

SIoux FALLS PARKS AND RECREATION BOARD MEETING
Wednesday, September 18, 2024
4:00 p.m. Regular Board Meeting
Great Bear Chalet- 5901 E Rice St

ORDER OF BUSINESS

1. Roll call and determination of quorum
2. Approval of minutes from August 21, 2024, meeting
3. Public Comment
4. Unfinished business
4. New business
 - a. Great Bear Annual Report –Dan Grider
 - b. Management Agreement for Operation of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site- Brett Kollars
6. Report of Director of Parks and Recreation
 - a. Aquatics Report – July
 - b. Golf Course Report – July
7. Items added after the agenda deadline
 - a. The Parks and Recreation Board may include other such business as may come before this body.
8. Reading of communications to the Board
9. Open board discussion
10. Adjournment

Persons requiring special accommodation for participation in any programs or activities sponsored by Sioux Falls Parks and Recreation should call 605-367-8222 during regular business hours at least 48 hours prior to the event. Special needs will be accommodated whenever reasonably possible.

August 21, 2024

A REGULAR MEETING OF THE SIOUX FALLS PARKS AND RECREATION BOARD was held on Wednesday, August 21, 2024, at 4 p.m. at the Outdoor Campus

Roll Call and Determination of Quorum

Members present: Jim Stavenger, Rick Weber, Teresa Cauwels, Mike Begeman, Justin Smith, Mick Conlin & Brooke Wegener

Members absent: none.

Parks and Recreation staff present: Brett Kollars, Assistant Director, Jackie Nelson, Recreation Manager; Mackenzie Songstad, City Services Technician; Mike Patten, Parks Planning and Projects Manager; Tyler Landry, Parks Development Specialist

Others Present: Catherine Schlimgen, City Attorney's Office; Dan Grider, Great Bear; Steve Johnson, Citizen

Approval of Minutes (July 17, 2024)

A motion to approve the minutes was made by Cauwels and seconded by Smith. Motion passed unanimously with all present Board members voting yes.

Public Input

Steve Johnson spoke about concerns regarding the lightning policy at Midco® Aquatics Center and future pool space.

Unfinished Business

None.

New Business

Great Bear Fees: A motion to recommend Great Bear Fees was made by Wegner and seconded by Weber. Motion passed unanimously with all present Board members voting yes.

Arrowhead Parkway – Section 4(f) de minimis: A motion to recommend Arrowhead Parkway – Section 4(f) de minimis was made by Conlin and seconded by Cauwels. Motion passed unanimously with all present Board members voting yes.

Tuthill Park & Spencer Park – Section 4(f) de minimis: A motion to recommend Tuthill Park & Spencer Park – Section 4(f) de minimis was made by Stavenger and seconded by Smith. Motion passed unanimously with all present Board members voting yes.

Report of Director of Parks and Recreation:

Brett Kollars Assistant Director of Parks and Recreation started his report stating he is standing in for Don. Don wanted to extend his gratitude and appreciation to Rick Weber for his time on the board. Kollars noted that the team is working feverishly on the Westside Recreation Center and looking to make turnover and operations at the beginning of the year. Kollars stated that five full time positions have been posted to help operate the Westside Recreation Center. Later this fall, part time positions will be filled. Kollars mentioned that the team is taking this chance to review facility guidelines and policies and consider alternatives and challenge the status quo. Kollars stated that the outdoor pools will be closing the weekend of September 1, 2024. Finally,

August 21, 2024

Kollars noted that Josh Johnson has been hired as Parks Operations Manager. His effective date was August 19, 2024.

Items Added After the Agenda Deadline

None.

Reading of Communications to the Board

None.

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

Secretary

Approved by:

President

Annual Report

Prepared for the Sioux Falls Parks & Recreation Board

September 2024

Summer 2023

After a record shattering winter season, the team charged ahead with summer operations. Between weddings and corporate events, June was the busiest off-season month on record! In addition, the community came together for the final Angels With A Dream Car Show in memory of Roxie Johnson, allowing us to grant our 20th child's wish.

In the fall, we geared up for the winter season with our annual manager's retreat, OctoBEARfest sale, and movie premiere at the Washington Pavilion.

