

SIoux FALLS PARKS AND RECREATION BOARD MEETING

Wednesday, January 17, 2024

4:00 p.m. Regular Board Meeting

Prairie Green Golf Course Club House, 600 E. 69th St.

ORDER OF BUSINESS

1. Roll call and determination of quorum
2. Approval of minutes from December 20, 2023, meeting
3. Public Comment
4. Unfinished business
5. New business
 - a. NSIC Swimming and Driving Championship- Entry Fees- Jackie Nelson
 - b. Conditional Gifting Agreement for a Future Cash Gift for the Constructing of the First Tee Building to be located at Elmwood Golf Course between the City and the South Dakota Golf Association Junior Golf Foundation d/b/a First Tee -South Dakota- Tory Miedema
 - c. First Tee Lease Agreement- Elmwood Golf Course between Landscapes Golf Management Company and the South Dakota Golf Association Junior Golf Foundation d/b/a First Tee-South Dakota - Tory Miedema
 - d. First Tee Building Naming Agreement- Elmwood Golf Course between the City and the South Dakota Golf Association Junior Golf Foundation d/b/a First Tee-South Dakota- Tory Miedema
 - e. The South Dakota Hall of Fame Lease Agreement between Landscapes Golf Management and the South Dakota Golf Association-Tory Miedema
 - f. Conditional Gifting and Naming Agreement for a Future Cash Gift for the Renovation and Expansion of the Locker Rooms Located at the Midco® Aquatic Center between the City and the Sioux Falls Area Community Foundation - Tory Miedema
 - g. 2024 Policy & Guidelines- Brett Kollars
 - h. Proposed Change to Recreation Trail Ordinance to Permit Class II E- Bicycles- Councilor Greg Neitzert
6. Report of Director of Parks and Recreation
 - a. Aquatics Report – November
 - b. Golf Course Report – November
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 367-8222 during regular business hours at least 48 hours prior to the event. Special needs will be accommodated whenever reasonably possible.

December 20, 2023

A REGULAR MEETING OF THE SIOUX FALLS PARKS AND RECREATION BOARD was held on Wednesday, December 20, 2023 at 4 p.m. at Falls Overlook Café

Roll Call and Determination of Quorum

Members present: Ann Nachtigal, Jim Stavenger, Rick Weber, Brooke Wegener and Mike Begeman and Teresa Cauwels

Members absent: Mick Conlin

Parks and Recreation staff present: Don Kearney, Director; Brett Kollars, Assistant Director of Parks and Recreation, Jackie Nelson, Recreation Manager; Mike Patten, Parks Planning and Projects Manager, Tory Miedema, Park Development Specialist; Carter Roberts, Park Development Specialist

Others Present: Karen Leonard, City Attorney's Office; Megan Klumper, Citizen; Katie and Caleb Foutz, Cub Scout Pack 155; Kristen Phipps, Soo Foo Off- Leash Association; John Nohr, Citizen; Michael Smith, Citizen; Erika Iverson, Citizen; Kylie and Kyler Cleveland, Cub Scout Pack 155; Chris Mckeown, Citizen.

Approval of Minutes (October 18, 2023)

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

Public Input

Kristen Phipps- provided feedback about the Family Park master plan.

Megan Klumper- provided feedback about the Family Park master plan.

Michael Smith- provided feedback about the Family Park master plan.

Erika Iverson- provided feedback about the Family Park master plan.

Chris Mckeown- provided feedback about the Family Park master plan.

Unfinished Business

None.

New Business

Agreement between the City of Sioux Falls and the Sioux Falls School District, No. 49.5 for the Development of a New School /Park Site: A motion to recommend approval of the Agreement between the City of Sioux Falls and the Sioux Falls School District, No. 49.5 for the Development of a New School/Park Site was made by Wegener and seconded by Cauwels. Motion passed unanimously with all present Board members voting yes.

First Premier Sponsorship Agreement at the Glice Mobile Ice Rink: A motion to approve First Premier Sponsorship Agreement at the Glice Mobile Ice Rink was made by Cauwels and seconded by Begeman. Motion passed unanimously with all present Board members voting yes.

