lists. The ownership of data and software utilized by the Manager in providing Services under this Agreement will remain with the City.

Section Seventeen
Expiration, Termination, Remedies, and Exculpation

1. **Grounds for Termination by the City.** The City may terminate this Agreement by notice to Manager if any one or more of the following events occur:

   a. If Manager applies for or consents to the appointment of a receiver, trustee, or liquidator of all or a substantial part of its assets or makes a general assignment for the benefit of its creditors, or files a voluntary petition in bankruptcy or a petition seeking reorganization, composition, arrangement with creditors, liquidation, or similar relief under any present or future statute, law, or regulation, or files an answer admitting the material allegations of a petition filed against it in any proceeding under the Bankruptcy Code, or is adjudicated bankrupt or insolvent.

   b. If any petition or complaint is filed without the application, approval, or consent of the City seeking reorganization, composition, arrangement with creditors, liquidation, or similar relief under any present or future statute, law, or regulation with respect to Manager seeking appointment of a receiver, trustee, or liquidator thereof of all or a substantial part of such party’s assets, and such petition of complaint is pending and not withdrawn or dismissed for an aggregate of ninety (90) days (excluding any days during which such petition or complaint shall be stayed), whether or not consecutive.
c. If Manager breaches or fails to perform any term, covenant, or condition contained in this Agreement and fails to cure the alleged breach within thirty (30) days following written notice specifying the alleged default and the action required to cure the default.

2. **Grounds for Termination by the Manager.** The Manager may terminate this Agreement by notice to the City if the City breaches or fails to perform any term, covenant, or condition contained in this Agreement and fails to cure the alleged breach within thirty (30) days following written notice specifying the alleged default and the action required to cure the default.

3. **Extension of Cure Period.** In the event a default, other than a default in the payment of money, is not reasonably susceptible to being cured within the thirty (30) day period, the defaulting party will not be considered in default if, within the allowed thirty (30) day period, the defaulting party will have commenced with due diligence to cure the noticed default and thereafter completes as soon as practicably possible the cure of the noticed default.

4. **Accounting Upon Termination or Expiration.** If this Agreement expires or is terminated as provided in this Section, Manager shall prepare or cause to be prepared financial statements in accordance with the applicable provisions of Section Eighteen for the period between the end of the last preceding accounting period and the termination date, and Manager shall account to the City as of the date of termination for all amounts due and payable specified in such financial statements (such accounting shall be subject to post-termination adjustment to correct any errors in such statements; the obligation to make any such adjustment shall survive the expiration or sooner termination of this Agreement). In addition, as of the date of any such termination, Manager shall release, transfer, or remit to the City all books, records, licenses, and property of the City held or controlled by Manager other than materials containing personnel records and shall take all other necessary measures to effectuate the orderly and prompt termination of the relationship contemplated by this Agreement.

5. **Remedies.** With or without terminating this Agreement, upon the occurrence of a default and a failure to cure within the cure period, if any, the party not in default will be entitled to all remedies available under applicable law. All remedies will be cumulative and nonexclusive of any other remedy.

6. **Officials Not Liable.** No official, director, officer, agent, or employee of the City shall be charged personally or held contractually liable by or to the Manager under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval, or attempted execution of this Agreement. No Mary Jo Wegner Arboretum and East Sioux Falls Historic Site Trustee, advisory board member, director, or employee of the Manager shall be charged personally or held contractually liable by or to the City under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval, or attempted execution of this Agreement.
7. **Waiver of Breach.** The waiver by the City or Manager of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition, or subsequent breach of the same or any other term, covenant, or condition herein contained. Any failure on the part of the City or Manager to require or exact full and complete compliance with any of the covenants, conditions, or Agreements of this Agreement shall not be construed as in any manner changing the terms hereof or to prevent the City or Manager from enforcing the full provisions hereof, nor shall the terms of this Agreement be changed or altered in any manner whatsoever other than by written agreement of the City and the Manager.

