

SIoux FALLS PARKS AND RECREATION BOARD MEETING

Wednesday, October 30, 2024

4:00 p.m. Regular Board Meeting

City Hall Media Room – 224 W. 9th St.

ORDER OF BUSINESS

1. Roll call and determination of quorum
2. Approval of minutes from September 18, 2024, meeting
3. Public Comment
4. Unfinished business
5. New business
 - a. 2025 Golf Course Rates – Don Kearney
 - b. Management Agreement for Operation of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site- Brett Kollars
 - c. Great Bear Financial Audit- Brett Kollars
 - d. Amendment Chapter 95- Fees – Jackie Nelson
 - e. Amendment Chapter 95- Alcoholic Beverages - Jackie Nelson
 - f. Jacobson Plaza Food And Beverage Services Agreement Between City of Sioux Falls and Washington Pavilion Management, Inc.- Jackie Nelson
6. Report of Director of Parks and Recreation
 - a. Aquatics Report – August
 - b. Golf Course Report – August
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.

September 18, 2024

A REGULAR MEETING OF THE SIOUX FALLS PARKS AND RECREATION BOARD was held on Wednesday, September 18, 2024, at 4 p.m. at Great Bear

Roll Call and Determination of Quorum

Members present: Jim Stavenger, Rick Weber, Teresa Cauwels, Mike Begeman, Justin Smith, Brooke Wegener & Mick Conlin (arrived at 4:08pm)

Members absent: none.

Parks and Recreation staff present: Brett Kollars, Assistant Director, Mackenzie Songstad, City Services Technician

Others Present: Catherine Schlimgen, City Attorney's Office; Dan Grider, Great Bear; Steven Sanford, Great Bear Management, Inc; Mike Cooper, Mary Jo Wegner Arboretum.

Approval of Minutes (August 21, 2024)

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

Public Input

None.

Unfinished Business

None.

New Business

Great Bear Annual Report: A motion to accept the Great Bear Annual Report was made by Cauwels and seconded by Wegener. Motion passed unanimously with all present Board members voting yes.

Management Agreement for Operation of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site: A motion to recommend approval of the Management Agreement for Operation of the Mary Jo Wegner Arboretum and East Sioux Falls Historic Site was made by Smith and seconded by Cauwels. Motion passed unanimously with all present Board members voting yes.

Report of Director of Parks and Recreation:

Don Kearney started his report stating that a Delbridge working group held a meeting on Friday, September 13, 2024, they are seeking request for qualification and expression of interest from museums, non- profits and other qualified entities. Applications will be available starting Friday, September 20, 2024, with a deadline of December 12, 2024. Kearney mentioned that Teresea Cauwels has been appointed by the Mayor to serve on the southern Sioux Falls aquatics committee. The first meeting is scheduled for kick off on October 2, 2024. Kearney encouraged board members to talk with neighbors and citizens about having a plan for removal of ash trees on private property. Kearney noted that the golf courses are doing very well and having a great year. Kearney stated Elmwood Club House is under construction, excavation on the club house has started and footings could be poured next week. Kearney noted that next week, they will start on excavation of the First Tee program and cart storage building. Finally, Kearney

September 18, 2024

mentioned that the team is gearing up for the Westside Wellness Center operations. They are working on hiring full time staff and IT transitions.

Items Added After the Agenda Deadline

None.

Reading of Communications to the Board

None.

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

Secretary

Approved by:

President

Sioux Falls Golf

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2025 Rates

Season Passes	2023	2024	2025
	Rates + Tax		
Adult All Time Pass	\$1,095	\$1,145	\$1,195
Adult Weekday Pass	\$795	\$845	\$870
Senior All Time (over 65)	\$895	\$945	\$995
Senior Weekday (over 65)	\$645	\$695	\$720
Young Executive All Time (24-40)	\$750	\$800	\$850
Young Executive Weekday (24-40)	\$545	\$595	\$620
Student All Time (19 to age 23)	\$395	\$445	\$470
Student Weekday (19 to age 23)	\$220	Eliminated	Eliminated
Youth Pass (18 & Under)	\$275	\$325	\$350
Kuehn Park & East Course All Time	\$475	\$525	\$575

Season Pass Add On	Rates + Tax		
Add Spouse to any Season Pass	\$275	\$325	\$350
Add Family to any Season Pass	\$350	\$400	\$425
Add Spouse/Family to Kuehn Park & East Course	\$200	\$250	\$275

Early Buy Sale	Promotion
Black Friday - January 31st	15% off ALL Season Passes

Green Fees	Rates + Tax		
9 Holes Weekday Prairie Green	\$25.00	\$27.00	\$28.00
9 Holes Weekday Elmwood	\$25.00	\$27.00	\$28.00
18 Holes Weekday Prairie Green	\$37.00	\$41.00	\$41.00
18 Holes Weekday Elmwood	\$37.00	\$41.00	\$41.00
9 Holes Weekend Prairie Green	\$32.00	\$34.00	\$35.00
9 Holes Weekend Elmwood	\$32.00	\$34.00	\$35.00
18 Holes Weekend Prairie Green	\$43.00	\$47.00	\$47.00
18 Holes Weekend Elmwood	\$43.00	\$47.00	\$47.00
9 Holes Weekday Kuehn Park	\$19.00	\$21.00	\$22.00
18 Holes Weekday Kuehn Park	\$25.00	\$29.00	\$29.00
9 Holes Weekend Kuehn Park	\$21.00	\$23.00	\$24.00
18 Holes Weekend Kuehn Park	\$27.00	\$31.00	\$31.00
9 Holes Weekday East Course	\$21.00	\$23.00	\$24.00
18 Holes Weekday East Course	\$29.00	\$33.00	\$33.00
9 Holes Weekend East Course	\$22.00	\$24.00	\$25.00
18 Holes Weekend East Course	\$31.00	\$35.00	\$35.00
Fast 5 Course (5 holes)	\$5.00	\$5.00	\$5.00
Fast 5 Course (10 holes)	\$8.00	\$10.00	\$10.00

Punch Passes	Rates (tax included)		
ONLY OPTION FOR 2025	\$625 for \$525		
NOTE: Punch Passes may be used for green & cart fees during the 2025 golf season. Punch Passes are non transferable and expire at the end of 2025 golf season. Not eligible for early discounts or Season Pass Perks. No discounts are given when punch pass dollars expire in the fall.			

Carts	2023	2024	2025
	Rates + Tax		
9- Holes Prairie Green & Elmwood	\$14	\$15	\$15
9 Holes - Kuehn Park	\$13	\$14	\$14
18 - Holes @ All Three Courses	\$21	\$23	\$23
Single Cart Rider	\$5/\$10	\$5/\$10	\$5/\$10

Season Cart Passes	Rates + Tax		
18 Hole All Time Cart Pass	\$800	\$850	\$850
18 Hole Weekday Cart Pass	\$675	\$725	\$725
18 Hole Family Cart Pass	\$1,115	\$1,165	\$1,165
9 Hole Weekday Cart Pass	\$500	\$550	\$550
9 Hole Family Cart Pass	\$675	\$725	\$725

Range Balls	Rates (tax included)		
Small Bucket 1 token	\$7	\$8	\$8.00
Medium Bucket 2 tokens	\$11	\$12	\$11.00
Large Bucket 3 tokens	\$13	\$14	\$14.00
Range Passes	Rates + Tax		
Unlmted Adult Pass	\$395	\$445	\$470
Unlimited Family Pass	\$445	\$495	\$520
Unlimited Youth Pass	\$300	\$350	\$375

Practice and Facility Use	Fee (tax exempt)		
Collegiate (per team) Fall & Spring	\$2,200	\$2,500	\$2,500
High School (school year)	\$1,000	\$1,800	\$1,800

Other Use/Rental	
All Courses	Negotiated by LGM

NOTE: Dynamic Online Pricing available along with other discounts, promotions, & specials as applicable based on season & manager discretion. *Cannot be combined with any other promotion or discount

2025 Fee Comparisons

Sioux Falls Golf	Willow Run GC	Bakker Crossing GC	Brandon GC
9 Hole Weekday Green Fee \$28 + tax <i>East Course = \$24 + tax</i> <i>Kuehn Park = \$22 + tax</i>	9 Hole Weekday Green Fee = \$35	9 Hole Weekday Green Fee = \$35	9 Hole- Weekday Green Fee = \$25 + tax
18 Hole Weekday Green Fee \$41 + tax <i>East Course = \$33 + tax</i> <i>Kuehn Park = \$29 + tax</i>	18 Hole Weekday Green Fee = \$50	18 Hole Weekday Green Fee = \$50	18 Hole Weekday Green Fee = \$38 + tax
9 Hole Weekend Green Fee \$35 + tax <i>East Course = \$25 + tax</i> <i>Kuehn Park = \$24 + tax</i>	9 Hole Weekend Green Fee = \$40	9 Hole Weekend Green Fee = \$40	9 Hole Weekend Green Fee = \$30 + tax
18 Hole Weekend Green Fee \$47+ tax <i>East Course = \$35 + tax</i> <i>Kuehn Park = \$31 + tax</i>	18 Hole Weekend Green Fee = \$55	18 Hole Weekend Green Fee = \$55	18 Hole Weekend Green Fee = \$43 + tax
9/18 =Hole Cart Fees \$15 / \$23 + tax	9 /18 Hole Cart fees \$16/\$25	9/18 Hole Cart fees \$16/\$25	9/18 Hole Cart fees \$14/\$22 + 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.

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 with 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.

Paceline

CERTIFIED PUBLIC ACCOUNTANTS | LLP



Ronald F. Comes, CPA
Daniel R. Foley, CPA
Mary T. Dally, CPA
Catherine E. Harr, CPA
Meghan E. Garry, CPA

August 15, 2024

To the Board of Directors
Great Bear Management, Inc.
Sioux Falls, South Dakota

We have audited the financial statements of **Great Bear Management, Inc.** for the year ended April 30, 2024, and we will issue our report thereon dated August 15, 2024. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated April 30, 2024. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Matters

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by Great Bear Management, Inc. are described in Note 1 to the financial statements. As described in Note 1, the Organization changed accounting policies related to financial instruments by adopting FASB Accounting Standards Update No. 326, Measurement of Credit Losses on Financial Instruments, in year-end 2024. Accordingly, the accounting change has been applied using the modified retrospective transition method. We noted no transactions entered into by the Organization during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. The most sensitive estimate affecting the financial statements was:

Management's estimate of management fees not received and rent expense not paid to the City of Sioux Falls under the existing agreement. We evaluated methods, assumptions, and data used to develop the estimate in determining that it is reasonable in relation to the financial statements taken as a whole.

The financial statement disclosures are neutral, consistent, and clear:

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, none of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to the financial statements taken as a whole.

Great Bear Management, Inc.
August 15, 2024
Page Two

Disagreements with Management

For purposes of this letter, a disagreement with management is a disagreement on a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated August 15, 2024.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Organization's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Organization's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

This information is intended solely for the use of the Board of Directors of Great Bear Management, Inc. and is not intended to be, and should not be, used by anyone other than these specified parties.

Sincerely,

Paceline Accounting Group, LLP

PACELINE ACCOUNTING GROUP, LLP
Certified Public Accountants

GREAT BEAR MANAGEMENT, INC
Adjusting Journal Entries
04/30/2024

Account	Description	Debit	Credit	Net Income Effect
AJE 01				
To record FY24 UBTI payable				
6170-0	Unrelated Business Tax	1,557.00	0.00	
2035-0	Unrelated Business Tax Payable	0.00	1,557.00	
Total		1,557.00	1,557.00	-1,557.00
AJE 02				
To record estimated management fee and rent expense (non-cash)				
6141-0	Rent Expense	76,400.00	0.00	
4025-0	Management fee	0.00	76,400.00	
Total		76,400.00	76,400.00	0.00
AJE 03				
To record depreciation				
6150-0	Depreciation	56,815.00	0.00	
1600-0	Accum Depreciation	0.00	56,815.00	
Total		56,815.00	56,815.00	-56,815.00
AJE 04				
To adjust accounts receivable to actual				
1100-0	Accounts Receivable	1,415.59	0.00	
4020-0	Sales - Events	0.00	1,415.59	
Total		1,415.59	1,415.59	1,415.59
AJE 05				
To move expense to fixed assets				
1500-0	Equipment	3,037.54	0.00	
6160-0	Misc Equipment	0.00	3,037.54	
Total		3,037.54	3,037.54	3,037.54
AJE 06				
To adjust disposed assets				
1600-0	Accum Depreciation	4,038.00	0.00	
1500-0	Equipment	0.00	4,038.00	
Total		4,038.00	4,038.00	0.00
AJE 07				
To adjust park improvements donated to the city				
9000-0	Park Improvements	14,859.74	0.00	
1602-0	Improvement Donation to City	0.00	14,859.74	
Total		14,859.74	14,859.74	-14,859.74
AJE 08				
To adjust wealth management balance to actual				
1010-0	FNB - Wealth Management Fund	29,359.55	0.00	
8003-0	Dividend Income	0.00	29,533.23	
6135-0	Bank charges	173.68	0.00	
Total		29,533.23	29,533.23	29,359.55
GRAND TOTAL		187,656.10	187,656.10	-39,419.06

GREAT BEAR MANAGEMENT, INC.
FINANCIAL STATEMENTS
WITH INDEPENDENT AUDITORS'
REPORT

APRIL 30, 2024 AND 2023

Paceline

CERTIFIED PUBLIC ACCOUNTANTS | LLP



GREAT BEAR MANAGEMENT, INC.

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INDEPENDENT AUDITORS' REPORT

To the Board of Directors
Great Bear Management, Inc.
Sioux Falls, South Dakota

Opinion

We have audited the accompanying financial statements of **Great Bear Management, Inc.** (a nonprofit organization), which comprise the statements of financial position as of April 30, 2024 and 2023, and the related statements of activities, functional expenses, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of **Great Bear Management, Inc.** as of April 30, 2024 and 2023, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Great Bear Management, Inc. and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Great Bear Management, Inc.'s ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Great Bear Management, Inc.'s internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Great Bear Management, Inc.'s ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

Paceline Accounting Group, LLP

Sioux Falls, South Dakota
August 15, 2024

GREAT BEAR MANAGEMENT, INC.
STATEMENTS OF FINANCIAL POSITION
APRIL 30, 2024 AND 2023

ASSETS	<u>2024</u>	<u>2023</u>
CURRENT ASSETS		
Cash and cash equivalents	\$ 807,509	\$ 883,123
Accounts receivable	1,047	10,456
Inventory	36,203	21,452
Prepaid expenses	7,673	76,930
Total current assets	<u>852,432</u>	<u>991,961</u>
 PROPERTY AND EQUIPMENT		
Equipment	498,772	439,394
Park Improvement in progress	26,791	32,764
Less accumulated depreciation	<u>(325,278)</u>	<u>(272,501)</u>
	<u>200,285</u>	<u>199,657</u>
 TOTAL ASSETS	 <u><u>\$ 1,052,717</u></u>	 <u><u>\$ 1,191,618</u></u>
 LIABILITIES AND NET ASSETS		
CURRENT LIABILITIES		
Accounts payable	\$ 10,019	\$ 11,668
Accrued expenses	5,355	5,548
Gift cards payable	32,662	23,774
Customer deposits	9,688	9,613
Total current liabilities	<u>57,724</u>	<u>50,603</u>
 NET ASSETS		
With donor restrictions	<u>994,993</u>	<u>1,141,015</u>
 TOTAL LIABILITIES AND NET ASSETS	 <u><u>\$ 1,052,717</u></u>	 <u><u>\$ 1,191,618</u></u>

GREAT BEAR MANAGEMENT, INC.

STATEMENTS OF ACTIVITIES

FOR THE YEARS ENDED APRIL 30, 2024 AND 2023

	<u>2024</u>	<u>2023</u>
REVENUES AND SUPPORT		
Season passes	\$ 459,793	\$ 389,338
Food and beverage	228,717	454,130
Lift	205,449	843,140
Rentals	142,495	454,418
Management fee, in kind	76,400	125,500
Lessons	40,341	107,972
Dividend income	29,533	-
Sponsor	20,000	23,500
Events	17,976	14,216
Retail	15,396	30,073
Groups	15,200	57,553
Gift certificates	14,968	11,006
Miscellaneous income	11,671	-
Interest income	1,481	1,323
Lockers	1,133	1,707
Special project fund income	-	40,000
	<hr/>	<hr/>
Total revenues and support	1,280,553	2,553,875
EXPENSES		
Program services	931,353	1,667,020
General and administration	449,685	317,526
Fundraising	30,677	18,925
	<hr/>	<hr/>
Total expenses	1,411,715	2,003,471
CHANGE IN NET ASSETS FROM OPERATIONS	(131,162)	550,404
NET ASSETS RELEASED TO THE CITY	<hr/> (14,860)	<hr/> -
CHANGE IN NET ASSETS	(146,022)	550,404
NET ASSETS, Beginning of year	<hr/> 1,141,015	<hr/> 590,611
NET ASSETS, End of year	\$ <hr/> <u>994,993</u>	\$ <hr/> <u>1,141,015</u>

**STATEMENTS OF FUNCTIONAL EXPENSES
ON FOLLOWING PAGES**

GREAT BEAR MANAGEMENT, INC.
STATEMENTS OF FUNCTIONAL EXPENSES
FOR THE YEAR ENDED APRIL 30, 2024

	<u>Program Services</u>	<u>General and Administration</u>	<u>Fundraising</u>	<u>Total</u>
Payroll	\$ 247,369	\$ 277,842	\$ 24,341	\$ 549,552
Payroll taxes	20,018	21,255	1,862	43,135
Employee benefits	540	675	135	1,351
	<hr/>	<hr/>	<hr/>	<hr/>
Total salaries and related expenses	267,927	299,772	26,338	594,038
Utilities	135,976	15,108	-	151,084
Insurance	56,012	57,061	-	113,073
Advertising	69,056	24,465	4,339	97,860
Rent expense, in kind	68,760	7,640	-	76,400
Uniforms and training	72,321	-	-	72,321
Food and beverages	68,565	-	-	68,565
Supplies	30,771	31,346	-	62,117
Bank charges	29,462	-	-	29,462
Repairs and maintenance	25,328	-	-	25,328
Professional fees	12,215	-	-	12,215
Retail items purchased for resale	11,529	-	-	11,529
Snomax supplies	10,896	-	-	10,896
Travel	4,889	4,981	-	9,870
Dues and subscriptions	3,564	3,631	-	7,195
Donations	5,300	-	-	5,300
Lease expense	4,281	-	-	4,281
Licenses	1,810	-	-	1,810
Unrelated business tax	1,557	-	-	1,557
Interest expense	-	-	-	-
	<hr/>	<hr/>	<hr/>	<hr/>
Total expenses before depreciation	880,219	444,004	30,677	1,354,901
Depreciation	51,134	5,681	-	56,815
	<hr/>	<hr/>	<hr/>	<hr/>
Total expenses	\$ 931,353	449,685	30,677	1,411,716

GREAT BEAR MANAGEMENT, INC.