Winter 2023/2024

Although snowmaking kicked off on November 25, the whole country was soon commiserating about the unseasonably warm temps. With a keen eye on the forecast and a lot of patience, our snowmaking team made the best of a far from ideal situation.

Finally, on January 8, we were able to open for the season with limited runs. Soon after, the frigid temps finally arrived temporarily pausing our operations. Once regular hours resumed, skiers, snowboarders and tubers enjoyed some beautiful winter days on the snow including at the 35th Annual Media One FunSki benefiting Children's Home Shelter for Family Safety.

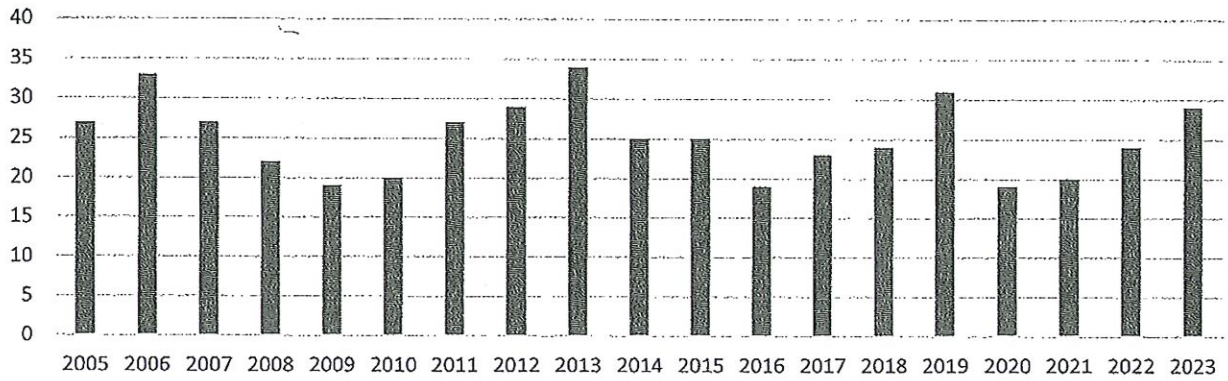
However, the weather was not yet done with us. Unseasonably warm temps returned in February, causing us to temporarily shut down until more snow could be made to replenish the base. Meanwhile, a significant portion of our commerce platform crashed, but our team did not waver. We adapted and persevered. A cold snap allowed us to reopen on February 19, and on February 25, we hosted a well-attended and sunny SnirtFest to finish the season off.

With a record number of passholders at over 1700, we take our commitment to them seriously. Out of respect for the trust they give us each winter, we are offering passholders an unprecedented \$100 credit toward a pass for next year.

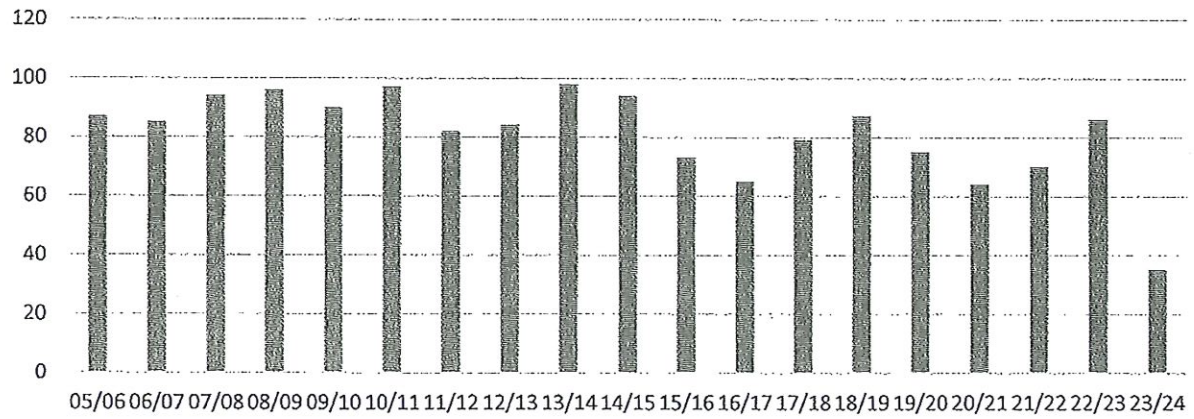
Despite our short 35-day season, we still saw 25,000 guests. When the lift spun for that last lap of the season, our team was sad, of course. Everyone wants more ski days. But we were grateful to be a part of such an understanding and supportive community.