8. **Effects of Termination or Expiration.** In the Event this Agreement expires or is terminated:

   a. **Payment of Operating Expenses.** All Operating Expenses incurred or committed prior to the date of expiration or termination will be paid using funds on deposit in the Operating Accounts described in Section Eleven above; and

   b. **Assignment of Contracts.** Without any further action on the part of Manager or the City, Manager will assign and the City will, or will cause another management company retained by it, to accept the assignment of Manager's rights, and assume and perform all of Manager's obligations, arising after the date of expiration or termination of this Agreement under any rental agreements, booking commitments, advertising agreements, concession agreements, and other contracts relating to the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site which have been executed by Manager, except (i) to the extent any agreement, commitment, or contract was executed by Manager in violation of any of the restrictions applicable to Manager's right to execute agreements, commitments, or contracts contained in this Agreement; and (ii) for any contracts, agreements, or commitment to which the consent of the other party (to the contract, agreement, or commitment) is required for the assignment and assumption unless the required consent is obtained (in the case of any required consent, Manager will use commercially reasonable efforts to obtain the required consents and the City will cooperate in any reasonable manner with Manager to obtain require consents).

9. **Surrender of the Premises and Other Assets.** Upon termination or expiration of this Agreement and in accordance with Section Two above, Manager will provide the City with all passwords, security information, and authorizations necessary for the City or the successor management company to access, assign, maintain and operate all websites, Facebook pages, intellectual property rights, the Operating Account, and vendor and supplier services.
Section Eighteen
Financial Reports

1. Financial Records and Agreements. Manager shall keep complete and adequate books and records reflecting the results of the operations of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site in accordance with generally accepted accounting principles. Manager shall at all times keep and maintain at the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site or its regular place of business all records, books of account, and other records relating to or reflecting the operations of Manager affecting the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site, including such records as may be reasonably required by the City to be maintained by the Manager and any information required to be maintained pursuant to any provisions of this Agreement. Upon request and subject to any restrictions imposed by applicable law, the Manager shall furnish to City copies of all agreements and amendments thereto executed by the Manager. In the event a request for an agreement is made by a third party, the City agrees to notify the Manager of such request and the Manager shall timely set forth any legal objection, if any, whether such agreement may be turned over. The City Attorney's Office shall be the record keeper of all such agreements.

2. No Removal. Except as otherwise provided herein, none of such books and records, including, without limitation, books of account, and front office records, shall be removed from the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site or its regular place of business without the City's prior written approval. Upon any termination of this Agreement, all such books and records shall be the property of the City and shall be maintained by the City, provided that the Manager shall have the continuing right to review or copy all such books and records.

3. Additional Reports. Manager shall, upon the request of the City, prepare for the City or assist the City in the preparation of such additional financial reports with respect to the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site as may be reasonably required in the preparation of the annual Mary Jo Wegner Arboretum and East Sioux Falls Historic Site financial report.

4. City Inspection. Manager, upon reasonable notice by the City to Manager, shall permit the City, acting through its employees and/or representatives, to make inspections, audits, examination, or abstracts of all records and books of account, including such records as may be reasonably required by the City to be maintained by Manager and information required to be maintained pursuant to any provision of this Agreement. Any such inspection or audit shall be conducted during the reasonable business hours of Manager and Manager shall make all of the aforesaid records, books of account, and other documentation available within seven days of the written request by the City.

5. Discrepancies. Notwithstanding anything to the contrary contained in this Agreement, the City may terminate this Agreement if any inspection or audit by the City or its agents discloses (i) an intentional material discrepancy on the part of
Manager; or (ii) an intentional material discrepancy made by a person other than those set forth in (i) above about which Manager had knowledge, did not disclose in writing to the City, and did not take such corrective action as Manager should deem reasonably necessary to avoid any further discrepancy. If any inspection or audit discloses an intentional material discrepancy of Manager, the City shall inform Manager and Manager shall (i) make such monetary adjustments including payment to the City as may be required because of such discrepancy; and (ii) take such actions as Manager deems reasonably necessary to avoid any further intentional discrepancy.

6. **Fees.** If it is necessary that the City retain counsel to collect any sums ultimately determined to be owing to it from Manager arising from a breach of this Agreement, Manager will pay to the City the sums reasonably expended by the City, including reasonable attorneys' fees.

7. **Obligations Survive Termination.** The obligations of Manager under this Section shall survive the termination of this Agreement.

**Section Nineteen**  
**Voluntarily Enter into Agreement**

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 Twenty**  
**Assignment**

This Agreement and the rights and obligations hereunder shall not be assigned or transferred by either party without the prior express written consent of the other. Subject to that restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

This Agreement is intended solely for the benefit of the City and the Manager and shall not be enforceable by or create any claim or right of action in favor of any other party.