STATEMENTS OF FUNCTIONAL EXPENSES

FOR THE YEAR ENDED APRIL 30, 2023

	<u>Program Services</u>	<u>General and Administration</u>	<u>Fundraising</u>	<u>Total</u>
Payroll	\$ 743,772	\$ 198,060	\$ 15,801	\$ 957,633
Payroll taxes	64,138	15,152	1,209	80,499
Employee benefits	649	811	162	1,622
Total salaries and related expenses	808,559	214,023	17,172	1,039,754
Food and beverages	152,504	-	-	152,504
Insurance	112,029	29,037	-	141,066
Rent expense, in kind	112,950	12,550	-	125,500
Utilities	105,388	11,710	-	117,098
Advertising	77,854	26,536	1,753	106,143
Supplies	56,725	14,703	-	71,428
Bank charges	54,849	-	-	54,849
Uniforms and training	44,975	-	-	44,975
Repairs and maintenance	29,555	-	-	29,555
Retail items purchased for resale	17,826	-	-	17,826
Dues and subscriptions	10,212	2,647	-	12,859
Professional fees	11,773	-	-	11,773
Donations	7,360	-	-	7,360
Travel	5,490	1,423	-	6,913
Snomax supplies	5,778	-	-	5,778
Lease expense	3,750	-	-	3,750
Unrelated business tax	2,989	-	-	2,989
Licenses	2,249	-	-	2,249
Interest expense	132	-	-	132
Total expenses before depreciation	1,622,947	312,629	18,925	1,954,501
Depreciation	44,073	4,897	-	48,970
Total expenses	\$ <u>1,667,020</u>	\$ <u>317,526</u>	\$ <u>18,925</u>	\$ <u>2,003,471</u>

GREAT BEAR MANAGEMENT, INC.

STATEMENTS OF CASH FLOWS

FOR THE YEARS ENDED APRIL 30, 2024 AND 2023

	<u>2024</u>	<u>2023</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Change in net assets	\$ (146,022)	\$ 550,404
Adjustments to reconcile change in net assets to net cash (used) provided by operating activities		
Depreciation	56,815	48,970
Park improvements donated to the City	14,860	-
Changes in assets and liabilities		
Accounts receivable	9,409	(2,937)
Inventory	(14,751)	1,168
Prepaid expenses	69,257	11,903
Accounts payable	(1,649)	(2,683)
Accrued expenses	(193)	1,164
Gift cards payable	8,888	(19,183)
Customer deposits	75	1,800
	<u> </u>	<u> </u>
Net cash (used) provided by operating activities	(3,311)	590,606
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of property and equipment	(63,416)	(62,552)
Purchase of park improvements	(8,887)	(17,995)
	<u> </u>	<u> </u>
Net cash used in investing activities	(72,303)	(80,547)
Net (decrease) increase in Cash and Cash Equivalents	(75,614)	510,059
CASH AND CASH EQUIVALENTS, Beginning of year	<u>883,123</u>	<u>373,064</u>
CASH AND CASH EQUIVALENTS, End of year	<u>\$ 807,509</u>	<u>\$ 883,123</u>
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Interest paid	<u>\$ -</u>	<u>\$ 132</u>

GREAT BEAR MANAGEMENT, INC.

NOTES TO FINANCIAL STATEMENTS

1. NATURE OF ACTIVITIES AND SIGNIFICANT ACCOUNTING POLICIES

a. Nature of Activities

Great Bear Management, Inc. (the Organization) is a nonprofit corporation under the laws of the State of South Dakota. The Organization was organized to support and promote winter sports, Special Olympics, state, county and municipal parks and other facilities devoted to such purposes, and to provide management and operating services with respect to the foregoing.

b. Basis of Presentation

The financial statements of the Organization have been prepared using the accrual basis of accounting in accordance with U.S. generally accepted accounting principles, which requires that resources be classified for reporting purposes based on the existence or absence of donor-imposed restrictions. This is accomplished by classification of resources into two classes of net assets: without donor restrictions and with donor restrictions. Accordingly, the net assets of the Organization and changes therein are classified as follows:

- Net Assets Without Donor Restrictions – Net assets that are not subject to donor-imposed restrictions and may be expended for any purpose in performing the primary objectives of the Organization. The Organization's board may designate assets without restrictions for specific operational purposes from time to time.
- Net Assets With Donor Restrictions – Net assets with donor restrictions are resources that are restricted by a donor for use for a particular purpose or in a particular future period. Some donor-imposed restrictions are temporary in nature, and the restriction will expire when the resources are used in accordance with the donor's instructions or when the stipulated time has passed. Other donor-imposed restrictions are perpetual in nature; the Organization must continue to use the resources in accordance with the donor's instructions.

c. Use of Estimates

The presentation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

d. Cash and Cash Equivalents

For purposes of reporting cash flows, the Organization considers all financial instruments with an original maturity of three months or less to be cash equivalents.

e. Accounts Receivable

Accounts receivable are uncollateralized obligations owed to the Organization for group, event, or sponsorship revenues. Management periodically reviews accounts receivable and estimates the unrealizable portion through an allowance for credit losses. Accordingly, no allowance for credit losses has been provided as no material write-offs are expected. As of April 30, 2024, 2023, and 2022 the accounts receivable balance was \$1,047, \$10,456, and \$7,519, respectively.

GREAT BEAR MANAGEMENT, INC.

NOTES TO FINANCIAL STATEMENTS

1. NATURE OF ACTIVITIES AND SIGNIFICANT ACCOUNTING POLICIES (continued)

f. **Inventory**

Inventory is valued at cost on a first-in, first-out basis.

g. **Property and Equipment**

Property and equipment is stated at cost or at fair market value at the date of donation. Expenditures over \$2,500 for assets purchased for improvements that significantly add to the productive capacity or extend the useful life of an asset are capitalized. Expenditures for maintenance and repairs are charged to expense. When equipment is retired or sold, the cost and related accumulated depreciation are eliminated from the accounts and the resultant gain or loss is reflected in income.

Depreciation is computed using the straight-line method. Estimated useful lives for depreciation range from five to seven years. Depreciation expense totaled \$56,815 and \$48,970 for the years ended April 30, 2024 and 2023, respectively.

h. **Revenue Recognition**

Lift tickets, food & beverage, rentals, lessons, groups, and retail

The Organization recognizes revenue from lift tickets, food & beverage, groups, and retail at the point in time when the sale occurs. Revenue from rentals and lessons are recognized when the event occurs.

Season passes

Revenue is recognized over the ski season on a straight-line basis due to a fluctuating usage pattern.

Private events

Revenue from private events are recognized when the event occurs.

Sponsors

Revenue from sponsorships is recognized when the sponsoring event occurs.

Gift certificates

The Company sells gift cards. The Company does not charge fees on unused gift cards and cards do not expire. Revenue from gift cards is recognized when the gift card is redeemed by the customer, or the likelihood of the gift card being redeemed is remote and the Company has no legal obligation to remit the unused balance to relevant jurisdictions as unclaimed property. The Company estimates its gift card breakage rate based on historical redemption experience and recognized the projected breakage at April 30th, which is the time the Company considers one third redemption remote. At April 30, 2024 and 2023, contract liability (gift cards payable) in regard to unearned gift certificates was \$32,662 and \$23,774, respectively.

In-Kind management fee and special project fund

Revenue from in-kind management fee and special project fund is recognized in the period received. See note 3 and note 4.

GREAT BEAR MANAGEMENT, INC.

NOTES TO FINANCIAL STATEMENTS

1. NATURE OF ACTIVITIES AND SIGNIFICANT ACCOUNTING POLICIES (continued)

i. **Functional Allocation of Expenses**

All costs are directly allocated to program, management and general or fundraising with the exception of staff salaries and benefits, occupancy and office, advertising, depreciation, insurance, and miscellaneous. Management's estimated allocation of these costs is based on estimates of time and effort.

j. **Income Taxes**

The Organization is a not-for-profit organization that is exempt from income taxes, except for any unrelated business income, under Section 501(c)(4) of the Internal Revenue Code and classified by the Internal Revenue Service as other than a private foundation. During the fiscal years April 30, 2024 and 2023, the Organization incurred unrelated business income of \$20,000 and \$23,500, respectively, related to sponsorship/advertising income. Income taxes paid amounted to \$1,557 and \$2,989 for fiscal years April 30, 2024 and 2023, respectively.

The Organization believes it has appropriate support for any tax positions taken affecting its annual filing requirements, and as such, does not have any uncertain tax positions that are material to the financial statements. The Organization would recognize future accrued interest and penalties related to unrecognized tax benefits and liabilities in income tax expense if such interest and penalties are incurred.

k. **Concentration of Credit Risk**

The Organization maintains cash balances at one financial institution located in South Dakota. These balances, at times, exceed Federal Deposit Insurance Corporation limits of \$250,000. At April 30, 2024 and 2023 the Organization's uninsured cash balances totaled \$0 and \$671,788, respectively. The Organization has not experienced any losses in such accounts and believes it is not exposed to any significant credit risk on cash.

l. **Advertising Costs**

Advertising costs are charged to operations when incurred. Advertising expense for the years ended April 30, 2024 and 2023 was \$97,860 and \$106,143, respectively.

m. **Fair Value of Financial Instruments**

As of April 30, 2024, none of the assets and liabilities were required to be reported at fair value on a recurring basis. The carrying values of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximated their values due to the short-term nature of these financial instruments. There were no changes in methods or assumptions during the year ended April 30, 2023.

n. **Reclassifications**

Certain April 30, 2023 items may have been reclassified to conform with the April 30, 2024 financial statement presentation.

o. **Date of Management's Review**

Subsequent events were evaluated through August 15, 2024, which is the date that the financial statements were available to be issued.

GREAT BEAR MANAGEMENT, INC.

NOTES TO FINANCIAL STATEMENTS

1. NATURE OF ACTIVITIES AND SIGNIFICANT ACCOUNTING POLICIES (continued)

p. Recently Issued Accounting Pronouncements

Accounting Standards Adopted

As of May 1, 2023 the Organization adopted FASB ASU 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, as amended, which modifies the measurement of expected credit losses on certain financial instruments. The adoption of this standard did not have a material impact on the Organization's financial statements but did change how the allowance for credit losses is determined.

2. NET ASSET DESIGNATIONS AND RESTRICTIONS

The Organization has an agreement with the City of Sioux Falls to operate and manage a year-round recreational facility for public use. Under this agreement, the Organization is required to maintain a separate bank account for the revenue and expenses related solely to this enterprise.

Upon termination of the management agreement with the City of Sioux Falls, the Organization must relinquish all property at the recreational park including cash, inventory, rental equipment, and office supplies that were purchased for the purpose of operating and managing the facility.

The Organization has incurred approximately \$2,550,000 in park improvements since inception that are not shown on these financial statements as title has reverted to the City of Sioux Falls at the time the expenditure was complete. The Organization has incurred approximately \$27,000 in park improvements for an ongoing ski terrain project, that as of April 30, 2024 has not been completed but will revert to the city upon full completion.

As all assets listed on the statement of financial position as of April 30, 2024 and 2023 are used for, or are the result of the management and operations of the recreational facility managed on behalf of the City of Sioux Falls, all assets are considered with donor restricted.

3. MANAGEMENT AGREEMENT

The management agreement with the City of Sioux Falls dated April 30, 2023, to operate the facility, commenced on May 1, 2023 and will expired on April 30, 2028, unless earlier terminated under the terms of the agreement or subsequently extended. Under this agreement, the Organization does not receive any management fees or compensation, but also does not pay rent for the use of the land, buildings and other permanent fixtures located at the recreational facility and owned by the City. Management has determined that the estimated fair market value of the management fees not received and rent expense not assessed as of April 30, 2024 and 2023 would be \$76,400 and \$125,500, respectively. The estimated revenue has been recorded as in-kind management fee income and the estimated expense has been recorded as in-kind rent expense on the April 30, 2024 and 2023 statement of activities in accordance with generally accepted accounting principles.

4. NOTES PAYABLE

The Organization has a bank line of credit available, expiring June 2024. The stated amount available is \$150,000, with a variable interest rate, which was 8.25% at April 30, 2024. There was no outstanding line of credit balance at April 30, 2024 and 2023.

Interest expense was \$0 and \$85 for 2024 and 2023, respectively.

GREAT BEAR MANAGEMENT, INC.

NOTES TO FINANCIAL STATEMENTS

5. SPECIAL PROJECTS FUND

The Organization received contributions from the Sioux Falls Area Community Foundation. The Organization received approximately \$0 and \$40,000 in special projects funds for the years ended April 30, 2024 and 2023, respectively. The Organization has expended that money for the intended purpose.

The Organization is also the beneficiary of the Angus Anson Family Great Bear Endowment held by the Sioux Falls Area Community Foundation. Contributions received for both the special projects fund and Angus Anson fund are recorded when received. The total fund balances are designated funds of the Sioux Falls Area Community Foundation and are not reflected in Great Bear Management's financial statements.

6. OPERATING LEASES

The Organization leased lockers under a non-cancelable lease as of July 10, 2018. The minimum non-cancelable lease commitment pursuant to this lease is as follows:

Year Ended April 30, 2024	3,750
Total Commitment	<u>\$ 3,750</u>

7. LIQUIDITY AND AVAILABILITY OF FINANCIAL ASSETS

Financial assets available for general expenditure, including restricted amounts that are available for expenditures within one year of April 30, 2024 and 2023 are as follows:

Financial Assets:	2024	2023
Cash	\$ 778,150	\$ 883,123
Accounts receivable	1,047	10,456
	<u>\$ 779,197</u>	<u>\$ 893,579</u>

The Organization has a liquidity management policy to structure its financial assets to be available for its general expenditures, liabilities, and as other obligations come due. To manage unanticipated liquidity needs, the Organization has a committed line of credit of \$150,000 which it could draw upon.

1st Reading: _____
 2nd Reading: _____
 Date Adopted: _____
 Date Published: _____
 Effective Date: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE CODE OF ORDINANCES OF THE CITY BY REVISING CHAPTER 95: PARKS AND RECREATION SUBCHAPTER FEES.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

Section 1. That Section 95.070 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 95.070 DEFINITIONS.

For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT. A person between the ages 18 and 64.

ANNUAL AQUATIC SEASON. Shall be effective from date of purchase for one 12-month period, and include the Midco Aquatic Center, outdoor aquatic centers, and outdoor swimming pools.

ANNUAL RECREATION CENTER PASS. Shall be effective from the date of purchase for one 12-month period and includes recreation centers.

CHILD. A person between the ages three and 17.

COUPLE. Two individuals, at least one of whom is over the age of 18, who reside in the same household.

FALL, WINTER, AND SPRING AQUATIC SEASON. All operational days at the Midco Aquatic Center excluding the summer aquatic season.

FALL, WINTER, AND SPRING REDUCED-INCOME. Families/individuals who are residents of Sioux Falls and who actively receive reduced or free school lunches, who actively receive Medicaid benefits, receive South Dakota Temporary Assistance for Needy Families (TANF), who presently have foster children residing in the household, or have an active Dakota EBT card—food stamp card.

FAMILY. Immediate family members living in the household, including step and foster children. It does not mean extended family such as grandparents, aunts, uncles, and children older than 18 years of age.

FREE PASS/FREE SEASON PASS. Families/individuals who are residents of Sioux Falls and have an active Dakota EBT card—food stamp card or receive South Dakota Temporary Assistance for Needy Families (TANF).

INDOOR AQUATIC FACILITY. An ADA accessible facility located within a recreation center that may include, but is not limited to, amenities such as a leisure pool, zero-depth beach entry, play features, water slides, lap lanes, and lazy river.

INFANT. A person between the ages zero to less than three years old.

JACOBSON PLAZA ICE RIBBON. An outdoor refrigerated sheet of ice that may be used for ice skating and other recreational purposes.

MIDCO® AQUATIC CENTER. An indoor, ADA accessible facility that may include, but is not limited to, amenities such as leisure pool, zero-depth beach entry, play features, water slides, lap lanes, current channel, and diving boards.

MONTHLY RECREATION CENTER PASS. Shall be effective from the date of purchase in any calendar month to the corresponding day of the next month if such day exists, or if not, to the last day of the next month.

OUTDOOR AQUATIC CENTER. An ADA accessible facility that may include, but is not limited to, amenities such as leisure pool, zero-depth beach entry, play features, water slides, lap lanes, and lazy river. (Drake Springs, Laurel Oak, and Terrace Park.)

OUTDOOR SPRAY PARK. A standalone structure not part of the Midco Aquatic Center from which water is sprayed or released but does not accumulate.

OUTDOOR SWIMMING POOL. A pool of water with depths from two to 12 feet of water, which may include lap lanes and diving boards. (Frank Olson and Kuehn.)

OUTDOOR WADING POOL. A pool of water with a separate entrance that may include 36 inches or less of water depth and play features. (McKenna, Frank Olson, and Kuehn.)

RECREATION CENTER. An indoor, ADA accessible facility that may include, but is not limited to, amenities such as an indoor aquatic facility, gymnasium, multi-purpose space, walking/running track, and fitness space. A recreation center shall not include the Midco Aquatic Center.

REDUCED-INCOME. Families/individuals who are residents of Sioux Falls and actively receive reduced or free school lunches, or who actively receive Medicaid benefits, receive South Dakota Temporary Assistance for Needy Families (TANF), who presently have foster children residing in the household, or have an active Dakota EBT card–food stamp card.

RESIDENT OF SIOUX FALLS. Any person whose place of residence is within the city limits of Sioux Falls.

SENIOR CITIZEN. A person age 65 and older.

SPLASH PASS. A transferrable pass to be redeemed only toward the cost of admission at the Midco Aquatic Center, outdoor swimming pools and outdoor aquatic centers.

SUMMER AQUATIC SEASON. The season of operation generally between the months of May through August as established annually by Sioux Falls Parks and Recreation at the Midco Aquatic Center, indoor aquatic facilities, outdoor aquatic centers, and outdoor swimming pools.

VETERAN. An individual who has or is currently serving in the United States military and must provide documentation of service such as a Military ID.

Section 2. That Section 95.071 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 95.071 RECREATION ACTIVITY AND FACILITY FEES.

(b)	<i>Ice Rink Fees</i>	
	Outdoor rinks (excluding the Jacobson Plaza Ice Ribbon)	
	Ice skate rental adult	\$3
	Ice skate rental children	\$1
	Ice skate rental senior citizen	\$2
	Jacobson Plaza Ice Ribbon	
	Skate rental (all ages)	\$3
	Skate time reservation	\$5

Date adopted: _____.

Paul TenHaken, Mayor

ATTEST:

Jermery J. Washington, City Clerk

1st Reading: _____
 2nd Reading: _____
 Date Adopted: _____
 Date Published: _____
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ORDINANCE NO. _____

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§ 95.071 RECREATION ACTIVITY AND FACILITY FEES.

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	Outdoor rinks (excluding the Jacobson Plaza Ice Ribbon)	
	Ice skate rental adult	\$3
	Ice skate rental children	\$1
	Ice skate rental senior citizen	\$2
	Jacobson Plaza Ice Ribbon	
	Skate rental (all ages)	\$3
	Skate time reservation	\$5

Date adopted: _____.