The following is some select data from our annual report:

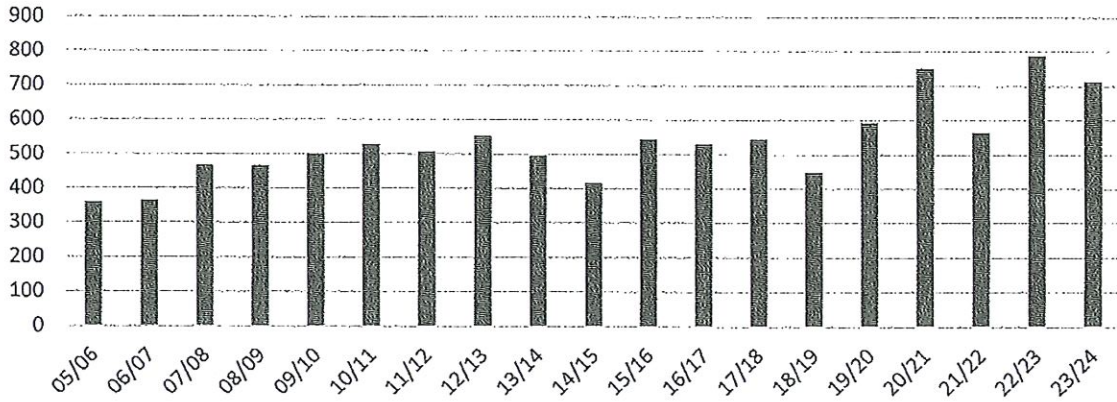
Summer Events per Season



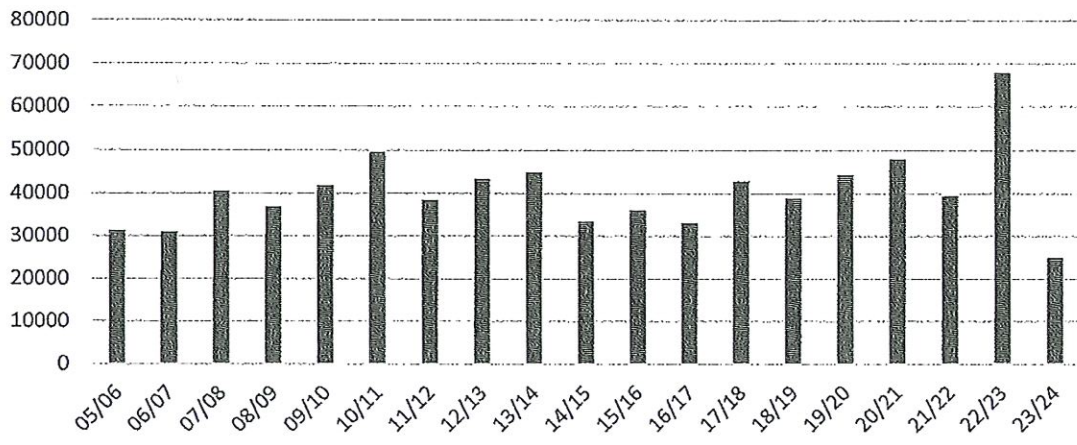
Winter Season Length



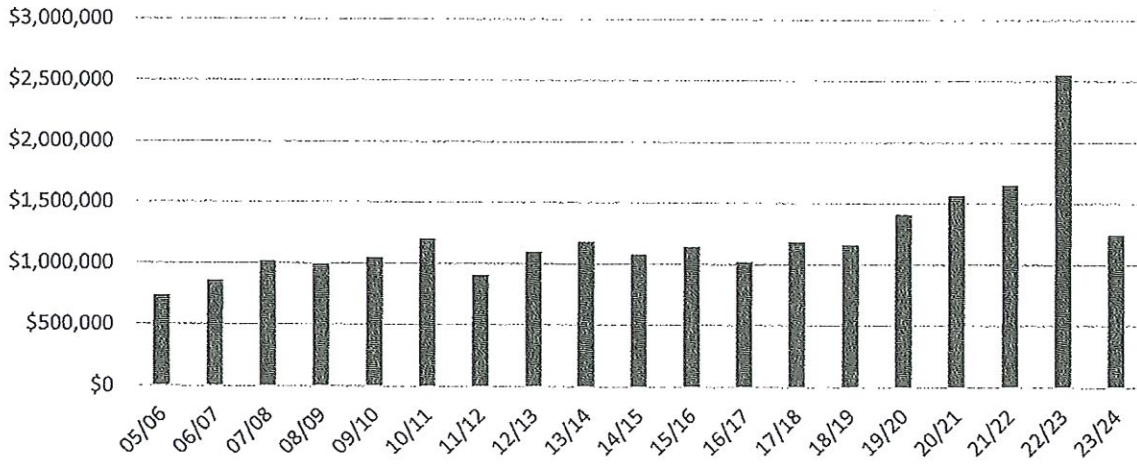
Visits Per Day



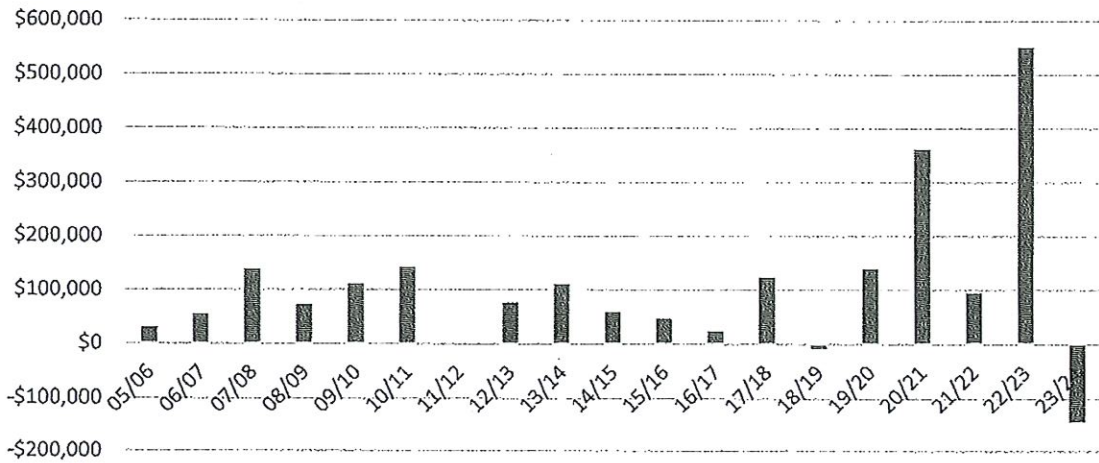
Total Area Visits



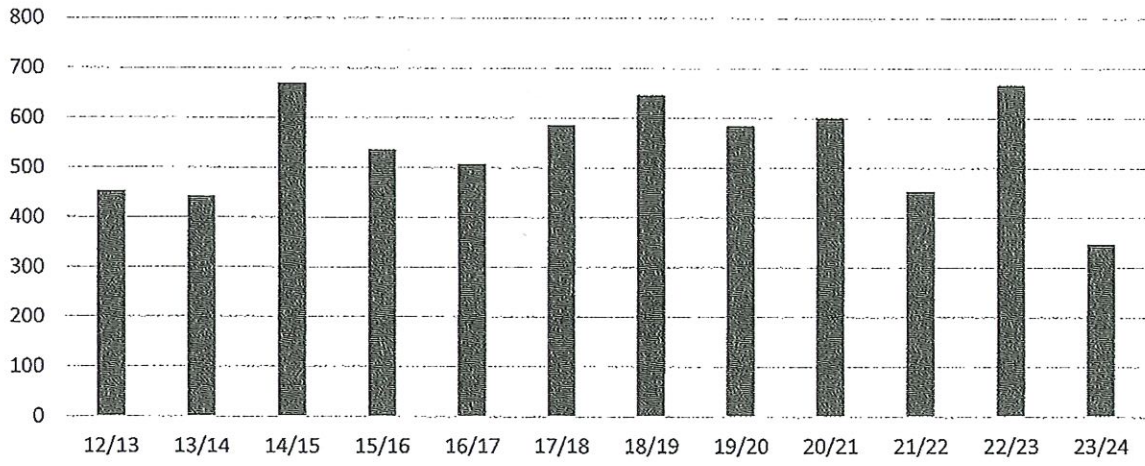
Total Area Revenue



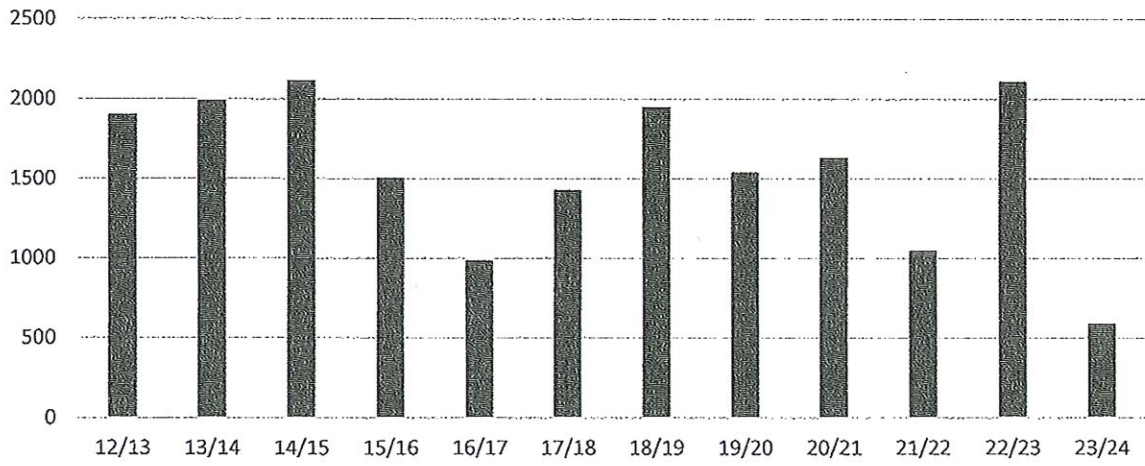
Revenue over Expenses



5th Grade Participants



5th Grade Visits



GREAT BEAR RECREATION PARK, INC. ANNUAL MANAGEMENT REPORT

Season	2023/2024	2022/2023	2021/2022	2020/2021	2019/2020	2018/2019
Potential Skier Days	49	91	74	70	79	96
Actual Skier Days	35	86	70	64	75	87
Variance	14	5	4	6	4	9
Potential Tubing Days	31	79	56	66	87	87
Actual Tubing Days	28	66	52	54	78	78
Variance	3	13	4	12	9	9
Paid Skier Visits	7893	22947	12237	14028	11764	13418
Season Pass Visits	12004	23494	16089	16298	12801	10672
Total Skier Visits	19897	46441	28326	30326	24565	24090
	568.49	540.01	404.66	473.84	327.53	276.90
Tubing Visits	5045	21339	11149	17718	19754	14788
Total Tubing Visits Per Day	180.18	323.32	214.40	328.11	253.26	189.59
Total Area Visits	24942	67780	39475	48044	44319	38878
Total Area Visits Per Day	712.63	788.14	563.93	750.69	590.92	446.87
Net Revenue*	\$1,090,194.20	\$2,353,895.37	\$1,496,844.47	\$1,409,648.00	\$1,228,977.84	\$996,199.96
Per Day Net Revenue	\$31,148.41	\$27,370.88	\$21,383.49	\$22,025.75	\$16,386.37	\$11,450.57
