SIoux Falls Parks and Recreation Board Meeting
Wednesday, November 18, 2020
4:00 p.m. Regular Board Meeting - AMENDED AGENDA
Great Plains Zoo, 805 S. Kiwanis Ave.

To participate in the meeting telephonically:
Dial-in info: 1(605)367-8898
Extension: 8898
Participant code: 957-5778

Order of Business

1. Roll call and determination of quorum
2. Approval of minutes from October 21, 2020 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. Mary Jo Wegner Arboretum Management Agreement – Jackie Nelson
   b. Tuthill House and Saaken House Demolition Resolution – Kelby Mieras
   c. Amendment to Sponsorship Agreement for Midco Aquatic Center – Kelby Mieras
   d. Terrace Park Historic Marker Placement Request – Mike Patten
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
   a. Letter of Advocacy from the Sioux Falls Board of Historic Preservation
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.
A REGULAR MEETING OF THE SIOUX FALLS PARKS AND RECREATION BOARD was held on Wednesday, October 21, 2020, at 4 p.m. at the City Center.

Roll Call and Determination of Quorum

Members absent: Mike Begeman and Todd Sundleaf.

Parks and Recreation staff present: Don Kearney, Director of Parks and Recreation; Jackie Nelson, Administrative Manager; Kelby Mieras, Operations Manager; and Rita Meyer, Administrative Assistant.

Others present: Karen Leonard, City Attorney’s Office; Justin Arlt, Sioux Falls Golf; and Trevor Mitchell, Argus Leader.

Approval of Minutes (September 30, 2020)
A motion to approve the minutes was made by Nachtigal and seconded by Lindquist. 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 and discussed all items on the agenda, as well as the Tuthill House, the Municipal Band Task Force and the Hayward Park Master Plan. The Park System Planning and Development Committee met and discussed all items on the agenda, as well as the Tuthill House, the Municipal Band Task Force, the Hayward Park Master Plan, and the Arboretum Agreement. The Partnerships and Recreation Committee had no report.

Unfinished Business
No unfinished business.

Under New Business
FAST Agreement Extension: Mieras shared details of an extension to the FAST Agreement for an additional five years. A motion to accept the extended agreement was made by Weber and seconded by Nachtigal. Motion passed unanimously with all present Board members voting yes.

McKennan Park Lighting Agreement: Mieras shared details of an agreement with the Friends of McKennan Park Neighborhood Association regarding using existing light poles in the park and along the 21st Street Boulevard for a holiday lighting project. This is a five-year agreement with an option to extend for an additional five years. After some discussion, a motion to accept the agreement
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was made by Lindquist and seconded by Nachtigal. Motion passed unanimously with all present Board members voting yes.

**Golf Course Rate Adjustments:** Kearney shared details of proposed rate changes for City Golf Courses for 2021. This includes general season pass increases, including changes to the nine-hole rounds to bring them in line with the existing market for public courses. These changes include a proposed new rate structure for a single rider cart fee for patrons who choose to ride as a single in their own cart and not double up. Driving range passes are now being proposed as unlimited passes. After some discussion, a motion to approve the rate adjustments was made by Nachtigal and seconded by Weber. Motion passed unanimously with all present Board members voting yes.

**Board Member Recognition for Lorrae Lindquist:** Just prior to this meeting, Kearney and Mayor TenHaken presented Lorrae Lindquist with a plaque to recognize her ten years of service on the Parks and Recreation Board. Kearney addressed the group with appreciation for her service and acknowledgment of the many accomplishments during her time on the Board. A short video presentation followed to highlight some of the projects completed during Lorrae’s time on the Board.

**Report of Director of Parks and Recreation:** Kearney shared that NRPA will have an official ceremony next week via Facebook for the virtual presentation of our CAPRA Accreditation Award. Our agency achieved a perfect score on our accreditation.

The Operations team is busy installing lights at Falls Park for the Winter Wonderland display.

The RFPs for the Great Bear chairlift have come back, and are significantly lower than the Engineer’s estimate.

Progress is being made on the bridge replacements at Sertoma Park and Dunham Park, with bridges potentially being open by early December.

The front nine holes at Prairie Green Golf Course will be closed for some storm drainage work beginning next week. This will improve drainage on the course as well as in the surrounding neighborhood.

Harmodon walkway work has been completed.

Work on the Terrace Park lion’s den and pergolas will start mid-November and should be completed by year end.

We will begin flooding ice rinks as weather permits, and Great Bear had record sales for their recent preseason pass sale event.
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**Items Added After the Agenda Deadline**
None.