Paul TenHaken, Mayor

ATTEST:

Jermery J. Washington, City Clerk

1st Reading: _____
 2nd Reading: _____
 Date Adopted: _____
 Date Published: _____
 Effective Date: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE CODE OF ORDINANCES OF THE CITY BY AMENDING CHAPTER 95: PARKS AND RECREATION, SUBSECTION (b) OF SECTION 95.029: ALCOHOLIC BEVERAGES.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

Section 1. That Subsection (b) of Section 95.029 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 95.029 ALCOHOLIC BEVERAGES.

(b) No person shall consume any alcoholic beverages in Falls Park, Fawick Park, or any park property located adjacent to and within 500' of the Big Sioux River between Falls Park Dr. south to the Cliff Ave. bridge located between 12th St. and 14th St., except upon application meeting the requirements of SDCL 35-4-124 and approval by the city council. The restriction contained within this subsection shall not apply to the licensed serving of wine and malt beverages by the Falls Park Overlook Café within the Café's building and patio area or where alcoholic beverages are licensed to be sold.

Date adopted: _____.

Paul TenHaken, Mayor

ATTEST:

Jermery J. Washington, City Clerk

1st Reading: _____
 2nd Reading: _____
 Date Adopted: _____
 Date Published: _____
 Effective Date: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE CODE OF ORDINANCES OF THE CITY BY AMENDING CHAPTER 95: PARKS AND RECREATION, SUBSECTION (b) OF SECTION 95.029: ALCOHOLIC BEVERAGES.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

Section 1. That Subsection (b) of Section 95.029 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 95.029 ALCOHOLIC BEVERAGES.

(b) No person shall consume any alcoholic beverages in Falls Park, Fawick Park, or any park property located adjacent to and within 500' of the Big Sioux River between Falls Park Dr. south to the Cliff Ave. bridge located between 12th St. and 14th St., except upon application meeting the requirements of SDCL 35-4-124 and approval by the city council. The restriction contained within this subsection shall not apply to the licensed serving of wine and malt beverages by the Falls Park Overlook Café within the Café's building and patio area or where alcoholic beverages are licensed to be sold.

Date adopted: _____.

Paul TenHaken, Mayor

ATTEST:

Jermery J. Washington, City Clerk

**JACOBSON PLAZA FOOD AND BEVERAGE SERVICES AGREEMENT
BETWEEN THE CITY OF SIOUX FALLS
AND
WASHINGTON PAVILION MANAGEMENT, INC.**

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JACOBSON PLAZA FOOD AND BEVERAGE SERVICES AGREEMENT

This Jacobson Plaza Food and Beverage Services Agreement (“Agreement”) is made and entered into this ____ day of _____, 2024, by and between the City of Sioux Falls, South Dakota, a home rule chartered municipality, organized and existing under South Dakota law (“City” or “Owner”), and Washington Pavilion Management, Inc., a nonprofit organization organized under the laws of the state of South Dakota (“Food and Beverage Operator” or “WPMI”).

RECITALS:

- A. The City is the owner of Jacobson Plaza at Falls Park, located at 810 North Phillips Avenue, Sioux Falls, SD 57104, referred to in this Agreement as “Jacobson Plaza.”
- B. The Jacobson Plaza skate ribbon, Gathering Hall, and Warming House substantial completion date is anticipated in the winter of 2024–2025.
- C. Open year-round, Jacobson Plaza is a vibrant and multifaceted park designed to enrich the recreational and social fabric of the city. Jacobson Plaza will feature several amenities that include a state-of-the-art skate ribbon, largest inclusive playground in the region, T. Denny Sanford Splash Pad, Pawsible Dog Park, an on-site Warming House with a Party Room that can be arranged in multiple configurations and is appropriate for parties, small corporate gatherings, and other private events, along with a connected Gathering Hall with outdoor seating, Common Space area with public restrooms between the Gathering Hall and flexible use Warming House.
- D. The City wishes to activate the amenities located in Jacobson Plaza in a manner that provides a welcoming and engaging experience allowing users to spend time enjoying outdoor park and recreation experiences through every season.
- E. The City desires to retain management over the skate ribbon, splash pad, playground, and other park features, along with the Warming House, including park and recreation activities at Jacobson Plaza in a manner that optimizes the ability of the Food and Beverage Operator to promote food and beverage services.
- F. The Food and Beverage Operator is engaged in, among other things, the business of managing and operating food, beverage (alcoholic and nonalcoholic), novelty, and merchandise concession services and catering services at the Washington Pavilion and Orpheum Theater.
- G. The City desires to engage the Food and Beverage Operator, and the Food and Beverage Operator desires to accept the engagement to provide all food and beverage services at the Gathering Hall with outdoor seating and the Party Room within the Warming House and the Flexible Use Space at Jacobson Plaza, along with Concession Sales and Catering Sales located within Jacobson Plaza on the terms and conditions set forth in this Agreement.

H. The City and the Food and Beverage Operator intend to work collaboratively to ensure residents and visitors alike have a positive and memorable park and recreation experience at Jacobson Plaza.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, the parties agree as follows:

Section 1. Definitions.

1.1 Defined Terms. For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

- a) “Adjusted Operating Income” is defined as Operating Income (“Losses”) plus depreciation on owned or leased Capital Equipment or Capital Improvements.
- b) “Agreement” shall refer to the contract executed between the Food and Beverage Operator and the City.
- c) “Agreement Year” refers to a fiscal year beginning July 1 and ending June 30 annually, and every July 1 through June 30 for every year thereafter until the Agreement terminates.
- d) “Alcoholic Beverage” shall refer to all alcoholic drinks, beers, and wines, regardless of where they are provided, in what packaging or format, or to whom they are provided (beverages containing THC shall not be sold within Jacobson Plaza).
- e) “Approved Operating Budget” means any annual Budget submitted by the Food and Beverage Operator with respect to the operation of the Food and Beverage Services as outlined in Section 2.1(b) approved by the City Finance Office and Director of Parks and Recreation pursuant to Section 12.3 of this Agreement.
- f) “Base Fee” as defined in Section 6.1 of this Agreement.
- g) “Budget” means a projection of revenues and expenses for a specified purpose and period of time.
- h) “Capital Equipment” means all furniture, fixtures, machinery and equipment to be utilized for the operation of Food and Beverage Services at Jacobson Plaza, either additional or replacement, having a per item original cost of \$5,000 or more and an expected useful life of more than one year.
- i) “Capital Improvements” mean any additions, alterations, renovations, repairs, and improvements to the Gathering Hall located in Jacobson Plaza with an initial dollar cost of not less than \$5,000 per project.

- j) “Cash Flow Shortfall” is as defined in Section 12.1 of this Agreement.
- k) “Catering Sales,” also referred to as “Catered Event,” refers to any prearranged food and beverage function of multiple customers, such as banquets, where payment for the entire function rests with one individual or company whether on or off-site.
- l) “City” means the City of Sioux Falls, South Dakota, a home rule-chartered municipality organized and existing under South Dakota law.
- m) “Common Space” refers to the area between the Warming House and Gathering Hall, which shall be used for common hallways and public restrooms as shown in **Exhibit B**.
- n) “Concession Sales” shall refer to all sales of food and beverages sold from permanent or portable food and beverage stands, carts, food trucks, and kiosks to individual customers, whether on- or off-site.
- o) “Contract Administrator” means the Director of Parks and Recreation or the City’s official, as from time to time designated by the City, as the person with authority to act (except in the instance other action or approval of the City—whether by its City Council, Mayor, or others—is required) with respect to matters pertaining to this Agreement and items used to operate the Food and Beverage Services at Jacobson Plaza.
- p) “Flexible Use Space” shall refer to the space used in the Warming House for gathering and putting on skates during the period the ribbon is utilized for ice skating, other recreational activities, and for public or private events as shown in **Exhibit B**.
- q) “Food and Beverage Operator” shall refer to the party selected by the City to provide the Food and Beverage Services and event management.
- r) “Food and Beverage Services” are as defined in Section 2.1b of this Agreement.
- s) “Food Service” shall refer to all food, beverage (alcohol and nonalcoholic), and Merchandise sales and operation within Jacobson Plaza.
- t) “Gathering Hall” shall refer to a full-service food and beverage area with additional outdoor seating as shown in **Exhibit B**.
- u) “Gross Revenues” shall refer to the total of all sales made by the Food and Beverage Operator from the operation of Food and Beverage Services and event management, along with amounts received by the Food and Beverage

Operator from program fees, sales of sponsorships, events rentals, any subcontractor sales, whether such amounts are evidenced by cash, check, credit, charge account, exchange, or otherwise, including but not limited to supplemental fees charged in connection with catering performed at the Gathering Hall as described in Section 2.1(b)(iii), less retail sales taxes and other direct taxes imposed upon receipts collected from the consumer,

- v) "Holiday Hours" refers to New Year's Day, Martin Luther King Day, President's Day, Easter, Memorial Day, Juneteenth, 4th of July, Labor Day, Native American Day, Veteran's Day, Thanksgiving Day, and Christmas Day, along with the Sioux Falls School District scheduled days off.
- w) "Jacobson Plaza" refers to the overall complex consisting of the state-of-the-art skate ribbon, largest inclusive playground in the region, T. Denny Sanford Splash Pad, Pawsible Dog Park, an on-site Warming House with a Party Room, Flexible Use Space and support areas, connected by a Common Space to a full-service Gathering Hall, and all future additions and improvements thereto, and replacements of the amenities located on the premises which site plan is as shown in **Exhibit A** which is attached hereto and made a part of this Agreement.
- x) "Incentive Fee" is as defined in Section 6.2 of the Agreement.
- y) "Inventory" means consumable and nonconsumable items to be used in the Food and Beverage Services and related activities at Jacobson Plaza including but not limited to produce, meats, dry stores, liquor and beverages, cooking equipment, uniforms, linens, merchandise held for resale, and any other items not considered as capital equipment.
- z) "Laws" means all federal, state, local, and municipal regulations, ordinances, statutes, rules, and constitutional provisions.
- aa) "Leasehold Improvements" refers to all equipment, fixtures, furnishings, finishes, and construction materials affixed to the Gathering Hall by more than an electrical or gas connection and utilized by the Food and Beverage Operator to providing Food and Beverage Services and event management.
- bb) "Marketing Plan" means a plan for the cross-advertising and promotion of Jacobson Plaza and events at Jacobson Plaza, which may include, but not be limited to, the following elements: approved on-site marketing signage; market research; market position; marketing objectives; marketing strategies; targeted events; industry advertising campaigns; internal and external support staffing requirements; social media marketing, advertising and sponsorship opportunities at the local and regional level; merchandising; food and beverage plans; public relations plans; media relations plans; and policies regarding the use of trade/barter.

- cc) "Merchandise" shall refer to the nonexclusive sales of nonedible products such as souvenirs, clothing, etc., sold at Jacobson Plaza. The merchandise should generally be related to branding of The Falls, Jacobson Plaza, etc.
- dd) "Operating Account" is as defined in Section 12.3(f) of this Agreement.
- ee) "Operating Expenses" mean the expenses and expenditures incurred by the Food and Beverage Operator in promoting, operating, maintaining, and managing the Food and Beverage Service, event management, and related activities at Jacobson Plaza, which 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: full-time and part-time employee compensation and payroll expenses on a pro-rata share based on time allocation to Food and Beverage Services at Jacobson Plaza including agreed-upon benefit cost allocation, employee bonuses, severance costs, employment taxes, and all employment-related costs for Food and Beverage Operator's employees assigned to provide direct services at Jacobson Plaza; operating supplies, materials, and parts costs; costs of any independent contractors; advertising, marketing, social media, group sales, and public relations costs; commissions; janitorial and cleaning expenses; data processing costs; dues, subscriptions, and membership costs for Food and Beverage Operator's employees; the Food and Beverage Operator's costs of procuring, administering, and maintaining the insurance policies required pursuant to this Agreement and deductibles, except the cost of the professional liability insurance policy; costs incurred by Food and Beverage Operator to procure and maintain permits and licenses; professional fees; printing and stationery costs; postage and freight costs; dues; subscriptions; banking and credit card services fees; rental costs, including operating lease payments; computer purchase, Internet, cable, and telephone charges, copier/printer/facsimile equipment rental charges, software costs, website construction, social media platform, maintenance, and hosting costs; replacement of Smallwares; repairs and maintenance costs for equipment when not consisting of Capital Improvements; depreciation expense on owned or leased Capital Equipment; security expenses; safety and medical expenses; taxes; all fees payable to Food and Beverage Operator as compensation pursuant to Sections 6.1, 6.2, and 6.3 of this Agreement; and defense and litigation costs and expenses under Section 2.1(b)(xix) of this Agreement; and an independent agreed-upon procedures review as required by the Contract Administrator of Jacobson Plaza's financial statements as agreed to by the City and Food and Beverage Operator. Operating Expenses do not include: (i) expenses or expenditures in connection with Capital Improvements or any outlay of funds for Capital Equipment except operating lease payments; (ii) any expenses relating to Food and Beverage Operator personnel not actively involved in the day-to-day operations at Jacobson Plaza; (iii) the cost of insurance premiums incurred by the City to purchase property and hazard insurance for Jacobson Plaza, the City's personal property located in Jacobson

Plaza, and the City's revenues from the operation of Jacobson Plaza due to a casualty occurrence; (iv) utility services, which are paid for by the City.

- ff) "Operating Income (Loss)" means, with respect to an Agreement Year, the excess, if any, of Operating Revenues over Operating Expenses for the Agreement Year, in the case of Operating Income, and the excess, if any, of Operating Expenses over Operating Revenues for the Agreement Year, in the case of an Operating Loss.
- gg) "Operating Revenues" mean the Gross Revenues of every kind or nature derived from operating, managing, and promoting the Food and Beverage Services and other coordinated events or activities managed by the Food and Beverage Operator and all other ancillary revenues related to Jacobson Plaza less cost of goods sold that are required to be accounted for in the Operating Account, all as determined in accordance with generally accepted accounting principles. Operating Revenues include but are not limited to: revenues from Merchandise sales (net of cost of goods sold); revenues from skate/ice time for private events held during nonpublic hours; advertising and sponsorship revenues; equipment rentals; Food and Beverage Services (net of cost of goods sold); all revenues from activities that are nonfood related but are booked by the Food and Beverage Operator; revenues from room rental at the Gathering Hall and Warming House; and co-hosted events revenues; all as determined in accordance with generally accepted accounting principles. Operating Revenues do not include: (i) interest income; (ii) income from sale of assets; (iii) insurance proceeds; or (iv) City funding pursuant to this Agreement.
- hh) "Party Room" refers to a room within the Warming House that can be arranged in multiple configurations and is appropriate for parties, small corporate gatherings, and other private events as shown in **Exhibit B**.
- ii) "Person" means any individual, general partnership, limited partnership, limited liability partnership, corporation, joint venture, trust, business trust, limited liability company, cooperative, or association, and the successors and assigns of any of the foregoing and, unless the context otherwise requires, the singular will include the plural, and the masculine gender will include the feminine and the neuter, and vice versa.
- jj) "Proposed Operating Budget" means any annual Budget with respect to the operation of Jacobson Plaza proposed by the Food and Beverage Operator for the City's approval.
- kk) "Smallwares" shall refer to the service ware, utensils, crockery, glassware, dishware, and cutlery to be used in the food and beverage operation.
- ll) "Term" is as defined in Section 7.1 of this Agreement.

- mm) “Title Sponsors” refers to the Title Sponsorship Agreements the City has entered for Jacobson Plaza at Falls Park, Pawsible Dog Park, T. Denny Sanford Splash Pad, and any other naming agreements that the City may enter during the term of this Agreement.
- nn) “Warming House” shall refer to the flexible use building adjacent to the Gathering Hall that includes a Party Room, Flexible Use Space, as well as areas for the rental of skates, offices, first aid, and storage as shown in **Exhibit B**.

Section 2. Engagement of WPMI; Scope of Services.

2.1 Engagement.

- a) General Scope. The City hereby engages the Food and Beverage Operator during the Term of this Agreement as the exclusive provider of the Food and Beverage Services for the entire Jacobson Plaza site, except for as agreed upon in the Agreement. The Jacobson Plaza site is identified on **Exhibit A**. Food and Beverage Operator accepts the engagement and will perform the Food and Beverage Services and event management during the Term. The Food and Beverage Operator will at all times be an independent contractor, and this Agreement will not in any way create or form a partnership or joint venture with the City and the Food and Beverage Operator. No agent or employee of the Food and Beverage Operator will, under any circumstances, be deemed an agent or employee of the City. As an independent contractor, the Food and Beverage Operator and its employees will not be within the protection or coverage of the City’s workers’ compensation insurance, nor will the Food and Beverage Operator and its employees be entitled to any current or future benefits provided to the City’s employees. The City will not be responsible for withholding social security taxes, income taxes, or unemployment compensation taxes from payments made by the City to the Food and Beverage Operator. The Food and Beverage Operator’s provision of Food and Beverage Services and performance of the duties under this Agreement will be in Food and Beverage Operator’s own name and subject to the limitations of this Agreement.
- b) Food and Beverage Services.
 - (i) Gathering Hall Food Service/Hours of Operation. The Food and Beverage Operator will provide Food and Beverage Services during all events held at the Gathering Hall and within Jacobson Plaza as depicted on **Exhibit B**. The Food Service will be provided during hours to adequately meet public demand and when it is most beneficial to patrons and reflective of Gathering Hall usage (“Business Hours”). The Food and Beverage Operator shall establish Holiday Hours that are beneficial to patrons. The Food and Beverage Operator shall set Business Hours and Holiday Hours in consultation with the Contract

Administrator. The Gathering Hall shall be operated in accordance with park purposes, and private events shall not conflict with peak park hours, unless the Food and Beverage Operator has received express permission from the City to host such an event during such times. The Food and Beverage Operator will furnish all management, supervision, labor, and other services as required, which is consistent with generally accepted operations of a high-quality Food Service during Business and Holiday Hours. Notwithstanding the next sentence, failure of the Food and Beverage Operator to staff and operate the Gathering Hall during Business and Holiday Hours shall be a material breach of the Agreement and cause for termination at the City's sole discretion. Food and Beverage Operator will determine whether to stay open during inclement weather. If the Food and Beverage Operator determines to remain open, the City will not be responsible for clearing sidewalks, removing snow from the parking lot, and cleaning the common areas should the decision be made to close the park.