Per Visit Net Revenue	\$43.71	\$34.73	\$37.92	\$29.34	\$27.73	\$25.62
Tubing Net Revenue	\$63,266.48	\$297,516.11	\$162,963.28	\$237,336.61	\$235,354.67	\$162,012.79
Per Day Net Tubing Revenue	\$2,259.52	\$4,507.82	\$3,133.91	\$4,395.12	\$3,017.37	\$2,077.09
Rental Revenue	\$107,610.03	\$454,418.05	\$224,733.34	\$250,960.53	\$183,805.54	\$139,171.28
Per Day Rental Revenue	\$3,074.57	\$5,283.93	\$3,210.48	\$3,921.26	\$2,450.74	\$1,599.67
Per Skier Rental Revenue	\$5.41	\$9.78	\$7.93	\$8.28	\$7.48	\$5.78
Snowboard Rentals	2422	6107	3890	3651	2420	2105
Snowboard Rental Revenue	\$43,106.68	\$143,226.50	\$60,915.96	\$62,441.50	\$48,913.89	\$34,977.91
Ski Rentals	4111	12302	7322	8192	6912	5387
Ski Rental Revenue	\$55,152.27	\$227,060.19	\$110,189.32	\$143,110.70	\$111,420.37	\$81,224.54
Season Passes Sold	1726	1554	1409	1200	767	714
Net Revenue	\$389,581.79	\$329,183.25	\$288,230.00	\$231,755.23	\$163,118.48	\$137,444.18
Punch Card Passes Sold	305	390	313	253	180	178
Net Revenue	\$55,476.77	\$66,851.85	\$56,694.44	\$42,708.33	\$33,495.37	\$38,501.93
Group Revenue	\$15,199.99	\$56,750.42	\$35,377.32	\$44,769.43	\$60,512.20	\$46,706.50
Snow Riders Participants	17	27	0	0	63	55
Net Revenue	\$3,156.92	\$5,029.63	\$0.00	\$0.00	\$6,691.67	\$5,929.65
5th Grade Friday Registrations	347	666	453	601	584	647
5th Grade Friday Visits	589	2108	1049	1632	1543	1952
Net Food Sales	\$142,298.37	\$394,341.33	\$239,354.17	\$220,973.33	\$226,991.69	\$185,522.95