**Reading of Communications to the Board**
None.

There being no further business, Lindquist made a motion to adjourn. Meeting adjourned.

__________________________________________
Secretary

Approved by:

__________________________________________
President
Management Agreement for Operation of the
Mary Jo Wegner Arboretum and East Sioux Falls Historic Site

Agreement made ______________, 2020, 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 per project. Capital improvements will not include routine maintenance and repair projects, which in the aggregate do not exceed $2,500 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, develop, 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, 2021 (the “Effective Date”), and will continue in full force and effect through December 31, 2021, 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 canceled.
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 using City funds shall be done in accordance with Section Thirteen of this Agreement. Any improvements which do not use City funding must be preapproved by the contract manager as defined in Section One paragraph 5 of this Agreement. The Manager shall submit the proposed concept of the improvements in writing to the contract manager. The contract manager, in his or her discretion, may require the parties to enter into a memorandum of understanding setting forth the terms and responsibilities of the parties prior to approval of the improvements. The City may impose conditions upon the installation of any improvements. Any improvements donated to the Arboretum shall become the property of the City. 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.

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**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 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 57103
     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. Provide for event setup, takedown, and event management.

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.
Notice of Hearing: __________
Date of Hearing: __________
Date Adopted: __________
Date Published: __________
Date Effective: __________

RESOLUTION NO. _______

A RESOLUTION DECLARING CERTAIN REAL PROPERTY OF THE CITY SURPLUS AND AUTHORIZING THE DEMOLITION THEREOF.

WHEREAS, the City owns the real property with the legal description of; and

The Northeast 1/4 of the Northwest 1/4 of Section 34, in Township 101 North, Range 49, Minnehaha County, South Dakota; and

The East 1/2 of the Southwest 1/4 of Section 1, Township 101 North, Range 49 West, of the 5th P.M., Minnehaha County, South Dakota.

WHEREAS, pursuant to SDCL 6-13-1, the governing board of a political subdivision may sell, trade, loan, destroy, or otherwise dispose of any land, structures, equipment, or other property which the governing board has, by appropriate motion, determined is no longer necessary, useful, or suitable for the purpose for which it was acquired; and

WHEREAS, the structures on the above-described real property commonly known as the Tuthill house, along with the detached garage and the Saaken house respectively and the personal property located therein is no longer necessary, useful, or suitable for the purpose for which it was acquired;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SIoux Falls, SD:

Section 1. The City hereby declares, pursuant to SDCL Chapter 6-13, the structures on the following real property known as the Tuthill house, along with the detached garage and the Saaken house and the personal property located therein to be surplus property that is no longer necessary, useful, or suitable for the purpose for which it was acquired:

The Northeast 1/4 of the Northwest 1/4 of Section 34, in Township 101 North, Range 49, Minnehaha County, South Dakota; and

The East 1/2 of the Southwest 1/4 of Section 1, Township 101 North, Range 49 West, of the 5th P.M., Minnehaha County, South Dakota.

Section 3. The above-described structures and personal property shall be demolished, destroyed, and removed from the real property.

Date adopted: ______________________

______________________________
Paul TenHaken, Mayor

ATTEST:

______________________________
Thomas Greco, City Clerk
Amendment No. 1 to the Sponsorship Agreement
For the Midco® Aquatic Center

Agreement made ________________, 2020, between the City of Sioux Falls, South Dakota (the “City”), and PJ Iowa, dba Papa John's (the “Sponsor”) to be effective on the date of execution by the City (the “Effective Date”).

The parties agree to amend the Agreement dated December 10, 2018, and filed as City Agreement No. 18-4296 by amending Section Two, Term, and paragraph 6, Term and Investment, of Appendix A to read as follows:

2. Term. This Agreement shall be effective on the Effective Date; however, Sponsorship Rights shall be for a Term (the “Term”) of six years commencing on December 15, 2018, and terminating on December 14, 2024.

Exhibit A SPONSOR Rights and Benefits

6. TERM AND INVESTMENT

- Term of this Agreement will be for six (6) years, beginning December 15, 2018, and ending December 14, 2024.