- (ii) Concessions. The Food and Beverage Operator will provide and sell to individual customers, food, beverages, and Merchandise from permanent or portable stands, carts, kiosks, or food trucks for all events at the Gathering Hall and within Jacobson Plaza. The Food and Beverage Operator will post, display, or make otherwise digitally available all menu items and prices at all permanent and portable stands for food, beverages, and Merchandise offered for sale. All signs must be consistent with the graphics of Jacobson Plaza and the sign templates must be approved by the Contract Administrator. Handwritten signs are not permitted.
- (iii) Catered Events. The Food and Beverage Operator will provide all Catering Sales including serving tables, bars, linens, place settings, other supplies and materials, and appropriate room and table décor on a timely basis for all Catered Events located in Jacobson Plaza as depicted on **Exhibit A**. Food and Beverage Operator will remove serving tables, bars, linens, place settings, and room and table décor immediately following the conclusion of each Catered Event. Food and Beverage Operator may provide digitally available catering menus utilizing Jacobson Plaza's logos. At the termination of the Agreement, the Food and Beverage Operator will assign to the City, or the succeeding Food and Beverage Operator selected by the City, all catering contracts and catering deposits for Catered Events scheduled to occur after the effective date of termination.
- (iv) Vending Machines. The Food and Beverage Operator may provide vending machines for use in times and locations as approved by the Contract Administrator. Vending prices will be established by the

Food and Beverage Operator in consultation with the Contract Administrator.

- (v) Merchandise. The Food and Beverage Operator may sell Merchandise as mutually agreed upon by the Contract Administrator.
- (vi) Equipment/Supplies. Food and Beverage Operator will be responsible for providing all food, beverages, Merchandise, marketing materials, Smallwares, and employee uniforms and other noncapital equipment. The Food and Beverage Operator will also provide the Food and Beverage Services office equipment, computers, software, and point-of-sale systems. All costs associated with providing the foregoing will be paid from the Operating Account. All the foregoing must be stored at the Gathering Hall or other on-site facilities at Jacobson Plaza and at no other location without the Contract Administrator's prior approval. Day-to-day replacements of and repairs to the foregoing will be an Operating Expense. Repairs and replacements shall be made in a timely manner and shall not accumulate over time to surpass the \$5,000 threshold. The City will not be responsible for damage to or loss of any of the foregoing items. The City will not be responsible for damage to or loss of the foregoing items resulting from a power failure, flood, fire, explosion, or other causes. Notwithstanding the foregoing, the City will make available to the Food and Beverage Operator property insurance proceeds received by the City, if any, as a result of such loss, under policies of property insurance maintained by the City.
- (vii) Janitorial Services. The Food and Beverage Operator shall provide all janitorial and cleaning related to the Gathering Hall and its kitchen and dining areas. The Food and Beverage Operator shall be responsible for light duty cleaning of the Party Room and the Flexible Use Space after any food and beverage operator's scheduled events in those areas, returning the facilities back to the condition prior to the event. Food and Beverage Operator will be responsible for light cleaning of the Common Space inclusive of public restrooms during periods agreed upon by the Contract Administrator and Food and Beverage Operator. The Food and Beverage Operator shall also take care to clean up any outdoor areas where Food and Beverage Services may be provided.
- (viii) Trash and Waste Removal. The Food and Beverage Operator shall be responsible to remove trash to on-site dumpsters and provide for replacement of trash liners in the Gathering Hall, as well as Flexible Use Space and Party Room located in the Warming House, and outdoor areas when the Food and Beverage Operator schedules events in those areas.
- (ix) Pest Control. Food and Beverage Operator shall be responsible for pest

control inside the Gathering Hall.

- (x) Payment of Expenses. The Food and Beverage Operator will pay, when due, all expenses from the Operating Account.
- (xi) Event Scheduling. The Food and Beverage Operator will cooperatively schedule with Sioux Falls Parks and Recreation special events and cross-promoted events that combine activities with Food and Beverage Service and/or Catered Events. The Food and Beverage Operator shall give the Contract Administrator a minimum of ten days advance notice for private events to ensure Parks and Recreation staffing for operations of Jacobson Plaza.
- (xii) Network and Phone Service Access. The Food and Beverage Operator shall have a backup plan for Internet connectivity that will serve the point-of-sale and phone system in the event there is Internet or other utility disruption.
- (xiii) Priority Use. The Food and Beverage Operator shall collaborate with Sioux Falls Parks and Recreation to establish City priorities for use of the Flexible Use Space and Party Room in accordance with Section 3.2(c) of this Agreement.
- (xiv) Marketing Plan. The Food and Beverage Operator will develop an annual marketing plan and engage in marketing, advertising, solicitation, and promotional activities as necessary and appropriate to develop the potential of the Gathering Hall, Flexible Use Space, and Party Room located in Jacobson Plaza, and the cultivation of broad community support for the utilization of the Gathering Hall, Flexible Use Space, and Party Room located in Jacobson Plaza. The City will retain the sole authority and responsibility to name any Jacobson Plaza facilities and their respective components. The Food and Beverage Operator will work in conjunction with the Contract Administrator to name and/or brand the Gathering Hall, as well as determining appropriate exterior signage on or around the Gathering Hall.
- (xv) Comply with Laws. The Food and Beverage Operator will maintain, manage, and operate the Food and Beverage Services provided for in this Agreement in compliance with all laws and with the periodic approvals of the City required pursuant to this Agreement, or as otherwise required by law.
- (xvi) Social Media and Websites. The Food and Beverage Operator will maintain and manage websites, social media platforms, and utilize other current and subsequently available Internet-based technologies to market, promote, and advertise the Gathering Hall located in Jacobson Plaza, along with Food and Beverage Services within Jacobson Plaza.

The Food and Beverage Operator's social media and websites shall not link to any web pages, social media, or Internet sites that are political, religious, indecent, scandalous, immoral, or illegal in nature or could reasonably be deemed offensive or not compliant with community standards of good taste or applicable law. The Food and Beverage Operator shall cross-link the Gathering Hall's websites to the City's website. The Food and Beverage Operator will maintain the Gathering Hall's websites. The City will allot Food and Beverage Operator banner presence on the City's website. The City's website (siouxfalls.gov) will not be used for the sale and display of commercial advertising in any form including banner advertisements, shopping carts, buttons, and text advertisements. The City will use an exit box notification whenever a visitor chooses to use a hypertext link to the Food and Beverage Operators website for Jacobson Plaza, stating the user is leaving the City's website.

- (xvii) Operating Plan. The Food and Beverage Operator will develop and deliver to the Contract Administrator the Operating Plan as follows:
 - i. Private rental policies.
 - ii. Alcoholic beverage management plan.
 - iii. Hours of operation.
 - iv. Staffing plan.
 - v. Delivery management plan.
- (xviii) Comprehensive Sales and Inventory Control Program. Food and Beverage Operator shall develop and implement a comprehensive sale and inventory control program to ensure an optimal cost of goods sold ratio.
- (xix) Legal. Food and Beverage Operator, after consultation with the City Attorney, or his or her designee, will institute or defend against, with legal counsel chosen by the Food and Beverage Operator, any legal actions or proceedings initiated by contracting parties and others, and those legal actions or proceedings necessary or appropriate in connection with the provision of Food and Beverage Services at Jacobson Plaza, including, without limitation, to collect charges, rents, or other revenues due, or to cancel, terminate, or sue for damages under any license, occupancy agreement, rental agreement, advertising agreement, sponsorship agreement, supplier agreement, service contract, sales contract, or any other contract or agreement for any breach or default by any licensee, lessee, advertiser, concessionaire or other contract party, with the defense and litigation costs and expenses,

including reasonable attorneys' fees, to be considered Operating Expenses. The City will fully cooperate with Food and Beverage Operator in its exercise of its rights and obligations under this Section 2.1(b)(xix).

- (xx) Maintain a Master Schedule/Records. The Food and Beverage Operator shall maintain a master set of records and schedules for the Food and Beverage Services and event management provided.
- (xxi) Contracts. The Food and Beverage Operator shall negotiate, execute (in Food and Beverage Operator's own name), deliver, and administer service, sponsorships and other contracts involving the day-to-day operations of the Food and Beverage Services and event management in Jacobson Plaza. The Food and Beverage Operator will consult with the Contract Administrator (input and comment), in advance of contract execution, regarding the terms of contracts providing major sources of revenue for Jacobson Plaza. The Food and Beverage Operator shall use good faith efforts to include in any such agreement 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. The Food and Beverage Operator shall obtain the prior approval of the Contract Administrator (which approval shall not be unreasonably withheld or delayed) before entering into any such contracts with a term that expires after the term of this Agreement, unless such contract, by its express terms, can be terminated by the Food and Beverage Operator or the City following expiration of the term without any penalty. In connection with any contracts, the Food and Beverage Operator shall use good faith efforts to 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 Food and Beverage Operator 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 Food and Beverage Operator retained by the City.
- (xxii) Cash or Point-of-Sale Registers. The Food and Beverage Operator will use computerized cash or point-of-sale registers for the recordation of all Gross Revenues.
- (xxiii) Marketing and Promotion. The Food and Beverage Operator will be responsible for marketing and promoting its Food and Beverage Services and event management for the public's use. The Food and Beverage Operator will work proactively to market and advertise its Food and Beverage Services in order to seek out customers willing to book events. The Food and Beverage Operator will maintain food and

beverage service information on the Jacobson Plaza websites, Facebook pages, and other technologies now existing and developed in the future.

- (xxiv) Liens. The Food and Beverage Operator will operate the Food and Beverage Services in a manner so as to not permit any liens to attach to the Gathering Hall, Warming House, equipment, inventory, Leasehold Improvements, uniforms, Smallwares, or any other personal property and consumables utilized for Food and Beverage Services.
- (xxv) Approval of the City. To the extent the City's approval is required under the terms of this Agreement, the written approval of the Contract Administrator will constitute the City's approval, except to the extent the approval of another party is expressly required by the terms of this Agreement or to the extent the City provides written notice to the Food and Beverage Operator that approval is required pursuant to the City's charter or ordinances. City approval (or denial) will be issued timely under the applicable circumstances, and approvals will not be unreasonably withheld.
- (xxvi) Honor of Title Sponsorship Agreements. The City retains the sole right to name Jacobson Plaza facilities, except to the extent that the City will work collaboratively with Food and Beverage Services to name/brand the Gathering Hall. The City has already entered into the Title Sponsorship Agreements for Jacobson Plaza at Falls Park, Pawsible Dog Park, and T. Denny Sanford Splash Pad. The Food and Beverage Operator will fully observe and comply with all marketing, advertising, and operational requirements for use of the title sponsors' names and logos in connection with the Gathering Hall located in Jacobson Plaza, Pawsible Dog Park, and T. Denny Sanford Splash Pad, and future title sponsorships located within Jacobson Plaza.
- (xxvii) Membership/Discounts. Currently, the Food and Beverage Operator, under its separate management agreement for the Washington Pavilion and Orpheum, offer membership and/or discounts at the Washington Pavilion and Orpheum. Cross discounts at Jacobson Plaza are prohibited unless the Contract Administrator authorizes in advance.
- (xxviii) Advertisement/Sponsorships. Food and Beverage Operator will market advertising and/or sponsorships for Jacobson Plaza. The Food and Beverage Operator will retain, invoice, and collect all amounts due, and count as Operating Revenue all payments collected by the Food and Beverage Operator on account of (i) sponsorship/advertising contracts sold and executed in Food and Beverage Operator's name; and (ii) sponsorship/advertising contracts sold by the City but executed by the Food and Beverage Operator. The content and form of all advertising, sponsorship, and promotional material under this

Agreement (the “Advertisement Material”) shall be subject to the prior written approval of the Contract Administrator, which approval shall not be unreasonably withheld. Notwithstanding the previous sentence, the Contract Administrator has the right to register objections to the Advertisement Material which it believes does not reflect well on the City or its image. It shall be deemed reasonable for the Contract Administrator to reject, in whole or in part, any Advertisement Material that it, in its sole discretion, determines is inconsistent with this Agreement or may violate the rights of others. Advertisement Material shall contain: (i) no misleading, unwarranted, exaggerated, or doubtful claims or statements, and Sponsor guarantees the truth of all claims and statements made in all Advertisement Materials; (ii) no infringement of another person’s or entity’s rights, whether by plagiarism, copyright or trademark infringement, or otherwise; (iii) no disparagement of any competitor or any competitor’s goods or services; (iv) no statements or announcements that are slanderous, obscene, profane, vulgar, repulsive, or offensive, either in theme or in treatment; (v) no mention by name of other generally advertised products or services; (vi) no lotteries, drawings, or other contests prohibited by law; (vii) the sale of tobacco as principal business; and (viii) the operation of an establishment engaging in exotic dancing.

2.2 Miscellaneous.

2.2.1 Food Service Areas. The location of all Food and Beverage Services areas, whether temporary, portable, or permanent, will be designated by the Contract Administrator. The Food and Beverage Operator will acquire no legal right to any location once assigned to a particular location. The Contract Administrator reserves the right to require the Food and Beverage Operator to move portable Food and Beverage Services operations and equipment to accommodate specific events. Nothing in this Agreement will limit or qualify the right of the Contract Administrator to free and unobstructed use, occupation, and control of the Gathering Hall, Warming House, and Common Space and ingress and egress for itself and the public.

2.2.2 Rules and Regulations. The Food and Beverage Operator will operate the Food and Beverage Services in accordance with the City’s Policies and Procedures and internal Food and Beverage Operator adopted policies and procedures.

2.2.3 Food and Beverage Services Allowed at Other Locations with the Contract Administrator’s Approval. The Food and Beverage Operator may provide Food and Beverage Services outside of the Jacobson Plaza site utilizing the Gathering Hall kitchen, equipment, and Smallwares at locations within the city only with the Contract Administrator’s approval.

- 2.2.4 Outside Food. Notwithstanding any other section of this Agreement, the City may from time to time bring in outside food for its consumption while using areas of Jacobson Plaza at the Food and Beverage Operator's discretion.

Section 3. City Responsibilities.

- 3.1 Generally. Sioux Falls Parks and Recreation shall manage and program the skate ribbon, splash pad, playground, and other park features and Warming House, including park and recreation activities at Jacobson Plaza in a manner that optimizes the ability of the Food and Beverage Operator to promote Food and Beverage Services.

3.2 Specific City Responsibilities:

- a) Day-to-Day Management. Sioux Falls Parks and Recreation shall provide all day-to-day management, programming, and operational staffing of the skate ribbon, splash pad, playground, and other park features and Warming House at Jacobson Plaza, including point-of-sale, skate rental functions, safety monitor functions, ice maintenance and maintenance for ice equipment.
- b) Fees. Skate rentals and skate ribbon time fees during public skate hours for public skating shall be retained by the City.
- c) Warming House Priority Usage. The City retains priority use of the Party Room and Flexible Use Space while the skate ribbon is actively open to the public for ice skating. Priority use of the Flexible Use Space and Party Room is granted to the City until 60 days prior to the beginning of each calendar quarter, at which time, the Food and Beverage Operator takes over priority. However, both parties will agree to cooperate, where feasible, on scheduling outside these prioritization areas.
- d) Skate Ribbon Maintenance. The City will maintain all equipment to operate the skate ribbon, including, but not limited to, an ice resurfer, ice edger, and various hand tools, and maintenance equipment.
- e) First Aid. Sioux Falls Parks and Recreation shall supply first aid supplies for the public. Food and Beverage Operator shall provide access to first aid supplies for the public; however, the Food and Beverage Operator shall have adequate first aid supplies within the Gathering Hall.
- f) Promotion. Sioux Falls Parks and Recreation shall work with the Food and Beverage Operator to cross-promote Food and Beverage Services and collaborate with the Food and Beverage Operator in hosting special events.
- g) Skate Rental/Maintenance. Sioux Falls Parks and Recreation shall manage skate rentals and maintenance thereof.

- h) Snow Removal. The City shall complete all snow removal for the parking lot, access road, and sidewalks, and will do so expeditiously to accommodate the schedule or regular use of the various portions of Jacobson Plaza.
- i) Network and Phone Service Access. The City shall provide Internet connectivity that will serve the Food and Beverage Operator's point-of-sale and phone system.
- j) Utilities. The City shall pay all charges for use and consumption of utilities serving the Gathering Hall, Warming House, and Common Space, which includes but is not limited to electric, natural gas, water and sewer, and garbage service.
- k) Janitorial Services. The City will provide janitorial services for the Warming House and Common Space including the public restrooms located in Jacobson Plaza. Additionally, the City shall provide cleaning for the exterior of the Gathering Hall including window washing, maintenance, and cleaning of the exterior envelope of the Gathering Hall.
- l) Janitorial Supplies. The City shall provide normal restroom paper products and cleaning supplies and small equipment needed to perform the janitorial tasks of general areas of Jacobson Plaza.
- m) Trash, Waste, and Containers. The City will provide all trash and recycling containers and dumpsters for outdoor areas and within the Warming House and public restrooms.
- n) Wi-Fi Access. The City may provide public Wi-Fi access at its discretion.
- o) Crowd Control. The City will provide crowd control ropes, fencing, and queue lines for the ice ribbon.
- p) Provide Pest Control. The City will provide and pay for all pest control from a provider licensed by the state of South Dakota for the Warming House, Common Space, and exterior of the Gathering Hall.
- q) Social Media. The City will preapprove all social media and associated websites linked to the City.
- r) Booking/Reservation Coordination for Gathering Hall, Party Room, and Warming House. The City will meet with the Food and Beverage Operator regularly to schedule Parks and Recreation's use of the Gathering Hall, Party Room, and Flexible Use Space with the Warming House.
- s) City's Internal Use of the Gathering Hall and Warming House. Regarding the City's internal use of these facilities, the City may schedule City events at

these facilities at no cost that do not conflict with food and beverage scheduled events or peak revenue generating hours.

- t) Digital Marketing/Social Media. The City will utilize digital marketing and social media for increased visibility.
- u) Capital Improvements and Capital Equipment. The City is responsible for all Capital Improvements and Capital Equipment in accordance with Section 12.4 of this Agreement.
- v) Ground Maintenance and Janitorial Service. The City is responsible for general ground maintenance and janitorial services of all outdoor park facilities located in Jacobson Plaza, the Warming House, and the Common Space to the extent as otherwise described in this Agreement. If additional cleaning is desired for special events or extended hours, Sioux Falls Parks and Recreation will supply access to the cleaning supplies to the Food and Beverage Operator.
- w) Standard of Care. Sioux Falls Parks and Recreation shall ensure that Jacobson Plaza and all amenities are maintained and managed in a manner that meets the City's standard of care and provides a welcoming and positive experience for the public users.

Section 4. Access.

- 4.1 Access to the Gathering Hall located in Jacobson Plaza. Representatives of the City will have the right to enter all portions of the Gathering Hall located in Jacobson Plaza providing the Food and Beverage Operator with a minimum of 24-hour advance notice when possible. The City may enter to inspect the Gathering Hall, to observe Food and Beverage Operator's performance and obligations under this Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utilities or other matters in, on or about the Gathering Hall, and to do any act or thing that the City may be obligated or have the right to do under this Agreement or otherwise. Nothing contained in this Section 4.1 is intended, nor may be construed to limit any other rights of the City under this Agreement. Nothing in this Section 4.1 will impose or may be construed to impose upon the City any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements nor create any independent liability for any failure to do so. The City agrees to not impair the ability of the Food and Beverage Operator to effectively operate the Gathering Hall.

Section 5. Confidentiality/Nondisclosure.