Election of Park and Recreation Board Officers:

A motion to approve the Election of Park and Recreation Board Officers made by Weber and seconded by Wegener. Motion passed unanimously with all present Board members voting yes.

Report of Director of Parks and Recreation:

Kearney started his report by thanking Ann Nachtigal for leading the Parks and Recreation Board for the last two years as president. Kearney noted that the Delbridge working group met this week and has hired A&M Art Conservators out of New Jersey to evaluate the Delbridge collection. In the next 60 days, the working group should have a formal report to review. Kearney noted that ice skating rinks are nonexistent at this time due to the above freezing temperatures. Great Bear is making snow in the evening, targeting a January 1st opening date. Kearney stated that he received many compliments on the Winter Weekends at the mural downtown, hats off to the team on all the hard work. Kearney noted that the skate park crew has pulled out for the winter and will return in the spring. Kearney asked Jackie Nelson to speak about concessions at Midco® Aquatics Center. Jackie Nelson stated that Parks and Recreation will now be taking over the concessions at the Midco® Aquatic Center. It will be open seven days a week, open to close, focused on swim meets and parties. Parks and Recreation takes over January 1, 2024, will have a soft opening on January 4, 2024, and a swim meet on January 5, 2024. Finally, Kearney responded to a question from Weber regarding Family Park Master Plan. Kearney stated there is no deadline to have the master plan approved. There was a working group meeting on December 19, 2023, with a small group of stake holders. Kearney noted they are also honoring donor intent with the Unzelman and Soukup families. Kearney is hopeful to take the largest park in the city and turn it into something that supports off leash dog use but also supports other uses. The council will get an update regarding Family Park master plan on January 2nd at the council informational meeting. Park Board will approve the master plan.

Items Added After the Agenda Deadline

None.

Reading of Communications to the Board

None.

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

Secretary

Approved by:

President



Sioux Falls Parks and Recreation
Application for Permit to Charge Entry Fees

Sponsor of Event Northern Sun Interscholastic Conference (NSIC)
Name of Event 2024 NSIC Swimming & Diving Championship
Date(s) of Event Feb 13-17, 2024
Location(s) of Event Midea Aquatic Center

Event Contact Names(s) Day Phone Evening Phone
1. Allison Cordes 612.801.1058 " "
2. Michael Thompson 918.557.9968 " "

Location(s) where entrance fees will be collected

- 1. Aquatic Center Entry
2.
3.
4.

List of fees—please indicate how fee is collected, such as per day, per weekend, per event, per vehicle, etc. (ADULT /STUDENT RATES)

- 1. \$ 10/5 per session
2. \$ 17/10 per Day
3. \$ 50/30 per championship
4. \$ per

Fee recipient NSIC

Fee purpose Fees collected to assist in covering expenses of running the championship.

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

Organization NSIC
Attention Allison Cordes
Street/P.O. Box 2999 County Rd 42 West Suite 136
City/State/Zip Burnsville, MN 55306

Applicant Signature [Signature] Application Date 5/23/23

Park Board Approval Date Permit Issued Date

Please submit application at least 60 days in advance of the event.

**CONDITIONAL GIFTING AGREEMENT FOR A FUTURE CASH
GIFT FOR THE CONSTRUCTING OF THE FIRST TEE
BUILDING
TO BE LOCATED AT ELMWOOD GOLF COURSE**

This Conditional Gifting Agreement for a Future Cash Gift for the Constructing of the First Tee Building to be Located at Elmwood Golf Course (the “*Agreement*”) is dated _____, 2023, and is made and entered into between the **City of Sioux Falls**, South Dakota, a home-ruled chartered municipality (the “*City*”), and the **South Dakota Golf Association Junior Golf Foundation d/b/a First Tee – South Dakota**, P.O. Box 88938, Sioux Falls, SD 57109-8938 (“*First Tee*”). The City and First Tee are referred to herein individually as a “*Party*” or collectively as the “*Parties*.”