Net Food Sales Per Day	\$4,065.67	\$4,585.36	\$3,419.35	\$3,452.71	\$3,026.56	\$2,132.45
Net Per Skier Food Sales	\$5.71	\$5.82	\$6.06	\$4.60	\$5.12	\$4.77

*winter season sales only net revenue

**please note all revenue figures are net of 7.7% and 8.7% state and city sales tax

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

Agreement made _____, 2024, 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, 2025 (the "Effective Date") and will continue in full force and effect through December 31, 2029, (the "Management Term") 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:
- (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., and 45 C.F.R. Part 80).
 - (ii) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., and 29 C.F.R. Parts 1602, 1604, 1605, and 1606).
 - (iii) The Age Discrimination in Employment Act (29 U.S.C. 621 et seq., and 29 C.F.R. Part 1625).
 - (iv) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq., and 45 C.F.R. Parts 90 and 91).
 - (v) The Americans with Disabilities Act of 1990, as amended.
 - (vi) The Rehabilitation Act of 1973 (29 U.S.C. 794 et seq., and 45 C.F.R. Parts 84 and 85).
 - (vii) The Genetic Information Nondiscrimination Act of 2008 (42 USC 1635 et seq., and 29 CFR 1635).

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 Contract Manager.

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.
5. **City Approval of Executive Director.** The City has approved Mike Cooper as the Executive Director of the Manager. If during the Management Term, Mike Cooper is no longer the Executive Director and a vacancy exists in the position of the Executive Director, then prior to the Manager’s appointment of an Executive Director, the Manager will seek the Contract Manager’s approval with respect to the qualification of the Executive Director proposed by the Manager. If a proposed Executive Director is not reasonably acceptable to the Contract Manager, Manager will submit names and resumes until the Contract Manager reasonably accepts a candidate for assignment to the Executive Director position.
6. **City Review of Executive Director Performance.** At any time during the Management Term, the City can notify Manager if it believes there is a performance problem with the Executive Director. Within 15 days of receipt of notice, Manager’s President of the Board of Directors will meet with Contract Manager to discuss the performance problem regarding the Executive Director and to propose steps appropriate to address the problems within a specified period of time. If the Contract Manager is not satisfied with the Manager’s President’s proposed steps to address the problem, or if the performance problems are not adequately addressed within the specified period of time, the Manager’s Board of Directors will remove the Executive Director from performing services.