- 5.1 Confidentiality/Nondisclosure. The parties agree they will keep confidential any and all proprietary information of the other party, or of any third party with whom Food and Beverage Operator contracts, or of any third party with whom the City contracts, when the confidential and proprietary information is conspicuously

marked as confidential or proprietary or otherwise indicating in writing as confidential or proprietary, and when the City Attorney's Office has concluded the information must not be made available to the public under the open records requirements applicable to the City. Each party will only use confidential and proprietary information for the performance of its respective obligations under this Agreement. A party will designate as confidential and proprietary information the designating party in good faith believes is confidential and proprietary. Neither party will divulge any confidential or proprietary information, in whole or in part, to any third party without the prior written consent of the other party; provided, however, confidential and proprietary information may be disclosed to the party's attorneys and professional consultants; provided further, the confidential and proprietary information may be required to be disclosed to the public pursuant to applicable law, including all open records requirements applicable to the City and its operations and facilities or as directed by order of a court of competent jurisdiction. If the City Attorney's Office determines the information is proprietary and confidential and protected from public access under applicable law, the City will not make available to the public the information. If the City Attorney's Office concludes in its opinion the information marked confidential or proprietary must be made available to the public under applicable law, the City Attorney's Office will advise Food and Beverage Operator of its decision and give Food and Beverage Operator a reasonable opportunity to obtain a court order to keep the information confidential. If Food and Beverage Operator does not proceed with reasonable diligence to file for and obtain a court order, the City will then make the public the information available. A party in default of its obligations to maintain confidentiality will provide notice to the other party of any known violations of this Section 5.1. Further, each party will endeavor in good faith to provide notice to the other party prior to any disclosure required by applicable law or order of a court of competent jurisdiction (it being understood notice may not be possible before disclosure is required). The restrictions upon confidentiality and use of the confidential and proprietary information of a party set forth in this Section 5.1 do not apply to information which the other party can demonstrate was publicly available or lawfully in its possession at the time of its disclosure to it by the other party.

- 5.2 Confidential Information. Upon the request of the City, the Food and Beverage Operator will furnish to the City copies of all agreements and amendments thereto executed by the Food and Beverage Operator and third parties with respect to Jacobson Plaza. In the event a member of the public requests a copy of an agreement between the Food and Beverage Operator and a third party, the City agrees to notify the Food and Beverage Operator of the request, and the Food and Beverage Operator will timely set forth its legal objection, if any, whether the agreement may be made available to the public. If Food and Beverage Operator has no legal objection, or if the City Attorney's Office determines the Agreement must be made available to the public under applicable law, then the City will advise the Food and Beverage Operator of its decision and give the Food and Beverage Operator a reasonable opportunity to obtain a court order to keep the information

confidential. If no court order is obtained, the City will make available the Agreement requested by a member of the public. If the City Attorney's Office determines the Agreement, or some portions thereof, are protected from public access under applicable law, the City will not make available the Agreement, or the confidential portions thereof, requested by the member of the public. The Contract Manager and the City agree this Agreement is not protected from public access and will be made available to any member of the public upon request.

- 5.3 Specific Performance. Each party agrees the provisions of this Section 5.3 are reasonable and necessary to protect the interests of the other party and the disclosing party's remedies at law for a breach of any of the provisions of this Section 5.3 will be inadequate and, in connection with any breach, the disclosing party will be entitled, in addition to any other remedies (whether at law or in equity), to temporary and permanent injunctive relief without the necessity of proving actual damages or immediate or irreparable harm, or of the posting of a bond. Notwithstanding the foregoing, if a court of competent jurisdiction determines any of the provisions of this Section 5.3 are unreasonable, the disclosing party agrees to a reaffirmation of those provisions, but with any limits the court finds to be reasonable, and the other party will not assert the provision should be eliminated in its entirety by the court.

Section 6. Compensation and Operating Expenses.

- 6.1 Base Fee. For all Food and Beverage Services and event management provided by the Food and Beverage Operator pursuant to this Agreement, Food and Beverage Operator will receive a base fee ("Base Fee") of \$6,750 per month January 1, 2025 through June 30, 2026 and \$5,000 per month beginning on July 1, 2026, increasing 3% per year beginning on July 1, 2027 and on each July 1 thereafter. The Base Fee then due the Food and Beverage Operator will be paid as a disbursement from the Operating Account in equal monthly installments, in arrears, no later than the first day of the month after the month for which Food and Beverage Services are provided by the Food and Beverage Operator pursuant to this Agreement.
- 6.2 Incentive Fee. In addition to the annual Base Fee, the Food and Beverage Operator may earn an Incentive Fee each year beginning on July 1, 2026. The Incentive Fee shall be 20% of any positive Adjusted Operating Income. The Incentive Fee will be paid as a disbursement from the Operating Account upon acceptance by the City after completion of any limited scope audit or agreed upon procedures audit for that year under Section 13.1, below.
- 6.3 Exclusive Compensation. The amounts payable to the Food and Beverage Operator pursuant to this Section 6 are the only amounts to which the Food and Beverage Operator is entitled for all Food and Beverage Services and event management the

Food and Beverage Operator rendered to the City pursuant to this Agreement for Food and Beverage Services or otherwise.

- 6.4 Operating Income (Losses). The City will be responsible for all Operating Losses. All Operating Income will be retained in the Operating Account. However, upon the City's request from time to time, the Food and Beverage Operator will distribute to the City from the Operating Account funds not otherwise required to pay current and projected Operating Expenses or for planned expenditures for Capital Equipment or Capital Improvements.

Section 7. Term.

- 7.1 Term. This Agreement will commence on the last to occur of the signing of this Agreement by the Mayor, the attestation of this Agreement by the City Clerk, the approval of this Agreement by resolution adopted by the City Council, and the expiration of the time within which the City Council's approval of this Agreement may be challenged by referendum following the publishing of the City Council's resolution (the "Effective Date") and will continue in full force and effect, for four and a half years, through June 30, 2029, unless sooner terminated pursuant to the provisions of this Agreement ("Term"). The Food and Beverage Operator may request in writing by January 31 in the final year of the Agreement, a request to extend the Agreement for an additional five- (5-) year period. Upon receipt of the extension request, the City may at its discretion, based upon an evaluation of the Food and Beverage Operator's compliance with the terms and conditions of the Agreement, grant a five- (5-) year extension in accordance with the Code of Ordinances of Sioux Falls, SD, in effect at the time of the extension. Should the Food and Beverage Operator fail to submit a written extension request, the Agreement shall terminate at the conclusion of the Agreement's term. The City reserves the right to terminate the Agreement for material breach in accordance with the terms and conditions set forth in Section 17.

Upon termination of this Agreement, the Food and Beverage Operator will yield and deliver peaceably to the City possession of the Gathering Hall (including any personal property of the City) and shall comply with Section 17.4 of this Agreement. Further, the Food and Beverage Operator agrees to be responsible for cleaning the Gathering Hall to the satisfaction of the City.

Section 8. Personnel

- 8.1 Generally. Food and Beverage Operator will employ, train, and supervise the personnel with appropriate qualifications and experience necessary to operate Food and Beverage Services and event management in accordance with a standard of similar high-quality event and food service facilities, in sufficient number to provide all the Food and Beverage Services and event management required of the Food and Beverage Operator under this Agreement. All personnel will be employees, agents, or independent contractors of the Food and Beverage Operator, and not of the City. The Food and Beverage Operator will select the number,

function, qualifications, and compensation, including salary and benefits, of its employees and will control the terms and conditions of employment relating to its employees. The Food and Beverage Operator agrees to use reasonable and prudent judgment in the selection and supervision of its employees and will make its best effort to employ persons who are courteous and efficient, and who will not use improper language or act in a loud or boisterous manner while performing the Foods Service and Catering Sales. Upon the request of the Contract Administrator, the Food and Beverage Operator will meet with the Contract Administrator to address any improper or substandard employee performance. The Food and Beverage Operator will take corrective action necessary to address the improper or substandard employee performance.

- a) Staff. Food and Beverage Operator will at all times during the Term employ a full-time Food and Beverage staff, which at a minimum will include a management level position to oversee operations (the “general manager”), and/or an executive chef, as well as positions that provide adequate back-up to cover the offering of high-quality Food and Beverage Services (collectively, “Food and Beverage Staff”). The Food and Beverage Operator may, at its sole discretion, share staff with other WPML managed facilities except only to the extent that the staffing expenses directly related to the Food and Beverage Services and event management at Jacobson Plaza are paid from the Operating Account. The Contract Administrator will review and have the right to approve the Food and Beverage Operator’s proposed on-site General Manager during the term of the Agreement.
- b) Staff Performance Issues. At any time during the Term, the Contract Administrator may notify the Food and Beverage Operator if it believes there is a performance problem with the General Manager or any other positions. The Food and Beverage Operator will meet with the Contract Administrator to discuss any problems regarding staffing for Food and Beverage Services and to propose appropriate steps to address problems.
- c) Employee Uniforms. The Food and Beverage Operator will ensure all of its employees, agents, and independent contractors performing Food and Beverage Operator duties at the Jacobson Plaza will be neatly attired and all nonmanagement staff will be attired in clean, commercially attractive uniforms, which will be subject to the Contract Administrator’s approval. Food and Beverage Operator will provide and maintain uniforms for all nonmanagement staff, the cost of which will be an Operating Expense.
- d) Employee Records. The Food and Beverage Operator will maintain accurate records of the names, addresses, and other legal identification of all Food and Beverage Operator employees, sufficient to ensure proper identification and legal working status. Food and Beverage Operator will take reasonable steps to hire only persons who have proper identification and are legally entitled to

work in the United States. The Contract Administrator, or other proper agency, may access the employee records at any time.

- e) Discrimination Prohibited. Food and Beverage Operator agrees to observe and fully comply with all antidiscrimination provisions of applicable law. Without limiting the generality of the foregoing, Food and Beverage Operator will:
 - (i) Not discriminate against any person in the performance of work (the law generally says in employment, which includes all aspects of employment) under this contract because of race, religion, color, sex, disability, national origin, ancestry, creed, or age.
 - (ii) Include the phrase “equal opportunity employer” or a similar phrase approved under South Dakota law in all solicitations or advertisements for employees.
 - (iii) Timely respond to any human rights inquiry of any federal, state, or local agency, and failure to timely respond will result in Food and Beverage Operator being deemed to have materially breached this Agreement allowing the City, in its discretion, to cancel, terminate, or suspend, in whole or in part, this Agreement.
 - (iv) Notwithstanding any provision in this Agreement to the contrary, if Food and Beverage Operator is found liable under or to be in violation of any federal, state, or local human rights or antidiscrimination laws under a final agency decision or court order, Food and Beverage Operator will be deemed to have materially breached this Agreement and it may be terminated, in whole or in part, by the City.
- f) Food and Beverage Operator will include the provisions of (i) through (iv) inclusively of this subsection in every subcontract made pursuant to this Agreement, so those provisions will be binding upon all parties contracting with Food and Beverage Operator.
- g) Compliance with Anti-Discrimination Acts. In addition to the undertakings required in Section 8.1(e) above, Food and Beverage Operator must comply with all applicable provisions of federal, state, and local antidiscrimination acts and associated regulations, all as amended, including, but 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 1954 (42 U.S.C. 2000e 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.

Food and Beverage Operator will be deemed in default of this Agreement and the City, in its discretion, may immediately cancel, terminate, or suspend, in whole or in part, this Agreement if Food and Beverage Operator violates any federal, state, or local human rights or anti-discrimination acts in effect.

8.2 Training. In addition to training requirements in Section 11.2, the Food and Beverage Operator will conduct regularly scheduled training sessions during the course of each year for all personnel, including part-time and temporary personnel, in regular contact with the Food and Beverage Operator's customers. Training of management staff will incorporate the Food and Beverage Operator's customer service, quality control programs, and systems and management philosophy and expectations. Food and Beverage Operator will train all employees so they are aware of the high standards for cleanliness, courtesy, and service required of the Food and Beverage Operator in providing Food and Beverage Services and event management at Jacobson Plaza. At a minimum, the Food and Beverage Operator's personnel training will include:

- a) Customer service, alcohol awareness, and skills training for each position including, but not limited to, proper banquet service, buffet setup, and food, beverages, merchandising, and wine service for all catering personnel.
- b) Regular training in substance abuse recognition for each employee who oversees, supervises, or manages subordinate staff.
- c) Environment sustainability, safety/risk management, and Hazards Analysis and Critical Control Points ("HACCP") training.

8.3 Appearance and Etiquette. Food and Beverage Operator employees must meet grooming guidelines and appearance standards, which guidelines and standards will be prescribed by Food and Beverage Operator.

Section 9. Inventory; Products.

9.1 Generally. Food and Beverage Operator will exercise the full Food and Beverage Services and event management set forth in this Agreement at all events in a manner consistent with food and beverage operating standards employed by high quality event facilities and food and beverage operations. Food and Beverage

Operator will have sufficient amounts of product prepared and an Inventory on the premises so as not to generally run out of product during an event held at Jacobson Plaza.

- a) Quality. All food and beverages sold by the Food and Beverage Operator will be of the highest standard of quality, wholesome and pure, and will conform in all respects to federal, state, municipal, and other laws, ordinances, and regulations. No imitation, adulterated, or misbranded product will be sold or kept for sale at the Jacobson Plaza facilities. All products sold and kept for sale will be stored and handled with due regard for sanitation. Leftover perishable products will not be sold at any time. All products kept for sale will be subject to inspection and approval by the Contract Administrator without notice. Rejected products will be immediately removed from the Jacobson Plaza and will not be returned for sale.
 - b) Product Waste. Food and Beverage Operator will use its best efforts to work with local not-for-profit organizations such as food banks to minimize product waste. Food and Beverage Operator will participate in recycling, composting, and sustainability plans, and will comply with all applicable recycling rules, laws, and regulations.
 - c) Local Products/Vendors. Food and Beverage Operator will use its best efforts to utilize local products of local vendors, when available, of good quality and competitive prices in the provision of Food and Beverage Services.
- 9.2 Pricing. The price of all products sold by Food and Beverage Operator will be determined by Food and Beverage Operator. Food and Beverage Operator pricing of Food and Beverage Services will be considered preapproved by the Contract Administrator if the price, quality, market acceptability, service, and other considerations are competitive within the local market and for comparable values.
- 9.3 Alcoholic Beverages. Alcoholic beverages will be offered for sale by the Food and Beverage Operator to the extent permitted by applicable laws. The Food and Beverage Operator is authorized to sell, without Contract Administrator approval, alcoholic beverages at the Gathering Hall, Warming House, and Common Space as shown on **Exhibit C**. The Contract Administrator will authorize when alcoholic beverages may be served elsewhere in Jacobson Plaza as shown on **Exhibit A**. The decision to serve or refuse service of alcoholic beverages to any individual will be the sole responsibility of the Food and Beverage Operator.

Section 10. Sanitation and Maintenance.

10.1 Sanitation.

- a) Generally. Food and Beverage Operator will maintain in a clean, sanitary, and orderly fashion all areas of the Gathering Hall for the operation of Food and Beverage Services. The Food and Beverage Operator will clean, as needed,

the walls, windows, ceilings, light fixtures, and equipment located within the Gathering Hall. The Food and Beverage Operator will deposit in receptacles provided by the City, all waste, garbage, and refuse which will accumulate in the Gathering Hall, inclusive of the Party Room and outdoor seating area, and splash pad seating area. Food and Beverage Operator is responsible for maintaining all grease traps, exhaust hoods, exhaust ductwork, and roof fans, and the regularly scheduled cleaning of the foregoing, the cost of which will be considered Operating Expenses. Food and Beverage Operator will deliver its trash, garbage, and waste from all Food Service areas to the designated dumpster or recycling areas. The removal of the trash and recyclables from the dumpsters will be paid for by the City.

- b) Compliance. Food and Beverage Operator will comply with and observe all laws as to sanitation and the purity of food and beverages and otherwise relating to its operations under this Agreement.

10.2 Maintenance.

- a) Generally. Food and Beverage Operator will maintain in a state of good repair all equipment, Leasehold Improvements, uniforms, and Smallwares used in the performance of its duties set forth in this Agreement. The cost of routine preventative maintenance will be Operating Expense.
- b) Repairs and Replacements. The Food and Beverage Operator will be responsible for all maintenance, repairs, and replacements of all Food and Beverage Operator's Smallwares utilized in the Food Service or located in the Food Service areas due to ordinary wear and tear. Repair costs for the foregoing on a per item basis equal to or less than \$5,000 will be Operating Expenses. Repairs and replacements shall be made in a timely manner and shall not be accumulated over time to surpass the \$5,000 threshold. Repair and replacement costs per item above \$5,000 will be paid out of the Operating Account by the Contract Administrator's sole discretion. Notwithstanding the foregoing, the City will at its cost replace all Smallwares when the City determines it is appropriate to change the style of substantially all Smallwares. If a replacement of Smallwares, equipment, or Leasehold Improvements is due to theft, the Food and Beverage Operator will pay for the replacement and it will be considered an Operating Expense. If a replacement of Smallwares, equipment, or Leasehold Improvements is due to vandalism, unusual wear, neglect, or negligence by Food and Beverage Operator or its agents, Food and Beverage Operator will pay for the replacement, and it will not be considered an Operating Expense. The Food and Beverage Operator will also be responsible for the purchase and replacement of all Food and Beverage Operator employee uniforms, which will be considered an Operating Expense.
- c) Preventative Maintenance. Food and Beverage Operator will develop a preventative maintenance plan for the kitchen, food service areas, Leasehold Improvements, and equipment assigned to it and under its control as an

Operating Expense. The preventative maintenance plan is subject to review and approval from time-to-time by the City. Food and Beverage Operator will pay all preventative maintenance costs required and approved by the City, as an Operating Expense.

- d) Annual Inventory. Food and Beverage Operator will provide to the City annually an inventory of all Food Service equipment, Leasehold Improvements, and Smallwares, whether provided by the City or Food and Beverage Operator. Upon the termination of this Agreement, Food and Beverage Operator must deliver to the City all Food Service equipment, Leasehold Improvements, and Smallwares in good condition, less normal wear and tear, unless the City has approved in writing the removal or disposal of items of the foregoing.

Section 11. Licenses; Taxes.

- 11.1 Permits and Licenses. The Food and Beverage Operator will obtain and maintain throughout the Term all licenses and permits necessary for the provision of Food and Beverage Services. All such licenses and permits will be held in the Food and Beverage Operator's name except for any on-sale liquor license, which shall be in the City's name. The cost of all such permits and licenses, in any, will be borne by the Food and Beverage Operator, and considered an Operating Expense. The City will cooperate with the Food and Beverage Operator in connection with filing applications for, and securing and maintaining in good standing, any and all licenses and permits and renewals needed by Food and Beverage Operator to fulfill its obligations under this Agreement.
- 11.2 Liquor License. Pursuant to Section 111.014.1 of the Code of Ordinances of Sioux Falls, SD (the "Code") the City will use its best efforts to issue a retail on-sale liquor license for use at Jacobson Plaza which shall be used to support the public purposes of Jacobson Plaza, which include but are not limited to hosting entertainment and recreational events, as well as parties, meetings, banquets, festivals, graduations, corporate events, and other scheduled gatherings and events, as well as providing Food and Beverage Services in support of Jacobson Plaza at Falls Park amenities and users of the park.
 - a) Ownership of Liquor License. The liquor license shall be held in the City's name. The City grants to the Food and Beverage Operator the use of the liquor license during the term of this Agreement.
 - b) Liquor Law Compliance. Food and Beverage Operator will strictly comply with the laws of the state of South Dakota regarding the sale of alcoholic beverages including, but not limited to, the prohibition of placement of video lottery within the licensed area. The Food and Beverage Operator will adopt an identification policy to verify the age of potential purchasers of alcoholic beverages, and to avoid selling alcoholic beverages to customers who are visibly intoxicated. Food and Beverage Operator will institute and conduct training programs for Food and Beverage Operator' employees on the proper

standards to use to avoid selling alcoholic beverages to customers who are or who appear to be intoxicated.