- Sponsor will pay the City as follows, excluding any sales tax that might be applicable:
  - Year 1 (December 15, 2018–December 14, 2019) = $10,000 (net)
  - Year 2 (December 15, 2019–December 14, 2020) = $10,000 (net)
  - Year 3 (December 15, 2020–December 14, 2021) = $10,000 (net)
  - Year 4 (December 15, 2021–December 14, 2022) = $10,000 (net)
  - Year 5 (December 15, 2022–December 14, 2023) = $10,000 (net)
  - Year 6 (December 15, 2023–December 14, 2024) = $10,000 (net)

- Payments will be due on a semiannual basis. In Year 1, fifty percent (50%) will be due upon execution of this Agreement, and fifty percent (50%) will be due June 15, 2019. In Year 2, fifty percent (50%) will be due December 15, 2019 and the parties agree to waive the $5,000 payment due on June 15, 2020. In Year 3, fifty percent (50%) due on December 15, 2020, is waived by mutual agreement of the parties and fifty percent (50%) will be due June 15, 2021.
- Years 4–6, fifty percent (50%) will be due December 15 and fifty percent (50%) will be due June 15.
- The Sponsor shall remit the semiannual installment payment no later than thirty (30) days from receipt of the invoice.
Validity of Remaining Terms. Except as otherwise amended in this Amendment No. 1, all of the terms and conditions of the Agreement remain in full force and effect.

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

__________________________________________  PJ IOWA DBA PAPA JOHN'S

MAYOR

__________________________________________

ATTEST:

__________________________________________

CITY CLERK
General Information:
- The Terrace Park Neighborhood Association acquired a grant to purchase and install a historic marker in Terrace Park
- The State Historic Preservation Office "Adam Nyhaug" researched and wrote the information on the proposed plaque
- The Board of Historic Preservation Approved placement earlier this year

Request:
- The TPNA via Aaron Skonholvd is requesting to place the proposed marker at Terrace Park this fall
- Location:

- Proposed Installation Date: November 21st, 2020
- The TPNA is responsible for all installation and maintenance of the marker
THE PHILLIPS HOUSE

The Phillips House was built in 1825 by Dr. John Phillips. It is located at 501 W. Main St., Muncie, IN 47303.

In 1823, Dr. John Phillips married Mary Sivler from Baltimore, Maryland. They moved to Muncie, Indiana, where Dr. Phillips began practicing medicine. The Phillips House was built as their home and was later used as a successful law office.

The house features a hexagonal cupola and a covered porch. It is constructed of brick and has a hipped roof. The interior includes a large central hallway and four bedrooms.

The Phillips House was designated a National Historic Landmark in 1977. It is now a museum open to the public and is owned and operated by the Muncie Historical Society.

In 1978, the house was restored and opened as a museum. The restoration included the replacement of the roof, the addition of a new kitchen, and the removal of modern furnishings. The museum includes exhibits on the history of Muncie and the Phillips family.

Today, the Phillips House is a popular destination for visitors and is a testament to the rich history of Muncie, Indiana.

May this help be a reminder that it is our duty to preserve and protect our heritage and our community.

BSG

Please proofread carefully. The customer is responsible for any errors after the approval process.
Sioux Falls Parks and Recreation
Application for an Historic Marker to Be Placed in a Park

Name of organization: Terrace Park Neighborhood Association
Individual or representative: Aaron Skonhvo
Mailing address: 1015 W 4th Street
City: Sioux Falls State: SD Zip: 57104
Daytime phone: 605-261-1591 Other phone: 605-361-7799
Proposed title for historic marker: Phillips House

Person, place, or event commemorated: The Hattie Phillips House that was used a community house for many years.
Please explain the compelling historic significance that justifies the placement of this marker (attach information to application if more space is needed) The Phillips House, and property, is now Terrace Park. The barn that was built in 1883 is still being used today. The plaque is to commemorate the house that was an integral part of the Terrace Park community for 83 years. (See Attached)

Proposed location for marker. The site of the Phillips house that was located at the south end of the quartzite retaining wall coming from the Lions Den. From the end of the wall, we would like to place it approximately 10 feet to the north. The marker would be facing south and be out of sight lines from bench viewing areas. Relationship of marker to location: Original location of the Phillips House. Brief description of subject matter of the marker: The marker will tell when the house was built, what it was used for, and local history of the property and how it was made into Terrace Park. It will also have a picture of the original house.
Proposed date for dedication or unveiling ceremony: Nov 21st 2020 (weather permitting)
If the requested marker is approved, the above organization or individual agrees to the stipulation that installation and maintenance costs for the marker are the responsibility of the applicant.

Signature of authorized individual or representative 10/27/2020 Application date

Date of Park Board action: Denied Approved Director of Parks and Recreation

After Park Board action, the application will be forwarded to the Sioux Falls Board of Preservation for consideration. The Board of Preservation should attach minutes documenting their decision on the marker and should return the application to the Director of Parks and Recreation along with the final text for an approved marker.