**Section Twenty-One**  
**Notices**

All notices, demands and other communications required or permitted under the provisions of this Agreement ("notice") shall, unless otherwise specified, be in writing, sent by hand delivery, or by certified first class mail, postage prepaid, with return receipt required, to the following addresses:
As to the City:
City of Sioux Falls, South Dakota  
Office of the Mayor  
224 West Ninth Street  
P.O. Box 7402  
Sioux Falls, SD 57117-7402  
Phone: 605-367-8800  
Fax: 367-8490  

As to the Manager:
Wegner Arboretum Society  
1900 South Perry Place  
Sioux Falls, SD 57110  
Attn: Executive Director  
Phone: 605-367-4414  

Or to such other address in the United States as the party to whom the notice is sent shall have designated in writing in accordance with the provisions of this Section. Any such notice sent by mail shall be deemed effective when received. Any party to this Agreement may change its address by giving the other party written notice of its new address as herein provided.

Section Twenty-Two  
No Waiver

If any one or more of the provisions of this Agreement shall be determined to be invalid, illegal, or unenforceable in any respect, the remaining provisions of this Agreement shall not be in any way impaired.

The failure of either party to insist upon a strict performance of any of the terms or provisions of the Agreement, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such terms, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

Section Twenty-Three  
Applicable Laws

This Agreement shall be governed by and interpreted under the substantive laws of the state of South Dakota without regard to principles of conflicts of law.

The section headings in this Agreement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Agreement.
Section Twenty-Four
Counterparts

This Agreement may be executed in two or more counterparts, each of which will be
deemed an original copy of this Agreement, and all of which, when taken together, will
be deemed to constitute one and the same Agreement.

Section Twenty-Five
Entire Agreement

This Agreement represents the entire and integrated agreement between the City and
the Manager with respect to the subjects described herein and supersedes all prior
negotiation, representations, or agreements, oral or written. This Agreement may be
amended or modified only in writing signed by the party to be bound by such
amendment or modification of this Agreement. The parties waive their rights to amend
or modify this Agreement in any other manner.

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

__________________________________________  ______________________________________
MAYOR                                     WEGNER ARBORETUM SOCIETY

ATTEST:                                    FEDERAL TAX ID NO. _____________

__________________________________________
City Clerk
Exhibit A

**City responsibilities:**

1. Provide grounds maintenance responsibilities including, but not limited to, mowing, weed control, trimming, irrigation repair, landscape maintenance, tree trimming, sidewalk and trail maintenance, repair of roads and roadways owned by the City, parking lot maintenance, small structure maintenance and repair, etc.

2. Provide building maintenance and repairs for the outside and inside of all buildings.

3. Provide, repair, and maintain all signage, interpretive exhibits, and other nonstructural improvements or fixtures.

4. Provide janitorial services for public restrooms a minimum of once daily.

5. Provide periodic janitorial services for the Educational Center, such as extensive floor cleaning, window washing, etc.

6. Provide janitorial equipment and supplies for the Educational Center.

7. Provide paper products for restrooms.

8. Provide snow removal services for the parking lot and walkways.

9. Be responsible for maintenance and payment of utilities in accordance with Section Eleven, subparagraph 13, of this Agreement.

10. Provide garbage service.

11. The City's Purchasing Office shall procure/contract all capital expenditures that are funded in whole or in part with funds provided by the City.

12. Provide and maintain phone lines and internet service to the Educational Center.

**Society responsibilities:**

1. Set hours of operation at the Educational Center with concurrence of the City.

2. Employ, supervise, and direct employees for the successful delivery of visitor services at the Arboretum and Educational Center and which is consistent with the provisions of this Agreement.

3. Schedule year-round activities at the Arboretum and Educational Center including but not limited to group outings, picnics, site tours, education classes, weddings, receptions, facility rentals, etc. No activities shall be scheduled beyond the termination date of this Agreement unless it is in accordance of Section One, subparagraph 6, of this Agreement.
4. Establish fees for services offered as approved by the City.

5. Provide light duty janitorial services for the Educational Center, including cleanup after events, servicing public restrooms with paper products, sweeping floors, dusting furniture, etc.

6. Provide office equipment, supplies, and uniforms as necessary for daily staff functions.

7. Recruit, train, and manage volunteers.

8. Keep records regarding usage of the Arboretum and Educational Center.

9. Coordinate scheduled events with City staff responsible for maintenance.

10. Provide Director prior notice of every meeting of the board of directors of the Manager and provide the Director, upon request, with copies of all minutes of such meetings.

11. Rent, lease, or purchase all furniture, fixtures, and equipment (FF&E), along with any replacement FF&E, to support the delivery of services to be provided by the Manager in this Exhibit A. Any expenditure of funds for FF&E and replacement FF&E will be funded from the Operating Accounts and will be an expense of the Manager.