- c) Changes in Liquor Laws. In the event Food and Beverage Operator is unable to use the City's retail on-sale liquor license for Jacobson Plaza through no fault of its own, or if, due to a change during the Term in any state or local law, rule of regulation, or due to a rule, regulation, or decision of the City, Food and Beverage Operator is prevented or limited in a material manner from selling alcoholic beverages at the Gathering Hall in Jacobson Plaza or elsewhere in Jacobson Plaza, the parties agree to renegotiate in good faith the economic terms of this Agreement so the economic benefits anticipated by each party are maintained to the greatest extent possible.

11.3 Taxes. The Food and Beverage Operator will collect and pay all applicable taxes.

Section 12. Funding; Budget; Bank Accounts.

12.1 Operating Funds. Subject to Section 12.2, below, to the extent Operating Revenues for Jacobson Plaza during a calendar quarter are insufficient, or expected to be insufficient, to cover Operating Expenses ("Cash Flow Shortfall") for the period, the City will advance funds to Food and Beverage Operator as follows.

- a) 30 days prior to the beginning of each calendar quarter during the Management Term, Food and Beverage Operator will submit to the City a notice of the projected Cash Flow Shortfall for the upcoming quarter (which is to be offset by any cash flow surplus estimated by Food and Beverage Operator for the then-current calendar quarter).
- b) The City will disburse to Food and Beverage Operator necessary funds within 5 business days after the start of each calendar quarter to cover the projected Cash Flow Shortfall. Those funds will be deposited by Food and Beverage Operator in the Operating Account established pursuant to Section 12.3(f), below, and used to pay Operating Expenses.
- c) The City shall at a minimum fund a \$50,000 reserve in the Operating Account to ensure adequate cash flow, which reserve must be replenished by the City any time it falls below the stated minimum threshold.

12.2 Inadequate Funding of Operations.

- a) Any failure by Food and Beverage Operator to perform its obligations under this Agreement will not be a breach or default under this Agreement if the breach or default results from the City's failure to provide sufficient funds as defined in the Agreement for the management and operation of the Gathering Hall and other activities located in Jacobson Plaza (i) in connection with (A) the City's approval of the Approved Operating Budget pursuant to Section

12.3, or (B) the City's request for a plan for reduction of Operating Expenses pursuant to Section 12.3(d)

- b) If, in connection with Section 12.2(a)(i), the City appropriates funds at (or reduces appropriated funds to) a level that, in the Food and Beverage Operator's judgment, renders provision of Food and Beverage Services located at Jacobson Plaza as set forth in Section 2.1 and 2.2 not feasible, Food and Beverage Operator will, at its option to be exercised by written notice to the City within 30 days of a funding appropriation or reduction, notify the City such reduced funding level renders Food and Beverage Services located at Jacobson Plaza as set forth in Section 2.1 and 2.2 not feasible. In this event, the City will have 60 days within which to appropriate funds in accordance with Section 6.4 that, in Food and Beverage Operator's judgment, renders the operation of the Gathering Hall located in Jacobson Plaza feasible. If the City does not appropriate funds in accordance with Section 6.4, then Food and Beverage Operator may either (i) continue providing Food and Beverage Services at a reduced level consistent with anticipated Operating Revenues and available funding, or (ii) terminate this Agreement pursuant to Section 17.2(a), with the effect set forth in Section 17.3.
- c) Except as otherwise set forth in this Agreement, Food and Beverage Operator will not be obligated to advance any of its own funds to, or for the account of, the Gathering Hall or incur any liability, unless the City has furnished Food and Beverage Operator with funds in the amount sufficient for the full discharge thereof. If the Food and Beverage Operator fails to follow the procedures set forth in this Section 12 related to Cash Flow Shortfalls, the City will have no obligation to provide funds for the payment of Operating Expenses incurred or committed in excess of the Approved Operating Budget or in excess of approved purchases or leases of Capital Equipment or Capital Improvements.

12.3 Annual Operating Budget.

- a) The Food and Beverage Operator will prepare a separate Proposed Operating Budget for the next Agreement Year with respect to Jacobson Plaza.
 - (i) The Proposed Operating Budget will be delivered to the City in accordance with the budget timeline established by the City for the upcoming Agreement Year. Through the process of negotiation the Food and Beverage Operator and the City will agree upon the Approved Operating Budget for the upcoming Agreement Year.
 - (ii) Each Proposed Operating Budget submitted must contain appropriate line items for projected Operating Revenues and Operating Expenses and the projected Operating Income (Loss), as may be amended by the mutual agreement of the parties from time to time.

- b) Each Proposed Operating Budget is subject to review, adjustment, and ultimate written approval by the City Finance Office, in its reasonable discretion. Upon adoption by the City Council of the City's annual operating budget in September, the City Finance Office will notify the Food and Beverage Operator of any requested adjustments to the Proposed Operating Budget. Any Proposed Operating Budget, as adjusted by the City Finance Office and agreed upon by the Food and Beverage Operator, will become the Approved Operating Budget for the upcoming Agreement Year (an "Approved Operating Budget").
- c) The Food and Beverage Operator may submit to the City, at any time prior to the close of the then current Agreement Year, an amended or revised Proposed Operating Budget for the remainder of the then current Agreement Year. Upon the City Finance Office's written approval, in the City Finance Office's sole discretion, the Approved Operating Budget will be amended or revised, as further determined by the City Finance Office for the current Agreement Year. If the City Finance Office does not approve the Proposed Operating Budget amendment, the Approved Operating Budget without amendment or revision will remain in full force and effect.
- d) In the event it appears reasonably likely in any Agreement Year during the Management Term, the actual Operating Income (Loss) for the year will be less favorable than projected in the Approved Operating Budget, the Food and Beverage Operator must notify the City Finance Office, in writing, of that likelihood as soon as it becomes evident and, thereafter, submit to the City for approval a plan for reduction of Inventory or Operating Expenses to a level consistent with the Operating Income (Loss) contained in the Approved Operating Budget. The City may approve a reduction of the Inventory, or Operating Expenses, approve an amended Approved Operating Budget, or both. Food and Beverage Operator will forthwith comply with any adjustments approved by the City, in the City's sole discretion, and the Approved Operating Budget for the year will be modified accordingly.
- e) Notwithstanding anything to the contrary in this Agreement, the City acknowledges and agrees that all budgets prepared by the Food and Beverage Operator pursuant to this Section 12 or otherwise are based solely on the Food and Beverage Operator's reasonable judgment and the facts and circumstances known by the Food and Beverage Operator at the time of preparation, and the Food and Beverage Operator does not warrant or guarantee the results of operations or performance set forth in any budgets prepared for the Food and Beverage Operator. Any failure of the Food and Beverage Operator to perform consistent with the Approved Operating Budgets for the applicable Agreement Year will not constitute a breach or default under this Agreement.
- f) The Food and Beverage Operator will maintain an interest-bearing bank account in a bank approved by the City for the promotion, operation and

management of the Food and Beverage Services located in Jacobson Plaza (the "Operating Account"). The Operating Account will be in the name of the Food and Beverage Operator and with signature authority on the Operating Account authorized for those employees of the Food and Beverage Operator as determined by the Food and Beverage Operator and approved by the City. All Gross Revenues collected by the Food and Beverage Operator will be deposited into the Operating Account, and expenses will be paid by the Food and Beverage Operator from the Operating Account. The cost of acquiring Inventory will be paid by the Food and Beverage Operator from the Operating Account. All Operating Revenues collected by the Food and Beverage Operator arising from operations are the sole property of the City, held in trust by the Food and Beverage Operator for the City for application as provided in this Agreement. Any amounts remaining in the Operating Account for the City's benefit pursuant to this Agreement will be, upon termination of this Agreement for any reason and after payment of all outstanding Operating Expenses, promptly paid by the Food and Beverage Operator to the City. At the discretion of the Food and Beverage Operator, an interest-bearing account for deposits received for events and other scheduled utilization of the Gathering Hall, Party Room, Warming House flexible space or other areas of Jacobson Plaza may be opened under the same terms and conditions as the Operating Account described in this Section 12. All deposits are held for the City's benefit and upon termination of this Agreement, all deposits for events occurring after termination will be promptly paid by the Food and Beverage Operator to the City. No additional bank accounts will be opened and utilized by the Food and Beverage Operator with respect to the Food and Beverage Services to be provided by the Food and Beverage Operator pursuant to this Agreement without the City's prior written consent.

12.4 Capital Improvements; Capital Equipment.

- a) The City will be obligated to provide adequate funding for Capital Improvements and Capital Equipment either within the City's approved Capital Program or from the Operating Account. Payments related to Capital Improvements and Capital Equipment from the Operating Account will not be included in Operating Expenses pursuant to this Agreement; however, depreciation expense related to Capital Equipment will be included in Operating Expenses. The Food and Beverage Operator will recommend to the City Capital Improvements and Capital Equipment purchases to be accomplished during the following Agreement Year and the four subsequent years in accordance with the City's five-year capital improvement planning process. The Food and Beverage Operator will, no later than March 31 of each Agreement Year, provide the City an estimate of the cost of all recommended Capital Improvements and Capital Equipment for the ensuing five calendar years. By mutual agreement of the parties, the Food and Beverage Operator may contract for Capital Equipment purchases and Capital Improvements if

the Food and Beverage Operator agrees to follow competitive bid laws in effect at the time should public funds be used to make such expenditures.

- b) Any failure by the Food and Beverage Operator to perform its obligations under this Agreement will not be a breach or a default under the Agreement if the breach or default results from the City's failure to appropriate sufficient funds for required Capital Improvements and Capital Equipment. If the City appropriates funds at (or reduces appropriated funds to) a level that, in the Food and Beverage Operator's reasonable judgment, renders the operation of Jacobson Plaza as set forth in Section 2.1 and 2.2 not feasible due to inadequate purchases of Capital Improvements and Capital Equipment, the Food and Beverage Operator will, at its option to be exercised by written notice to the City within 30 days of a funding appropriation or reduction, notify the City such reduced funding of Capital Improvements and Capital Equipment renders the operations of Jacobson Plaza as set forth in Section 2.1 and 2.2 not feasible, and either (i) continue to offer food and beverage services at Jacobson Plaza at a reduced level consistent with available funding for Capital Improvements and Capital Equipment, or (ii) terminate this Agreement pursuant to Section 17.2(a) with the effect set forth in Section 17.3.
- c) The City will have no obligation to provide funds for Capital Improvements and Capital Equipment in excess of funds previously budgeted and appropriated for Jacobson Plaza, except as provided in Section 12.5.
- d) To the extent of the funds available in the Operating Account, Capital Improvements and Capital Equipment may be funded from the Operating Account. The Food and Beverage Operator must obtain written approval from the City prior to committing to the purchase or lease of any Capital Equipment or Capital Improvement to be funded from the Operating Account.

12.5 Funds for Emergency Repairs. The Food and Beverage Operator will have the right to act, with the City's consent, in situations which the Food and Beverage Operator reasonably determines to be an emergency with respect to the safety, welfare, and protection of the general public at the Gathering Hall located in Jacobson Plaza, including spending and committing funds held in the Operating Account for Jacobson Plaza, even if those expenses are not budgeted. Immediately following any action described in this Section 12.5, the Food and Beverage Operator will inform the City of the situation and the actions taken, and the City will, if necessary to avoid a Cash Flow Shortfall as described in Section 12.1, pay into the Operating Account the amount of funds, if any, spent or committed by the Food and Beverage Operator pursuant to this Section 12.5 in excess of budgeted amounts.

Section 13. Records, Audits and Reports.

13.1 Records and Audits.

- a) With respect to the food and beverage service and event management provided by the Food and Beverage Operator pursuant to this Agreement, the Food and Beverage Operator will keep separate, full and accurate accounting records relating to its activities in accordance with generally accepted accounting principles in the United States (“GAAP”). The Food and Beverage Operator will maintain a system of bookkeeping acceptable to the City and adequate for the Food and Beverage Operator’s operations under this Agreement, and in compliance with requirements of those auditors engaged to audit all books and records maintained by the Food and Beverage Operator with respect to its Food and Beverage Services under this Agreement and the maintenance and operation of Jacobson Plaza.
- (i) The Food and Beverage Operator will afford to the City full and complete access to the books and records at the City’s request.
 - (ii) The Food and Beverage Operator will keep and preserve for a reasonable period of time hard or electronic copies of sales slips, rental agreements, purchase orders, sales books, credit card invoices, bank books, duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for all times the Food and Beverage Operator provides Food and Beverage Services in Jacobson Plaza.
 - (iii) Upon the termination or expiration of this Agreement, the Food and Beverage Operator will package the records free of charge to the City, and will deliver to the City, at the City’s expense, the records, except the Food and Beverage Operator’s personnel records, including but not limited to calendared or scheduled events.
 - (iv) The City may request from the Food and Beverage Operator either a limited scope audit or agreed upon procedures audit. The Food and Beverage shall thereafter file such audit with the City. Costs associated with obtaining such limited scope audit or agreed upon procedures audit shall be an Operating Expense. Such audits shall be performed by either an internal or an external auditor approved by the City, which approval may be by email and shall be conducted in accordance with generally accepted auditing standards.
 - (v) The provisions of this Section 13.1(a) will survive termination of this Agreement.
- b) The City will have the right at any time, and from time to time, to have an independent certified public accountant or internal City staff audit all of the books and records of the Food and Beverage Operator relating to Operating

Revenues and Operating Expenses and all other matters related to Jacobson Plaza, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices.

- (i) Costs incurred by the City in conducting an audit pursuant to this Section 13.1(b) will not be an Operating Expense but will be paid by the City except as otherwise provided in Section 13.1(b)(ii).
- (ii) If any audit conducted on behalf of the City pursuant to this Section 13.1(b) demonstrates the Operating Revenues or Operating Expenses reflected in any annual financial statements prepared by the Food and Beverage Operator are erroneous by more than 5 percent of total Operating Revenues or Operating Expenses, the Food and Beverage Operator will pay to the City all its actual costs and expenses incurred in conjunction with the audit and will promptly remit to the City any portion of the Base Fee or Incentive Fees paid to the Food and Beverage Operator that would not have been payable to the Food and Beverage Operator but for the errors.
- (iii) The City's right to have conducted an audit pursuant to this Section 13.1(b) made with respect to any Agreement Year the Food and Beverage Operator provides Food and Beverage Services and event management at Jacobson Plaza will expire six years after termination of this Agreement.

(iv) The provisions of this Section 13.1(b) will survive termination of this Agreement.

- c) The City will have the right at any time, and from time to time, to complete a performance audit of the Food and Beverage Operator's Food and Beverage Services rendered pursuant to the terms of this Agreement. The performance audit may include statistical comparisons of the Food and Beverage Services provided at Jacobson Plaza to other public facilities managed by the Food and Beverage Operator (provided the Food and Beverage Operator shall use good faith efforts to obtain permission from third parties to release such information) and other management companies. The Food and Beverage Operator will cooperate with the City in completing the performance audit.

13.2 Annual Plan. With respect to all activities of the Food and Beverage Operator pursuant to this Agreement, the Food and Beverage Operator will provide to the City an annual management plan if requested by the City.

- a) If requested by the City, the annual management plan for each Agreement Year will be provided to the City on or before April 30 of the prior Agreement Year.
- b) The annual management plan for Jacobson Plaza must include:

- (i) Information regarding the Food and Beverage Operator's anticipated operations of the Gathering Hall, Concession Sales, Catering Sales, and event management.
 - (ii) Planned equipment and maintenance activities by the Food and Beverage Operator.
 - (iii) Anticipated events and revenues.
 - (iv) Anticipated marketing, advertising, and promotional plans.
 - (v) All other information requested by the City at any time and from time to time to be included in the annual management plan.
- c) Each annual management plan submitted will be subject to the City's review, adjustment, and ultimate written approval, in its sole discretion. Within 30 days of receipt of a proposed annual management plan from the Food and Beverage Operator, the City will notify the Food and Beverage Operator of any adjustments to the proposed annual management plan. Any proposed annual management plan, as adjusted by the City, will become the management plan for the upcoming Agreement Year.

13.3 Monthly Reports. By the 25th day of each month, the Food and Beverage Operator will provide the City a written monthly report in a form consistent with the Food and Beverage Operator's current accounting practices detailing anticipated activities for the upcoming month and reporting on the prior month's activities and finances. With each report, the Food and Beverage Operator must include a statement of net assets (balance sheet), a statement of revenues, expenses and changes in net assets, a statement of cash flows, event bookings, and an aged accounts receivable report and other financial reports requested by the City in its sole discretion. The financial statements will include Gross Revenues, cost of goods sold, Operating Revenues and Operating Expenses for the month compared to the same month the previous Agreement Year, for year to date compared to the year to date the previous Agreement Year, and for the month and year to date compared to the Approved Operating Budget.

13.4 Bank Statements. The Food and Beverage Operator will grant the City electronic view access to the Operating Account. In addition, upon the City's request, the Food and Beverage Operator will submit to the City, or will cause the depository institutions holding the Operating Account to submit to the City, monthly bank statements for the Operating Account.

13.5 Financial Records and Agreements. The Food and Beverage Operator shall keep complete and adequate books and records reflecting the results of the operations of Food and Beverage Services in accordance with generally accepted accounting principles. The Food and Beverage Operator shall at all times keep and maintain at Jacobson Plaza or its regular place of business all records, books of account, and

other records relating to or reflecting the operations of the Food and Beverage Services provided, including such records as may be reasonably required by the City to be maintained by the Food and Beverage Operator 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 Food and Beverage Operator shall furnish to the City copies of all agreements and amendments thereto executed by the Food and Beverage Operator. In the event a request for an agreement is made by a third party, the City agrees to notify the Food and Beverage Operator of such request, and the Food and Beverage Operator 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.

- 13.6 Meetings with the City. The Food and Beverage Operator senior management will meet with the Contract Administrator, other City employees, and community boards established by the City on a schedule to be agreed upon by the Food and Beverage Operator and the City to review the activities and operations for the facilities located in Jacobson Plaza as requested by the City. Currently, the City has established the Parks and Recreation Board for this purpose.