Board of Preservation signature Denied Approved Date per attached minutes

Permission to install marker: Yes ___ No ___ Director of Parks & Recreation _____ Date _____

J:\MIKE PATTEN\HISTORIC MARKER APPLICATIONS\TERRACE PARK - PHILLIPS HOUSE\HISTORIC MARKER PLACEMENT APPLICATION FORM APRIL 20085963.DOC
The Phillips House

The Phillips House was built in 1883 at a cost of $50,000. It was an Italianate style three-story with exquisite woodwork with gold-plated hardware throughout the inside. The first two stories were constructed of Sioux quartzite. The third story, complete with lookout, was made of wood. The land around the house was filled with gardens, apple and plum orchards as well as a nursery. There was also a barn, paddock and a shelter for the animals.

In this house, Hattie Phillips raised her 7 children after the loss of her husband, Dr. Josiah Phillips in 1882. Hattie lived in the house til the early 1900's and used it for religious, charitable and social activities for the community.

At 3:00 pm, December 10th, 1909, a fire started on the third floor by a renter using a blow torch to thaw frozen water pipes. The closest hydrant was 4 blocks away and the fire department was unable to adequately deliver water to the third story due to lack of water pressure. Though most of the building was saved, the third story was lost, never to be rebuilt.

The City purchased the Phillips Estate in July of 1916 with the intention of making the property a city park. The house immediately received a new roof and, in 1918 a museum for Native American artifacts was opened on the first floor.

In 1920, the first two stories of the home were returned to their original state by the General Federation of Women's Clubs. When the restoration was complete, the Phillips House returned to being a house for the community, always open for social and civic gatherings through the 1960s.

In 1923, the terraces were cut for a natural outdoor amphitheater and quartzite walkways and steps were installed. Later, in 1931 the outdoor theater stage was built. Then in 1934, the Japanese Gardens were finished.

Starting in 1954, the old barn with its potbelly stove was used to house lions from the city zoo in the winter months; residents in the area said the lion's roar could be heard half a mile away! It was at this time the barn, the oldest building in the park system, got its nickname: the Lions Den.

Throughout the 50s and 60s the house fell into disrepair. There were calls from the community to save the Phillips House. The members of the Minnehaha County Historical Society worked with the Park Board to procure the house as a museum and an art center. In September 1966, the Park Board notified the Historical Society that they had until October 1st to present a plan for restoration. After collecting hundreds of signatures, The Historical Society previewed their plan with the Park Board President on Sept 30th, with the intention to inform the full board 4 days later, on October 4th. However, on October 1st, 1966, a chilly 37 degree Saturday morning, heavy machinery and a wrecking ball rolled into the park towards the house. The bell tolled for the old house, and sadly it was demolished.

May this help be a reminder that it is our duty to preserve and protect. Once buildings are gone, they are gone forever.
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<thead>
<tr>
<th></th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
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Computer lab attendance isn’t included in total as they are accounted for in CC attendance.

All community centers and enlarged gyms were closed in April and May due to the COVID-19 pandemic.
# 2020 MIDCO AQUATIC CENTER OPERATING DASHBOARD

## Statistics

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<thead>
<tr>
<th></th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>YTD Total</th>
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## Revenue

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<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
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<td>234,204</td>
<td>16,249</td>
<td>16,825</td>
<td>28,874</td>
<td>25,858</td>
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## Expenses

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<th>Apr</th>
<th>May</th>
<th>Jun</th>
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<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>YTD Total</th>
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*July and Dec have 3 pay periods.

## Summary

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<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
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</thead>
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<td>37,760</td>
<td>71,747</td>
<td>183,969</td>
<td>156,039</td>
<td>120,151</td>
<td>121,604</td>
<td>1,060,678</td>
</tr>
</tbody>
</table>
# City of Sioux Falls Golf Courses
## Income Statement
**September 30, 2020**