12. Develop an annual Marketing Plan and engage in marketing, advertising, solicitation, and promotional activities as necessary and appropriate to develop the potential of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site.

13. Develop, maintain and manage websites, Facebook pages and utilize other current and subsequently available internet based technologies to market, promote and advertise the Facilities.

14. Pursuant to Section Fourteen of this Agreement, develop and deliver to the City the Operations Plan which shall include policies and guidelines for public use of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site.

15. Pay, when due, all Operating Expenses.
## Park Board Meetings 2020 Locations

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 15</td>
<td>4:00 p.m.</td>
<td>Prairie Green Clubhouse</td>
</tr>
<tr>
<td>February 19</td>
<td>4:00 p.m.</td>
<td>Kenny Anderson Community Center</td>
</tr>
<tr>
<td>March 18</td>
<td>4:00 p.m.</td>
<td>Prairie West Library</td>
</tr>
<tr>
<td>April 15</td>
<td>4:00 p.m.</td>
<td>City Center</td>
</tr>
<tr>
<td>May 20</td>
<td>2:00 p.m.</td>
<td>Park tour - (looking for ideas)</td>
</tr>
<tr>
<td>May 20</td>
<td>4:00 p.m.</td>
<td>MJW Arboretum</td>
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<tr>
<td>June 17</td>
<td>4:00 p.m.</td>
<td>Great Bear Chalet</td>
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<tr>
<td>July 15</td>
<td>4:00 p.m.</td>
<td>Morningside Community Center</td>
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<tr>
<td>August 19</td>
<td>4:00 p.m.</td>
<td>Huether Family Match Pointe</td>
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<tr>
<td>September 16</td>
<td>2:00 p.m.</td>
<td>Park tour - Sherman Park Gazebo and Buffalo Wall</td>
</tr>
<tr>
<td>September 16</td>
<td>4:00 p.m.</td>
<td>Midco Aquatic Center</td>
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<tr>
<td>October 21</td>
<td>4:00 p.m.</td>
<td>City Center</td>
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<tr>
<td>November 18</td>
<td>4:00 p.m.</td>
<td>Great Plains Zoo</td>
</tr>
<tr>
<td>December 16</td>
<td>4:00 p.m.</td>
<td>Overlook Café</td>
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</table>

The regular meeting date is the third Wednesday of each month at 4:00 p.m.

- Sept. 27-29, 2020  NRPA Congress, Orlando, FL
- Sept 13-15, 2020  SDPRA Fall Conference, Yankton, SD

*Updated October 2019*
Meeting date falls during SDPRA Conference.
<table>
<thead>
<tr>
<th>Community Center Attendance</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
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<tr>
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<td><strong>2,339</strong></td>
<td><strong>1,117</strong></td>
<td><strong>5,167</strong></td>
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<td><strong>126,697</strong></td>
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*Computer lab attendance isn't included in total as they are accounted for in CC attendance.*
# MIDCO AQUATIC CENTER OPERATING DASHBOARD

## Statistics

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<td>463</td>
<td>587</td>
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## Rates

- **Fall, Winter, Spring Passes Sold**: 1, 1
- **Annual Passes Sold**: 134
- **Total Passes Sold**: 135

## Other

- **Lesson Registrations**: 54
- **Class Registrations**: 0
- **Meeting Room Reservations**: 10
- **Swim Lane Hours Reserved**: 3,174

## Revenue

<table>
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<tr>
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<td>3,688</td>
<td>110,419</td>
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<tr>
<td><strong>Total Revenue</strong></td>
<td>75,526</td>
<td>78,740</td>
<td>74,564</td>
<td>52,772</td>
<td>96,884</td>
<td>342,173</td>
<td>58,269</td>
<td>26,569</td>
<td>43,578</td>
<td>45,168</td>
<td>898,182</td>
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## Expenses

<table>
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<td>38,280</td>
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<td>3,697</td>
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<td>1,277</td>
<td>7,880</td>
<td>5,085</td>
<td>1,482</td>
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<td>74,826</td>
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<tr>
<td><strong>Total Expenses</strong></td>
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<td>166,940</td>
<td>366,410</td>
<td>133,474</td>
<td>175,244</td>
<td>132,731</td>
<td>185,290</td>
<td>194,589</td>
<td>117,241</td>
<td>131,089</td>
<td>1,405,097</td>
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*March, Aug, and Dec have 3 pay periods.