Section 14. Indemnification and Insurance

14.1 Indemnification.

- a) Indemnification by the Food and Beverage Operator. The Food and Beverage Operator agrees to indemnify, defend, and hold harmless the City, its elected and appointed officials, agents, officers, City Council members, employees, and the City's successors and permitted assigns (collectively the "City Indemnified Parties"), from and against any and all claims, causes of action, costs, expenses (including reasonable attorneys' fees and only to the extent set forth below in this Section 14.1(a)), liabilities and damages (collectively "Losses") suffered by any of the City Indemnified Parties, arising out of or in connection with any (i) negligent acts, errors or omissions, or intentional misconduct, fraud, or improper activities outside of the scope of authority granted under this Agreement exercised by the Food and Beverage Operator and its employees or agents; (ii) the Food and Beverage Operator's default or breach of its representations, covenants and agreements made in this Agreement; (iii) the Food and Beverage Operator's failure to comply with any and all laws applicable to the Food and Beverage Operator's performance of this Agreement, (iv) any unlawful acts on the part of the Food and Beverage Operator and its employees and agents, and (v) the release into the environment of any hazardous material by the Food and Beverage Operator's employees or agents which give rise to liability or which would or may require any "response," "removal," "abatement," or "remedial action" (as such terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act as amended by the Superfund Amendments

and Reauthorization Act, or as defined under any applicable state or local laws). Losses will include reasonable attorneys' fees in all cases of indemnification.

- b) The provisions set forth in Section 14.1(a), above, will survive termination of this Agreement for a period of six years thereafter.
- c) IN NO EVENT WILL THE CITY OR THE FOOD AND BEVERAGE OPERATOR BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY PUNITIVE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, WHETHER BASED UPON BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT TORT LIABILITY, OR OTHERWISE.

14.2 Insurance.

- a) 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.
- b) The Food and Beverage Operator, at its cost, shall secure the insurance specified below for the Facilities during the term of this Agreement. All insurance secured by the Food and Beverage Operator under the provisions of this section shall be issued by insurance companies reasonably acceptable to the City. The insurance specified in this section may be in a policy or policies of insurance, primary, or excess.
 - (i) Workers' compensation insurance with statutory limits of the workers' compensation laws of the State of South Dakota and Coverage B—Employer's Liability—covering operations of the Food and Beverage Operator. This shall include "other states insurance" so as to include all states not named on the "declarations" page of the insurance policy, but excepting monopolistic state fund states. The available limits for Coverage B—Employer's Liability—shall be not less than \$1,000,000.00 each accident, \$1,000,000.00 disease—policy limits.
 - (ii) Commercial general liability insurance providing coverage not less than that of the standard commercial general liability insurance policy ("occurrence form") for operations of the Management Company. If the "occurrence form" is not available, "claims made" coverage shall be maintained for three years after completion of this Agreement. The policy shall include contractual, personal injury, and property damage liability coverages with total available limits not less than \$5,000,000.00 per occurrence, not less than \$5,000,000.00 general aggregate, and \$5,000,000.00 aggregate products and completed operations.

- (iii) Automobile liability insurance covering all owned, non-owned, and hired automobiles, trucks, and trailers. Such insurance shall provide coverage at least as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000.00 combined single limit each occurrence.
 - (iv) Insurance to cover the Food and Beverage Operator's responsibilities herein to the City for property of the City in the Food and Beverage Operator's care, custody, and control, including fixed asset supplies and inventories.
 - (v) 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 five million dollars (\$5,000,000) for each occurrence.
- c) At the City's request, the Food and Beverage Operator shall obtain such other insurance that is customary and standard for protection against claims, liabilities, and losses connected with the Food and Beverage Services. The insurance required in subsections "iv" and "v" above shall be provided as specifically directed by the City.
 - d) The Food and Beverage Operator will provide the City with at least thirty (30) days' written notice of an insurer's intent to cancel or not renew any of the insurance coverages.
 - e) The City's approval or acceptance of certificates of insurance does not constitute City assumption of responsibility for the validity of any insurance policies, nor does the City represent that the above coverages and limits are adequate to protect any individual/group/business, its consultants' or subcontractors' interests, and assumes no liability therefore. The Food and Beverage Operator agrees to hold the City harmless from any liability including additional premiums due because of the Food and Beverage Operator's failure to maintain the coverage limits required.
 - f) Blanket Policies. All insurance may be obtained by the Food and Beverage Operator 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 which are generally accepted by the City.
 - g) City as Additional Insured. All insurance provided under this Section 14.2 shall name the City and its duly authorized representatives as an additional insured. The Food and Beverage Operator shall deliver to the City certificates of insurance evidencing the existence of all insurance required to be maintained by the Food and Beverage Operator pursuant to this Agreement.

The Food and Beverage Operator will deliver to the City, at least 15 days prior to expiration of each policy, satisfactory evidence of renewal to the extent any policy expires and requires renewal during the term of this Agreement. Evidence of renewal may be provided less than 15 days prior to the expiration of each policy with prior written consent by the City but shall never be later than one business day prior to the expiration of the policy. Upon request, the Food and Beverage Operator will provide to the City a complete copy of all insurance policies required under this Agreement. This Section 14.2(g) shall survive the Termination of this Agreement.

- h) 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 (thirty) days' prior written notice to the City, the Food and Beverage Operator, and any additional insured.
- i) Claims. The Food and Beverage Operator 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.
- j) Failure to Maintain Insurance. If the Food and Beverage Operator 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 the Food and Beverage Operator shall reimburse the City for any premiums paid by the City within ten (10) days of demand therefor. Any amounts unpaid shall accrue interest at the New York Prime Rate plus five (5) percent from the day incurred. The Food and Beverage Operator 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.
- k) Risk Management. The Food and Beverage Operator shall cooperate in the implementation of any loss control recommendations, insurance coverage reviews, and collection appraisals for insurance purposes of the City.
- l) Subrogation. Notwithstanding any provision of this Agreement to the contrary, Food and Beverage Operator waives all claims against the City, its elected and appointed officials, agents, officers, City Council members, employees and the City's successors and permitted assigns with respect to Food and Beverage Operator's Losses in the form of personal injury, death and property damage claims. Notwithstanding any provision of this Agreement to the contrary, the City waives all claims against Food and Beverage Operator, its officers, directors, partners, employees and agents and Food and Beverage Operator's successors and permitted assigns with respect

to the City's Losses in the form of personal injury, death and property damage claims. Food and Beverage Operator will by endorsement to the policies, when available, obtain from its insurance carriers providing commercial general liability, automobile, workers' compensation and umbrella liability insurance waivers of subrogation against the City, its elected and appointed officials, agents, officers, City Council members, employees and the City's successors and permitted assigns. The City will by endorsement to the policies, when available, obtain from its insurance carrier providing property insurance waivers of subrogation against Food and Beverage Operator, its officers, directors, partners, employees and agents and Food and Beverage Operator's successors and permitted assigns.

To the extent commercially practicable, the terms of all insurance policies of any independent contractors retained by the City or hired by the Food and Beverage Operator must require the independent contractors to waive subrogation claims against the Food and Beverage Operator and its officers, directors, partners, employees and agents, and the City and its elected and appointed officials, agents, officers, City Council members and employees.

Section 15. Ownership of Assets.

- 15.1 Ownership. The Food and Beverage Operator accepts the Gathering Hall, Party Room, and Warming House Flexible Use Space in their "AS IS, WITH ALL FAULTS" condition and shall return the Gathering Hall, Party Room, Warming House Flexible Use Space in the same condition, normal wear and tear excepted, in the event the Food and Beverage Operator shall cease to manage the Gathering Hall located at Jacobson Plaza. The ownership of the Gathering Hall, Common Space, and Warming House, and any and all Capital Improvements at the Gathering Hall, Common Space, and Warming House be and remain with the City. The Capital Equipment, Merchandise, Inventory, funds in the Operating Account, technical and office equipment, furnishings, furniture, displays, fixtures, vehicles, and similar tangible property located at the Gathering Hall will be held in trust by the Food and Beverage Operator during the term of this Agreement and, upon termination of this Agreement, ownership will immediately transfer to the City. The City will further retain exclusive ownership of all intangible property related to Gathering Hall and the real property located at Jacobson Plaza, including but not limited to unexpired warranties and guaranties, keys, plans and specifications, websites, domain names, social media platforms, suppliers' lists, customer lists, and all data related thereto. Ownership of and title to all intellectual property including but not limited to trade names, trademarks, logos, copyrights, patents, and all intellectual property rights of whatsoever value held in the City's name will remain in the name of the City. The ownership of consumable assets including but not limited to, Merchandise, Inventory, office supplies, and cleaning materials purchased with Operating Revenues will remain with the Food and Beverage Operator, and such assets may be utilized and consumed by the Food and Beverage Operator in the performance of Services under this Agreement; any such assets that

have not been utilized or consumed upon termination of this Agreement will become the property of the City. The ownership of data processing programs and software utilized by the Food and Beverage Operator in providing the Services, and all data stored including programs and software purchased by the Food and Beverage Operator with funds provided by the City or from Operating Revenues for Jacobson Plaza, will remain with the City. The Food and Beverage Operator will not take or use for its own purposes customer or exhibitor lists or similar materials developed by the City for the use of Jacobson Plaza, unless written consent is granted by the City. Ownership of equipment, furnishings, furniture, displays, and fixtures not considered to be real property and other personal property leased or purchased by the Food and Beverage Operator with City funds or from the Operating Account for use at and for Jacobson Plaza will vest solely in the City automatically and immediately upon termination of this Agreement. City assets as described in this Section 15.1, or otherwise, will not be pledged, liened, encumbered, or otherwise alienated or assigned by the Food and Beverage Operator, except the Food and Beverage Operator may grant a security interest in Capital Equipment to secure financing of same.

- 15.2 City Obligations. Except as otherwise set forth in this Agreement, throughout the term of this Agreement, the City will maintain full beneficial use and ownership of Jacobson Plaza and will pay, keep, observe, and perform all payments, terms, covenants, conditions, and obligations under any bonds, debentures or other security agreements or contracts relating to Jacobson Plaza to which the City may be bound. Upon the Food and Beverage Operator's request, the City shall assist and make available to the Food and Beverage Operator its procurement process.

Section 16. Assignment; Affiliates.

- 16.1 Assignment. Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned by either party without the prior written consent of the other party.

Section 17. Termination.

- 17.1 Termination Upon Default. Either party may terminate this Agreement upon an uncured default by the other party. A party will be in default under this Agreement if:
- a) a party fails to pay any sum within 30 days after payment is due and payable;
 - or
 - b) a party fails in any material respect to perform or comply with any of the other terms, covenants, agreements, or conditions of this Agreement and the failure continues for more than 30 days after written notice of default from the other party.

In the event a default, other than a default in the payment of money, is not reasonably susceptible to being cured within the 30-day period, the defaulting party will not be considered in default if, within the allowed 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.

17.2 Termination Other than Upon Default.

- a) The Food and Beverage Operator will have the right to terminate this Agreement, upon 60 days' written notice to the City: (i) if at the end of Agreement Year ending June 30, 2027, the revenues are not as projected; (ii) if the City elects not to make Capital Improvements or purchase Capital Equipment at acceptable levels as set forth in Section 12.4; or (iii) if the City fails to fund Operating Expenses in accordance with Section 6.4.
- b) The City will have the right to terminate this Agreement upon the occurrence of:
 - (i) if the Operating Losses exceed 20 percent of Gross Revenue in any Agreement Year beginning in the Agreement Year ending June 30, 2026, and any subsequent Agreement Year of this Agreement including any extension;
 - (ii) the Food and Beverage Operator filing a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization, an arrangement, or readjustment of its debts, or for any other relief under the United States Bankruptcy Code, as amended, or under any other state or federal insolvency act or law, or the Food and Beverage Operator's consent to, approval of, or acquiescence to the appointment of a receiver or trustee for all or a substantial part of its property;
 - (iii) 60 days following the filing against the Food and Beverage Operator of an involuntary petition in bankruptcy or an involuntary petition seeking reorganization, an arrangement, or readjustment, without dismissal of such petition; or
 - (iv) the liquidation, dissolution, or termination of the existence of the Food and Beverage Operator.

17.3 Effect of Termination. In the event this Agreement expires or is terminated for any reason:

- a) all Operating Expenses incurred or committed prior to the date of expiration or termination will be paid using funds on deposit in the Operating Account, and to the extent those funds are not sufficient, the City will pay all Operating

Expenses and will indemnify and hold harmless the Food and Beverage Operator;

- b) the City will promptly pay the Food and Beverage Operator all fees earned to the date of expiration or termination, provided the City will be entitled to offset against unpaid fees any proven Losses incurred by the City because of the Food and Beverage Operator's default under this Agreement which default by the Food and Beverage Operator gave rise to the asserted right to terminate this Agreement; and
- c) without any further action on the part of the Food and Beverage Operator or the City, the Food and Beverage Operator will assign and the City will, or will cause another Food and Beverage Operator retained by it to, accept the assignment of the Food and Beverage Operator's rights, and assume and perform all of the Food and Beverage Operator's obligations, arising after the date of expiration or termination of this Agreement under any contracts, leases, licenses, occupancy agreements, rental agreements, advertising agreements, concession agreements, and any other contracts relating to Jacobson Plaza which have been executed by the Food and Beverage Operator, except to the extent any license, agreement, commitment, or contract was executed by the Food and Beverage Operator in violation of any of the restrictions applicable to the Food and Beverage Operator's right to execute licenses, agreements, commitments, or contracts contained in this Agreement.

17.4 Surrender of Jacobson Plaza and Other Assets. Upon termination of this Agreement, the Food and Beverage Operator will immediately surrender and vacate Jacobson Plaza and all of its facilities upon the effective date of the termination. Jacobson Plaza and all Merchandise, Inventory, Capital Equipment, furniture, fixtures, and furnishings will be returned to the City in the same condition it was in on the date the Food and Beverage Operator began providing the Food and Beverage Services, reasonable wear and tear and aging excepted. The Food and Beverage Operator will provide the City with all passwords, security information, and authorizations necessary for the City or the successor Food and Beverage Operator to access, assign, maintain, and operate all websites, social media outlets, intellectual property rights, the Operating Account, and vendor and supplier services. All reports, records, including financial records and documents maintained by the Food and Beverage Operator for Jacobson Plaza relating to this Agreement other than materials containing the Food and Beverage Operator's proprietary information and personnel records will be immediately surrendered to the City by the Food and Beverage Operator upon termination.

17.5 Other 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 except as otherwise

limited by Section 14.1(c). All remedies will be cumulative and nonexclusive of any other remedy.

- 17.6 Survival. The provisions of Sections 17.3, 17.4 and 17.5 will survive termination or expiration of this Agreement.

Section 18. Suspension of Operation.

- 18.1 Suspension of Operation. The Food and Beverage Operator shall, at the direction of the Contract Administrator, immediately suspend, delay, or interrupt the Food and Beverage Operator's operation of all or part of Jacobson Plaza, the Gathering Hall, Warming House, and/or Common Space for such period of time as the City may determine appropriate to protect the facilities located in Jacobson Plaza and/or public health, safety, and welfare due to the occurrence of hazardous work conditions, emergency conditions, and/or any other cause including, but not limited to, the Food and Beverage Operator's failure to perform any of the covenants, agreements, and conditions contained in this Agreement on its part to be performed provided that the City has determined that the continuance of the operation of the Food and Beverage Services may detrimentally impact Jacobson Plaza or any of its facilities and/or health, safety, and welfare of the persons on site. The Food and Beverage Operator hereby waives any claim, and the City shall not be liable to any party, claiming through the Food and Beverage Operator for damages, payment abatement, or compensation because of the City's actions under this Section. The City's suspension of the Food and Beverage Operator's operations shall be in addition to any other right or remedy available by law or equity.

Section 19. Miscellaneous.

- 19.1 No Partnership or Joint Venture. The only relationship between the parties created by this Agreement is that of independent contractor. Nothing in this Agreement is intended or may be construed in any way to create or establish the relationship of partners or a joint venture between the City and the Food and Beverage Operator. None of the officers, agents, or employees of the Food and Beverage Operator will be or be deemed to be employees of the City for any purpose whatsoever.
- 19.2 Entire Agreement. This Agreement (and the Exhibits to this Agreement) contain the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings with respect to the subject matter of this Agreement. No other agreements, representations, warranties, or other matters, whether oral or written, will be deemed to bind the parties with respect to the subject matter of this Agreement.
- 19.3 Written Amendments. This Agreement may not be altered, modified or amended in whole or in part, except in a writing executed by the City and the Food and Beverage Operator.

19.4 Force Majeure.

- a) No party will be liable or responsible to the other party for any delay or failure or inability to perform caused by a Force Majeure Event if notice is provided to the other party within ten days of the date on which the party gains actual knowledge of the Force Majeure Event. The term "Force Majeure Event" as used in this Agreement includes: strike; war; public rioting; lightning; fire not caused by either party's gross negligence or willful misconduct; storms; floods; explosions not caused by either party's gross negligence or willful misconduct; inability to obtain materials or supplies due to widespread scarcity; epidemics; landslides; earthquakes; civil disturbances; terrorist acts; and any other cause of the kind or type described above and not reasonably within the control of the party whose performance is to be excused and not preventable by the exercise of due diligence. Notwithstanding anything contained herein to the contrary, the provisions of this Section 19.4 will not be applicable to either party's obligation to pay any monies, costs, charges, or expenses to third parties required to be paid pursuant to the terms of this Agreement.
- b) Neither party will be under any obligation to supply any service or services if and to the extent and during any period the supplying of any service or services or the provision of any component necessary is prohibited or rationed by any laws during a Force Majeure Event.
- c) In the event of damage to or destruction of Jacobson Plaza or any of the facilities or park and recreation amenities located at Jacobson Plaza by reason of fire, storm or other casualty or occurrence of any nature or any regulatory action or requirements that, in either case, is expected to render Jacobson Plaza materially untenable, notwithstanding the City's reasonable efforts to remedy the situation, for a period estimated by an architect selected by the City at the request of the Food and Beverage Operator of at least 180 days from the happening of the fire, other casualty or any other such event, either party may terminate this Agreement upon 90 days' written notice.
- d) The Food and Beverage Operator may suspend performance required under this Agreement as to any damaged or destroyed Jacobson Plaza facilities affecting the Food and Beverage Operator's Food and Beverage Services, without any further liability, in the event of any Force Majeure Event, which event is of such effect and duration as to effectively curtail the use of Jacobson Plaza so as to effect a substantial reduction in the need for the Food and Beverage Services provided by the Food and Beverage Operator for a period in excess of 180 days; provided, however, for the purposes of this subsection, the Food and Beverage Operator will have the right to suspend performance retroactively effective as of the date of the use of Jacobson Plaza was effectively curtailed. "Substantial reduction in the need for the Food and Beverage Services provided by the Food and Beverage Operator" means a

reduction of a degree to make the provision of any Food and Beverage Services by the Food and Beverage Operator economically impractical. The City and the Food and Beverage Operator will agree to an equitable reduced management fee payment for the period of reduction in Services required and to other mutually agreed upon modifications to the terms of this Agreement.