<table>
<thead>
<tr>
<th>Current Month</th>
<th>Year To Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prairie Green</td>
<td>Prairie Green</td>
</tr>
<tr>
<td>Elmwood</td>
<td>Elmwood</td>
</tr>
<tr>
<td>Kuehn Park</td>
<td>Kuehn Park</td>
</tr>
<tr>
<td>Consolidated</td>
<td>Consolidated</td>
</tr>
<tr>
<td></td>
<td>Budget</td>
</tr>
<tr>
<td></td>
<td>Prior Year</td>
</tr>
<tr>
<td></td>
<td>Rounds Played</td>
</tr>
<tr>
<td></td>
<td>Revenues</td>
</tr>
<tr>
<td></td>
<td>Cost of Goods Sold</td>
</tr>
<tr>
<td></td>
<td>Gross Profit</td>
</tr>
<tr>
<td></td>
<td>Operating Expenses</td>
</tr>
<tr>
<td></td>
<td>EBITDA</td>
</tr>
<tr>
<td></td>
<td>Net Income</td>
</tr>
</tbody>
</table>

### Revenues

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greens Fees</td>
<td>43,560</td>
<td>56,351</td>
</tr>
<tr>
<td>Pro Shop</td>
<td>10,093</td>
<td>11,278</td>
</tr>
<tr>
<td>Driving Range</td>
<td>10,154</td>
<td>10,594</td>
</tr>
<tr>
<td>Carts</td>
<td>42,829</td>
<td>45,667</td>
</tr>
<tr>
<td>Food &amp; Beverage</td>
<td>25,713</td>
<td>26,357</td>
</tr>
<tr>
<td>Annual Passes</td>
<td>24,997</td>
<td>22,997</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td><strong>160,283</strong></td>
<td><strong>184,104</strong></td>
</tr>
<tr>
<td><strong>9,428</strong></td>
<td><strong>11,150</strong></td>
<td><strong>1,752</strong></td>
</tr>
<tr>
<td><strong>9,329</strong></td>
<td><strong>9,546</strong></td>
<td><strong>1,272</strong></td>
</tr>
<tr>
<td><strong>18,757</strong></td>
<td><strong>19,696</strong></td>
<td><strong>3,025</strong></td>
</tr>
<tr>
<td><strong>141,526</strong></td>
<td><strong>164,408</strong></td>
<td><strong>52,562</strong></td>
</tr>
<tr>
<td><strong>11,757</strong></td>
<td><strong>12,152</strong></td>
<td><strong>9,529</strong></td>
</tr>
<tr>
<td><strong>389</strong></td>
<td><strong>449</strong></td>
<td><strong>-</strong></td>
</tr>
<tr>
<td><strong>17,691</strong></td>
<td><strong>17,122</strong></td>
<td><strong>369</strong></td>
</tr>
<tr>
<td><strong>32,581</strong></td>
<td><strong>46,259</strong></td>
<td><strong>7,954</strong></td>
</tr>
<tr>
<td><strong>9,402</strong></td>
<td><strong>3,275</strong></td>
<td><strong>950</strong></td>
</tr>
<tr>
<td><strong>11,317</strong></td>
<td><strong>27,904</strong></td>
<td><strong>8,869</strong></td>
</tr>
<tr>
<td><strong>-</strong></td>
<td><strong>-</strong></td>
<td><strong>200</strong></td>
</tr>
<tr>
<td><strong>102,668</strong></td>
<td><strong>107,162</strong></td>
<td><strong>26,770</strong></td>
</tr>
</tbody>
</table>

### Operating Expenses

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pro Shop</td>
<td>11,757</td>
<td>12,152</td>
</tr>
<tr>
<td>Driving Range</td>
<td>389</td>
<td>449</td>
</tr>
<tr>
<td>Carts</td>
<td>17,691</td>
<td>17,122</td>
</tr>
<tr>
<td>Course Maintenance</td>
<td>32,581</td>
<td>46,259</td>
</tr>
<tr>
<td>Food &amp; Beverage</td>
<td>9,402</td>
<td>3,275</td>
</tr>
<tr>
<td>General &amp; Administration</td>
<td>11,317</td>
<td>27,904</td>
</tr>
<tr>
<td>Membership</td>
<td>102,668</td>
<td>107,162</td>
</tr>
<tr>
<td><strong>Total Operating Expenses</strong></td>
<td><strong>818,333</strong></td>
<td><strong>880,372</strong></td>
</tr>
</tbody>
</table>

### EBITDA

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Purchased Assets</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Hotel Lease income</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Depreciation</td>
<td>(6,070)</td>
<td>(6,114)</td>
</tr>
<tr>
<td>Interest Expense</td>
<td>(331)</td>
<td>(883)</td>
</tr>
<tr>
<td>Gain/Loss on Sale of Asset</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other Income/Expense</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
<td><strong>32,257</strong></td>
<td><strong>48,708</strong></td>
</tr>
</tbody>
</table>

### Notes
- Budget and Prior Year values are not provided.
- All financial figures are in thousands.
Dear Parks Board:

The Sioux Falls Board of Historic Preservation would like to begin by thanking the Sioux Falls City Parks and Recreation Department for their dedication to celebrating the history of our city’s historic parks.