## Summary

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<tbody>
<tr>
<td><strong>Total Revenue</strong></td>
<td>75,526</td>
<td>78,740</td>
<td>74,564</td>
<td>52,772</td>
<td>96,884</td>
<td>342,173</td>
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<td>26,569</td>
<td>43,578</td>
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<tr>
<td><strong>Total Expenses</strong></td>
<td>48,741</td>
<td>166,940</td>
<td>366,410</td>
<td>133,474</td>
<td>175,244</td>
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<td>185,290</td>
<td>194,589</td>
<td>117,241</td>
<td>131,089</td>
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<td>3,300</td>
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## City of Sioux Falls Golf Courses
### Income Statement
**September 30, 2019**

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<th>Kuehn Park</th>
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<th>Prior Year</th>
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<td>9,569</td>
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<td>1,188</td>
<td>24,462</td>
<td>25,514</td>
<td>27,352</td>
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<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Depreciation</td>
<td>3,948</td>
<td>3,948</td>
<td>3,948</td>
<td>3,948</td>
<td>3,948</td>
<td>3,948</td>
</tr>
<tr>
<td>Interest Expense</td>
<td>1,275</td>
<td>1,275</td>
<td>1,275</td>
<td>1,275</td>
<td>1,275</td>
<td>1,275</td>
</tr>
<tr>
<td>Gains/Loss on Sale of Asset</td>
<td>327</td>
<td>327</td>
<td>327</td>
<td>327</td>
<td>327</td>
<td>327</td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
<td>42,162</td>
<td>38,159</td>
<td>10,508</td>
<td>96,869</td>
<td>111,068</td>
<td>(4,809)</td>
</tr>
</tbody>
</table>
Financial and Operational Executive Summary
For the Month of September

Prepared for: Sioux Falls City Golf – Park Board
Prepared By: Justin Arlt – PGA - Market General Manager

<table>
<thead>
<tr>
<th>Rounds of Golf</th>
<th>September</th>
<th>Fall Season Pass Sales</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>11,945</td>
<td>2019 = 50</td>
<td>$12,500</td>
</tr>
<tr>
<td>2018</td>
<td>9,569</td>
<td>2018 = 25</td>
<td>$5,000</td>
</tr>
<tr>
<td>Up / down</td>
<td>+ 2,376</td>
<td>Up / Down +25</td>
<td>+ $7,500</td>
</tr>
</tbody>
</table>

September Rounds Played Performance:

Golf rounds were up mainly because the Fall golf season of 2018 was extremely wet and cold. The weather this year was normal and consistently better except for the tornado week. The week of the tornado obviously made a negative impact on play and revenue with so many people effected and many others helping those effected. Golf was certainly not a focus for many, and rounds were not played. Revenue generation was affected.

Season Pass Sales Performance:

This year our fall pass program was twice as successful as last years. We sold passes the entire month of September. Not only did we sell more passes, but we sold more at a higher price in 2019.
Food & Beverage:

Andrew Marco and staff did a good job of reducing the menu options for the fall season. The goal was to pare down selections because much of our traffic and play decreases when school is back in session. In addition, we have many staff members heading back to school, so our staffing abilities were also compromised. The new menu and golf specials were well received, and revenue was strong.

Course & Grounds

All three golf courses received glowing reviews and satisfaction ratings from patrons. Courses and specifically the greens were in amazing playing conditions and people noticed. PGA Tour player Woody Austin played and said our greens were rolling at PGA tour quality and couldn’t believe we were a municipal course. Our Elmwood and Kuehn Park faithful constantly made comments and praises about both courses never looking and playing better. Elmwood hosted the SDGA Hall of Fame event and former LPGA Tour Player Kris Tschetter said she was amazed by the quality of the fairways and how firm and fast everything played.

Golf Operations

The month of September was a busy month for golf outings. Much busier than 2018 because the staff did a great job of booking events for late in 2019. League play was also concluded and feedback on our league play was very positive. We look to build on a better event and league season next year in part to our strong fall finish in 2019.

Financial Outlook

It was a strong month financially despite missing our Budget by 10%. This variance can be explained by the negative effect of our major storms and tornados on the evening of September 10th. We lost all play and a big event on September 11th. Rounds played the rest of the week were also very low as many people were affected. The estimated rounds lost total 1200. The estimated revenue lost is over $20,000. **September key statistics below:**

- Missed budget by **$19,000** for the month.
- Missed Revenue by **$51,000** for the month.
- Expenses were **$32,000** better than budget.
- Despite budget misses we were **$100,000** better than September 2018 this year!