19.5 Binding Upon Successors and Assigns. This Agreement and the rights and obligations under this Agreement will inure to the benefit of, and be binding upon, the parties and each of their respective successors and permitted assigns.

19.6 Notices. Any notice, consent or other communication given pursuant to this Agreement must be in writing and will be effective either:

- a) when delivered personally to the party for whom intended;
- b) on the first business day following delivery by a nationally recognized overnight courier service;
- c) on the third day following mailing by certified or registered mail, return receipt requested, postage prepaid; or
- d) on the date transmitted by telecopy as shown on the telecopy confirmation and so long as the telecopy transmission is followed by mailing of the notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to the receiving party as set forth below or as a party may designate by written notice given to the other party in accordance with this Section 19.6.

If to the City

Mayor
City of Sioux Falls
224 West Ninth Street
Sioux Falls, SD 57117-7402

If to WPMI:

Darrin Smith
Washington Pavilion Management
301 S. Main Ave.
Sioux Falls, SD 57104

With a copy to:

City Attorney
City of Sioux Falls
224 West Ninth Street
Sioux Falls, SD 57117-7402

19.7 Section Headings and Defined Terms. The section headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning and interpretation of this Agreement. The use of masculine pronouns will include the feminine and neuter.

- (i) The Food and Beverage Operator has full legal right, power, and authority to enter into and perform its obligations hereunder.
- (ii) This Agreement has been duly executed and delivered by the Food and Beverage Operator and constitutes a valid and binding obligation of the Food and Beverage Operator, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, or similar laws affecting creditors' rights generally or by general equitable principles.
- (iii) The terms and obligations of this Agreement do not violate the terms and provisions of any other agreement to which the Food and Beverage Operator is a party.

19.13 Governing Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of South Dakota, without giving effect to otherwise applicable principles of conflicts of law.

19.14 Forum Selection. Any dispute, controversy, or claim arising out of or relating to this Agreement will be exclusively and finally resolved in South Dakota Circuit Court, Second Judicial Circuit, Minnehaha County, South Dakota. The Food and Beverage Operator hereby waives all defenses of inconvenience and jurisdiction and irrevocably submits to the jurisdiction and venue of the chosen court and expressly waives any right to file in or remove to any other venue or jurisdiction any dispute, controversy, or claim arising out of or relating to this Agreement.

19.15 No Inferences Regarding Drafting. The parties acknowledge and agree the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual agreement regarding all matters set forth in this Agreement. Because of those negotiations and discussions, neither party will be presumed to be the drafter of this Agreement and, therefore, no presumption as to validity, enforcement, or interpretation will be applicable based upon the identity of the drafter of this Agreement.

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

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

CITY OF SIOUX FALLS

WASHINGTON PAVILION
MANAGEMENT, INC.

BY: _____

BY: _____

PRINTED NAME: _____

PRINTED NAME: _____

TITLE: _____ Mayor _____

TITLE: _____

FEDERAL TAX ID NO. _____

ATTEST:

CITY CLERK
PRINTED NAME: _____

Exhibit A
Jacobson Plaza – Tract 3A

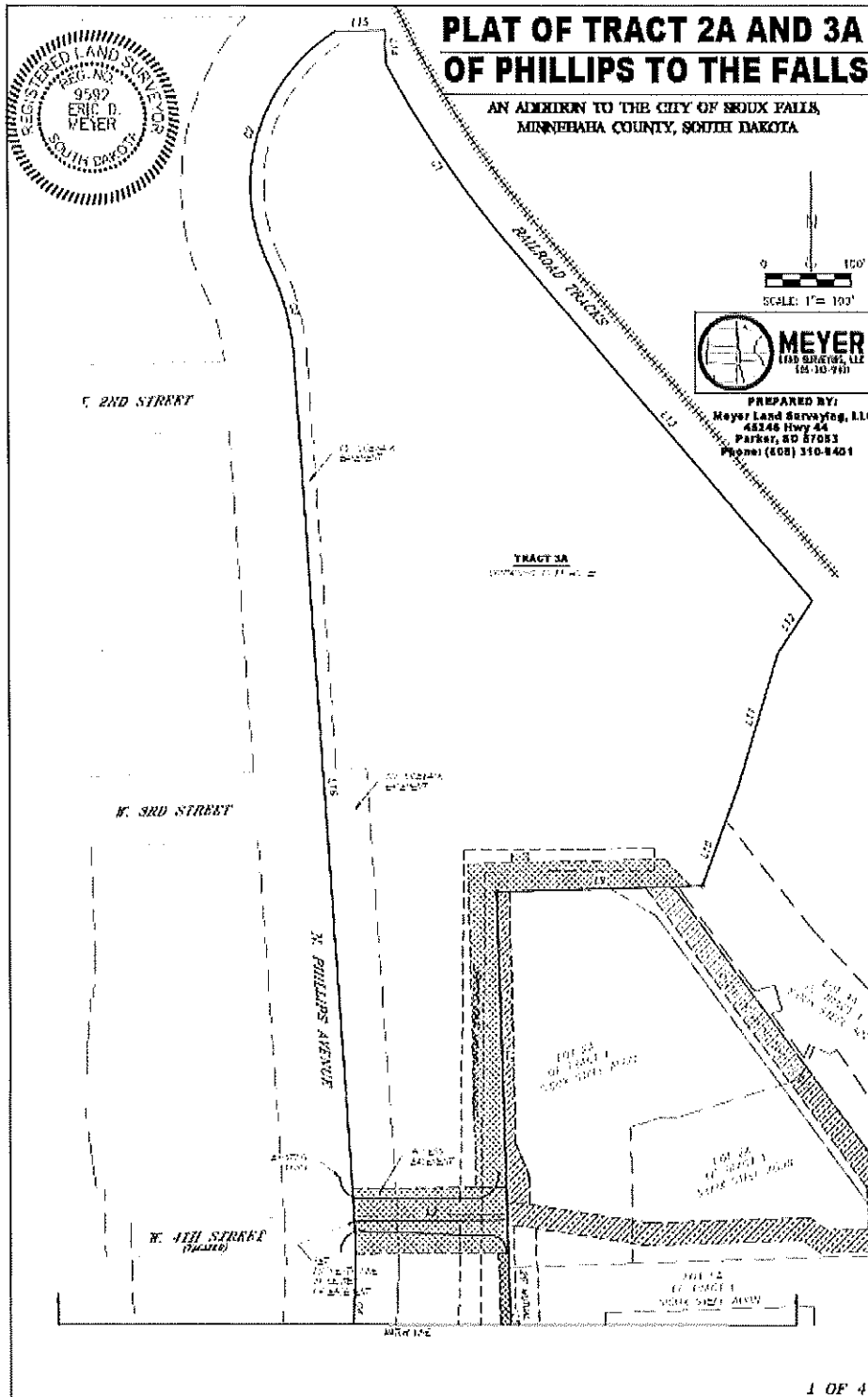


Exhibit B
Building Location

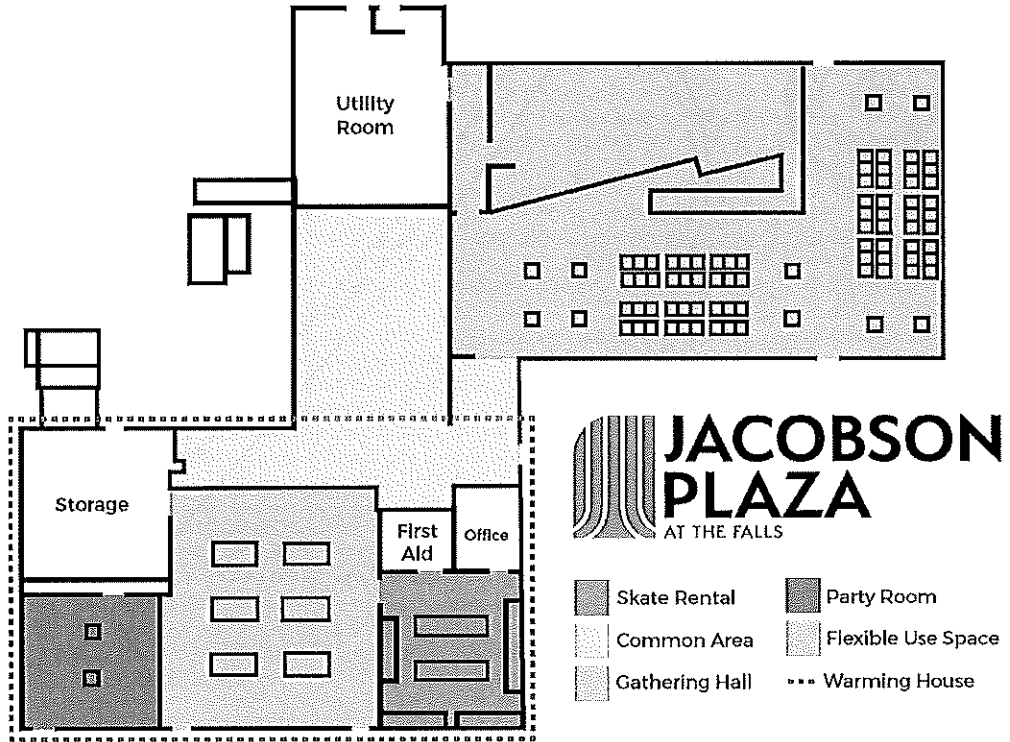
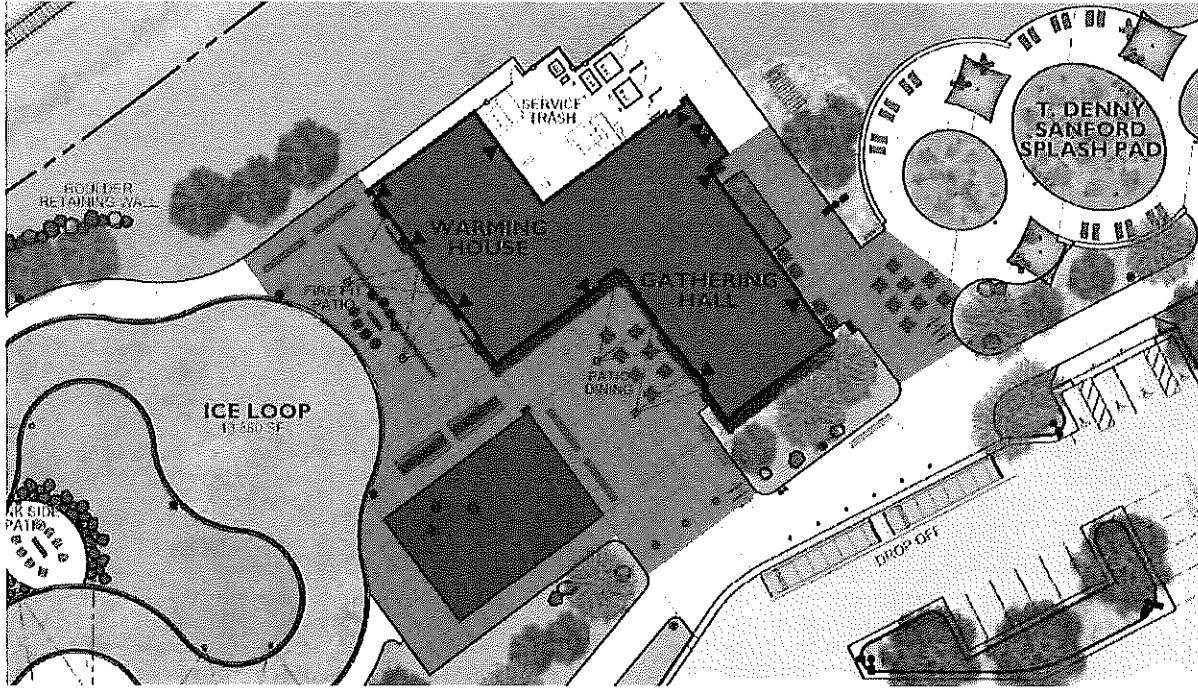


Exhibit C
Alcohol Service Areas



■ Alcohol Service Areas

2024
MIDCO AQUATIC CENTER OPERATING DASHBOARD
(Unaudited)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	YTD Total
Statistics									
<u>Attendance</u>									
Daily Attendance	3,852	5,878	7,198	5,456	5,247	6,405	6,089	4,750	44,875
Swim Pass Attendance	4,571	5,823	6,165	5,753	8,930	13,564	13,862	12,263	70,931
Swim Lesson Attendance	3,621	2,282	3,925	154	79	2,043	1,615	5	13,724
Swim Team Attendance	2,398	1,910	624	2,035	1,933	622	365	190	10,077
Swim Meet Attendance	4,113	5,526	-	1,137	4,452	6,114	62	6	21,410
Other Attendance	681	3,206	1,226	2,511	1,369	681	404	564	10,642
Total Attendance	19,236	24,625	19,138	17,046	22,010	29,429	22,397	17,778	171,659
Average Daily Attendance	641	879	617	588	710	981	747		1,929
<u>Passes</u>									
Fall, Winter, Spring Passes Sold	-	-	-	-	-	-	-	-	-
Annual Passes Sold	170	160	157	201	290	352	173	152	1,655
Total Passes Sold	170	160	157	201	290	352	173	152	1,655
<u>Other</u>									
Lesson Registrations	70	82	105	55	17	313	16	13	671
Class/Event Registrations	72	464	79	37	37	38	7	54	788
Meeting Room Reservations	20	25	42	20	27	21	20	14	189
Meeting Room Hours Reserved	31	38	78	38	48	37	36	25	329
Swim Lane Hours Reserved	1,393	919	413	972	570	336	144	74	4,820
Revenue									
Daily Admission	\$ 16,999	\$ 26,222	\$ 32,181	\$ 22,579	\$ 25,812	\$ 30,631	\$ 29,467	\$ 23,036	\$ 206,927
Passes	28,306	23,928	26,707	28,927	65,610	81,813	30,619	21,046	306,956
Programming Registrations	10,908	29,438	8,744	10,273	10,659	15,620	6,382	4,227	96,251
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	66	247,539
Total Revenue	\$ 87,720	\$ 85,425	\$ 74,738	\$ 68,258	\$ 113,907	\$ 348,150	\$ 69,048	\$ 48,375	\$ 895,620
Expenses									
Personnel*	\$ 82,436	\$ 134,630	\$ 133,163	\$ 128,842	\$ 187,550	\$ 153,219	\$ 158,080	\$ 156,221	\$ 1,134,141
Building R&M	733	16,959	12,818	24,701	15,827	1,314	48,314	32,345	153,010
Supplies & Materials	-	20,795	15,741	26,138	21,180	10,056	23,959	20,244	138,115
Utilities	23,110	33,844	38,874	48,539	23,987	39,336	35,496	42,633	285,818
Other	1,431	2,725	14,670	3,817	2,383	5,482	7,292	30,523	68,325
Total Expenses	\$ 107,710	\$ 208,953	\$ 215,267	\$ 232,037	\$ 250,927	\$ 209,408	\$ 273,141	\$ 281,966	\$ 1,779,409
*May and Nov have 3 pay periods	2	2	2	2	2	3	2	2	
Summary									
Total Revenue	\$ 87,720	\$ 85,425	\$ 74,738	\$ 68,258	\$ 113,907	\$ 348,150	\$ 69,048	\$ 48,375	\$ 895,620
Total Expenses	107,710	208,953	215,267	232,037	250,927	209,408	273,141	281,966	1,779,409
Operating Surplus/(Loss)	\$ (19,990)	\$ (123,528)	\$ (140,529)	\$ (163,780)	\$ (137,020)	\$ 138,742	\$ (204,093)	\$ (233,591)	\$ (883,789)

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

----- Current Month -----					
Prairie Green	Elmwood	Kuehn Park	Consolidated	Budget	Prior Year
5,993	10,658	5,538	22,189	18,740	20,695
85,973	150,610	59,859	296,443	231,155	236,320
21,762	47,702	8,414	77,877	83,400	76,971
18,771	16,254	12,185	47,209	39,785	41,275
72,588	117,487	34,817	224,892	189,453	190,636
60,282	102,198	13,445	175,925	162,201	157,082
55,264	51,028	25,119	132,411	121,000	116,615
314,641	485,279	154,838	954,758	826,994	816,899
15,626	23,533	6,282	45,441	38,190	39,611
24,583	37,663	3,926	66,172	51,283	49,486
40,209	61,196	10,208	111,614	89,473	89,097
274,432	424,083	144,630	843,145	737,521	729,802
20,381	26,394	17,596	64,372	63,182	58,768
-	335	-	335	3,690	3,065
25,049	29,307	3,452	57,808	57,651	56,163
82,416	97,732	21,809	202,057	186,856	180,346
16,952	25,367	7,027	49,346	42,731	43,290
34,955	52,388	13,065	100,408	89,410	83,527
-	-	-	-	783	-
179,754	231,523	63,049	474,326	444,303	425,159
94,678	192,559	81,581	368,819	293,216	304,643
-	6,936	-	6,936	5,211	5,340
5,438	-	-	5,438	2,400	814
(6,192)	(3,490)	(1,662)	(11,543)	(11,500)	(10,364)
-	-	-	-	(24)	(91)
-	-	-	-	-	-
-	-	-	-	-	-
93,925	196,066	79,719	369,650	289,305	300,342

----- Year To Date -----					
Prairie Green	Elmwood	Kuehn Park	Consolidated	Budget	Prior Year
29,304	47,521	23,613	100,438	82,380	89,855
338,503	652,361	234,848	1,225,712	1,021,318	1,020,060
141,232	216,070	32,486	389,788	408,535	378,657
86,588	84,930	55,342	226,860	208,925	210,892
333,578	498,334	143,838	975,749	858,353	877,580
307,713	417,412	48,056	773,181	726,250	703,944
267,808	252,384	128,097	648,289	575,000	559,342
1,475,421	2,121,491	642,667	4,239,580	3,799,381	3,750,475
60,897	109,426	15,947	187,270	186,140	180,164
98,987	123,851	17,944	240,783	229,533	226,386
159,884	233,278	34,692	428,853	415,673	406,550
1,315,537	1,868,214	607,776	3,811,527	3,383,708	3,343,923
133,624	157,311	78,468	369,403	394,289	357,525
3,538	9,374	4,306	17,217	18,440	16,695
110,048	123,712	20,404	254,164	260,003	250,991
473,955	543,748	119,282	1,136,984	1,033,474	1,001,047
82,836	150,540	21,725	255,102	230,237	246,880
331,202	339,781	99,069	770,052	720,481	662,187
-	-	-	-	3,134	918
1,135,202	1,324,466	343,254	2,802,923	2,660,058	2,536,243
180,335	563,746	264,522	1,008,604	723,650	807,682
-	-	-	-	-	-
-	47,924	-	47,924	32,511	35,999
35,532	-	-	35,532	19,200	814
(47,321)	(33,929)	(14,672)	(95,922)	(94,200)	(131,453)
-	(332)	-	(332)	(435)	(1,301)
-	(1,803)	-	(1,803)	-	(3,341)
-	-	-	-	-	-
168,546	578,608	249,850	994,004	680,726	708,400