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. **Arrowhead House.** The City supports the Manager use of the Arrowhead House located on adjacent property in Arrowhead Park. Manager will work the Contract Manager for dates which are mutually agreed upon.
8. The Manager shall have the exclusive right (not the obligation) to operate or subcontract food services and other revenue opportunities.
9. 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.
10. 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.
11. **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.
12. **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.)
13. **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.
14. **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.

15. **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.

16. **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 or 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.
13. Annually take inventory of Society's trees and support tree planting process.

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.

2024
MIDCO AQUATIC CENTER OPERATING DASHBOARD
(Unaudited)

	Jan	Feb	Mar	Apr	May	Jun	Jul	YTD Total
Statistics								
Attendance								
Daily Attendance	3,852	5,878	7,198	5,456	5,247	6,405	6,089	40,125
Swim Pass Attendance	4,571	5,823	6,165	5,753	8,930	13,564	13,862	58,668
Swim Lesson Attendance	3,621	2,282	3,925	154	79	2,043	1,615	13,719
Swim Team Attendance	2,398	1,910	624	2,033	1,933	622	365	9,887
Swim Meet Attendance	4,113	5,526	-	1,137	4,452	6,114	62	21,404
Other Attendance	681	3,206	1,226	2,511	1,369	681	404	10,078
Total Attendance	19,236	24,625	19,138	17,046	22,010	29,429	22,397	153,881
Average Daily Attendance	641	879	617	588	710	981	747	1,729
Passes								
Fall, Winter, Spring Passes Sold	-	-	-	-	-	-	-	-
Annual Passes Sold	170	160	157	201	290	352	173	1,503
Total Passes Sold	170	160	157	201	290	352	173	1,503
Other								
Lesson Registrations	70	82	105	55	17	313	16	658
Class/Event Registrations	72	464	79	37	37	38	7	734
Meeting Room Reservations	20	25	42	20	27	21	20	175
Meeting Room Hours Reserved	31	38	78	38	48	37	36	304
Swim Lane Hours Reserved	1,393	919	413	972	570	336	144	4,746
Revenue								
Daily Admission	\$ 16,999	\$ 26,222	\$ 32,181	\$ 22,579	\$ 25,812	\$ 30,631	\$ 29,467	\$ 183,891
Passes	28,306	23,928	26,707	28,927	65,610	81,813	30,619	285,910
Programming Registrations	10,908	29,438	8,744	10,273	10,659	15,620	6,382	92,024
Meeting Room Reservations	1,400	1,888	3,975	1,975	2,600	-	1,825	13,663
Swim Lane Reservations	8,083	3,844	3,069	4,436	4,172	-	680	24,284
Other	22,023	105	62	69	5,053	220,086	75	247,473
Total Revenue	\$ 87,720	\$ 85,425	\$ 74,738	\$ 68,258	\$ 113,907	\$ 348,150	\$ 69,048	\$ 847,245
Expenses								
Personnel*	\$ 82,436	\$ 134,630	\$ 133,163	\$ 128,842	\$ 187,550	\$ 153,219	\$ 158,080	\$ 977,921
Building R&M	733	16,959	12,818	24,701	15,827	1,314	48,314	120,665
Supplies & Materials	-	20,795	15,741	26,138	21,180	10,056	23,959	117,870
Utilities	23,110	33,844	38,874	48,539	23,987	39,336	35,496	243,185
Other	1,431	2,725	14,670	3,817	2,383	5,482	7,292	37,802
Total Expenses	\$ 107,710	\$ 208,953	\$ 215,267	\$ 232,037	\$ 250,927	\$ 209,408	\$ 273,141	\$ 1,497,443
<i>*May and Nov have 3 pay periods</i>								
Summary								
Total Revenue	\$ 87,720	\$ 85,425	\$ 74,738	\$ 68,258	\$ 113,907	\$ 348,150	\$ 69,048	\$ 847,245
Total Expenses	107,710	208,953	215,267	232,037	250,927	209,408	273,141	1,497,443
Operating Surplus/(Loss)	\$ (19,990)	\$ (123,528)	\$ (140,529)	\$ (163,780)	\$ (137,020)	\$ 138,742	\$ (204,093)	\$ (650,198)