The role of the Board of Historic Preservation is to promote the use and conservation of historic properties for the education, inspiration, pleasure and enrichment of the citizens of Sioux Falls. Recently, Aaron Skonhod researched and authored a historic plaque dedicated to the Phillips House that once stood in Terrace Park. The last line of this plaque reads as follows:

*May this be a reminder, it is our duty to preserve and protect. Once buildings are gone, they are gone forever.*

How ironic is it that this Board is being asked to tear down an iconic structure in one of our best-known city parks at the same time you are asked to approve a plaque commemorating the removal of a similar iconic structure from Terrace Park.

This letter is sent on behalf of the Board of Historic Preservation urging you to consider saving the iconic Tuthill Home in Tuthill Park so that the Park Board might be spared from having to review the text of a plaque in 5+ years for a home that is structurally sound, beloved and used by many Sioux Falls residents, and simply needs some cosmetic repairs so it can continue to be used and loved by a new generation of Sioux Falls residents. Although McKennan, Terrace, Lyon and Tuthill parks were once home to their donors’ residence, Tuthill Park remains the only Sioux Falls City Park with its donor’s home still standing.

Because the Tuthill Summer Home is historically significant to the City of Sioux Falls and continues to serve its purpose as a gathering and educational venue, we respectfully request that the Parks Board save the structure and work with the Board of Historic Preservation, the City, and the neighborhood to preserve its rich history and ensure that it stands as a reminder to Sioux Falls residents of the generosity, legacy and tenacity of Sioux Falls’ residents.

The Secretary of the Interior is the federal agency tasked with preserving America’s historic buildings, properties, and landmarks. For instance, Mt. Rushmore and the Pettigrew Home & Museum are both protected by the Secretary of Interior. As a volunteer board appointed by the Mayor, we are asking the Parks Board to save this home because it has historic significance, as defined by the guidelines provided to us by the Secretary of the Interior.

Properties like the Tuthill Summer Home are historically significant to the City of Sioux Falls, even though the property is not listed on the State or National Historic Register of Historic Places. This does not mean that they do not deserve the city’s protection because of their historical significance.

*Below, utilizing the Secretary of Interior criteria, we outline the reasons Tuthill Summer Home is historically significant to our community and should not be demolished.*

**Criterion A – Pattern of events or historic trends:**
The Tuthill home demonstrates multiple layers of Sioux Falls’ history. It was originally built as a farmhouse between 1870s and 1907, highlighting a trend of early homes and farmsteads being incorporated into our city as it grew. Then, the Tuthill family purchased the home and land as their summer home. This showcases yet another trend of Sioux Falls’ prominent families spending their summers in homes along the Big Sioux River. The Tuthill home is one of the only remaining, unaltered examples of an early Sioux Falls farmhouse and summer home. When the Tuthill family designed the gardens, for which the park is so revered, they did so with their summer home in mind.

**Criterion B – Association with the life/lives of important person(s):** The Tuthill Summer Home was occupied by two prominent Sioux Falls citizens, William Howie and Arthur Tuthill. The fact that this home was owned by multiple prominent families strengthens its historic and educational value. For example, Sen. Pettigrew was the second owner of what is now the Pettigrew Home & Museum. William Howie was among the first settlers in Sioux Falls Township. In the 1880s he was elected to serve on the Township Board. Arthur Tuthill was a second-generation, successful Sioux Falls lumber baron. The fact that Tuthill lived in this house is quite significant to it remaining in the park because he is the park’s donor and namesake.

**Criterion C – Design or Construction Value:** This farmhouse could have been built between the 1870s and 1907. Its design is a unique, surviving example of an early Sioux Falls residence. Today, no homes of this type and style currently exist within one of Sioux Falls’ seven historic districts.

You have the opportunity to help preserve this valuable piece of Sioux Falls’ history so you won’t need to review a historic plaque at a future meeting and say to yourself that you wished you could have made a different decision when you had the chance. Please vote to preserve, not demolish this historic and iconic Sioux Falls home so it may be preserved for future generations to appreciate and enjoy.

Sincerely,

Sioux Falls Board of Historic Preservation

Alex Halbach, Chair

Lura Roti, Vice Chair

cc: Mayor Paul TenHaken

City Councilors