**City of Sioux Falls Golf Courses
Income Statement
July 31, 2024**

		----- Current Month -----			----- Year To Date -----		
	Prairie Green	Elmwood	Kuehn Park	Consolidated	Budget	Prior Year	
Rounds Played	6,227	11,311	5,938	23,476	19,380	21,889	
Revenues							
Greens Fees	85,834	158,896	59,529	304,259	239,488	261,032	
Pro Shop	22,740	41,267	9,707	73,714	82,800	82,245	
Driving Range	17,369	18,256	12,709	48,335	48,285	49,340	
Carts	80,159	123,003	34,205	237,367	189,453	205,514	
Food & Beverage	90,408	112,906	11,468	214,781	184,330	180,166	
Annual Passes	55,180	50,990	26,059	132,230	121,000	114,957	
Total Revenues	351,691	505,319	153,676	1,010,686	865,356	893,254	
Cost of Goods Sold							
Merchandise	11,841	22,147	6,507	40,495	38,840	37,230	
Food & Beverage	23,206	27,899	3,885	54,991	57,816	62,009	
	35,047	50,046	10,392	95,485	96,656	99,239	
Gross Profit	316,644	455,272	143,284	915,200	768,700	794,015	
Operating Expenses							
Pro Shop	18,768	28,066	16,379	63,213	59,383	59,034	
Driving Range	-	2,501	-	2,501	1,200	396	
Carts	28,014	30,369	6,338	64,721	58,786	64,325	
Course Maintenance	94,839	94,244	25,036	214,118	170,398	199,761	
Food & Beverage	20,467	37,902	5,272	63,641	49,063	49,934	
General & Administration	50,184	54,074	9,406	113,665	87,942	87,785	
Membership	-	-	-	-	783	-	
Total Operating Expenses	212,272	247,156	62,430	521,859	421,555	461,235	
EBITDA	104,372	208,116	80,853	393,341	347,145	332,780	
City Purchased Assets	-	-	-	-	-	-	
Hotel Lease Income	-	6,970	-	6,970	5,000	5,597	
Interest Income	5,271	-	-	5,271	2,400	-	
Depreciation	(5,855)	(3,563)	(1,848)	(11,266)	(11,500)	(22,086)	
Interest Expense	-	35	-	35	(33)	(105)	
Gain/Loss on Sale of Asset	-	(1,803)	-	(1,803)	-	(10,194)	
Other Income/Expense	-	-	-	-	-	-	
Net Income	103,787	209,755	79,006	392,548	343,012	305,992	
	23,311	501,751	18,075	78,249	63,640	69,160	
	252,530	174,989	929,269	929,269	790,163	783,740	
	119,470	168,369	24,073	311,911	325,135	301,686	
	67,816	68,677	43,158	179,651	169,140	169,617	
	260,989	380,847	109,021	750,857	669,900	686,944	
	247,431	315,214	34,611	597,255	564,049	546,861	
	212,544	201,356	101,978	515,878	454,000	442,727	
	1,160,780	1,636,212	487,829	3,284,821	2,972,387	2,933,575	
	45,271	85,893	10,665	141,829	147,950	140,553	
	74,404	86,188	14,018	174,611	178,250	176,900	
	119,675	172,081	24,683	316,439	326,200	317,453	
	1,043,105	1,464,131	463,146	2,968,382	2,646,187	2,614,122	
	113,243	130,917	60,872	305,032	331,108	298,757	
	3,538	9,039	4,306	16,882	14,750	13,630	
	84,999	94,405	16,952	196,356	202,350	194,828	
	391,539	446,016	97,373	934,927	846,619	820,701	
	65,884	125,174	14,699	205,756	187,506	203,590	
	296,247	287,393	86,005	669,644	631,072	578,661	
	955,449	1,092,943	280,205	2,328,597	2,215,755	2,111,085	
	85,656	371,188	182,941	639,785	430,432	503,037	
	-	-	-	-	-	-	
	30,094	40,988	-	40,988	27,300	30,659	
	(41,129)	-	-	30,094	16,800	-	
	-	(30,440)	(12,810)	(84,378)	(82,700)	(121,091)	
	-	(332)	-	(332)	(411)	(1,211)	
	-	(1,803)	-	(1,803)	-	(3,341)	
	-	-	-	-	-	-	
	74,622	379,602	170,131	624,354	391,421	408,053	