RECITAL

- A. WHEREAS, Elmwood Golf Course is located on property owned by the City located at 2604 West Russell Street, Sioux Falls, SD 57104; and
- B. WHEREAS, First Tee is currently located inside the clubhouse at Elmwood Golf Course and the Holiday Inn & Suites located at 2040 W. Russell Street, Sioux Falls, SD;
- C. WHEREAS, First Tee, consistent with its purpose to promote the development and availability of recreation and the sport of golf for all residents of Sioux Falls, South Dakota, and its neighboring citizens, desires to relocate to a new facility to be constructed adjacent to Elmwood clubhouse located at Elmwood Golf Course; and
- D. WHEREAS, the City desires to partner with First Tee and construct the Improvements as defined in Section 3 of this Agreement and shall hereinafter be referred to in this Agreement as the First Tee building; and
- E. WHEREAS, the First Tee building has an estimated construction cost of \$934,000 dollars in accordance with a cost estimate prepared by Stone Group Architects which is attached hereto as **Exhibit A** and made a part of this Agreement; and
- F. WHEREAS, the actual cost of the Improvements is to be raised and paid for by First Tee.

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

TERMS

Section One

The Gift/City Contribution

1.1 First Tee agrees to gift to the City, and the City conditionally agrees to accept a cash gift of an amount which is estimated to be nine hundred thirty-four thousand dollars (\$934,000) for the Improvements (the “*Gift Amount*”). First Tee agrees the Gift Amount will be the sum of the actual cost of the bids received, Excess Change Orders incurred, and the cost of design. This Agreement shall impose no obligation on the City for payment of the Improvements. The Parties agree and recognize this is a future gift that will be fully vested when all conditions are met.

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Section Two
Term of Agreement

2.1 This Agreement will commence on February 7, 2024 (the “Effective Date”), unless earlier terminated pursuant to the provisions of this Agreement.

Section Three
Purposes of the Gift

3.1 The specific purpose of the Gift Amount gifted by First Tee to the City are to provide for the construction of the First Tee building to be located adjacent to the Elmwood Golf Course located at 2604 West Russell Street (the “Project Site”) attached hereto as **Exhibit B**. The Improvements to the Project Site, upon agreement of the parties, may include, but are not limited to, the building shell spaces listed in Exhibit A and described as follows:

3.1.1 Building shell and interior walls for the First Tee office space, South Dakota Golf Association office space, restrooms, classroom, breakroom, workroom, covered patio, and associated storage and circulation space (the “Improvements”). All furniture, fixtures, and equipping of the spaces will be the responsibility of First Tee.

3.1.2 Examples of what the Improvements may look like are reflected in **Exhibit C**, attached to this Agreement. The City will design and construct all Improvements to be made to the Project Site utilizing the Gift Amount.

Section Four
Design, Construction, and Payment Process of the Improvements

4.1 The design, construction, and payment process for the Improvements to the Project Site will include the following requirements:

4.1.1 First Tee will fund the cost of design of the Improvements as outlined in the cost estimate to the Project Site from the Gift Amount (the “Design Costs”).

4.1.2 The Parties will be engaged in the design process through periodic design review meetings to gather feedback and address concerns. Prior to developing the construction documents for bid, a final design and site plan (the “Plan”) will be created. Each Party must approve the final Plan in writing prior to the development of the bid/construction documents and commencement of construction of the Improvements to the Project Site. Following approval of the final version of the Plan by all Parties, subsequent significant or material changes to the Plan will require the mutual written approval of the Parties.

4.1.3 The City will have no obligation to award other agreements, disburse funds, or commence construction of the Improvements to the Project Site until First Tee has confirmed it has received the Gift Amount and has distributed to the City the Contract Sum as defined in Paragraph 4.1.4 below. Upon the City’s receipt of documentation that First Tee has received the Gift Amount or

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bridge financing, the City will proceed diligently with bidding the construction described below for the Improvements.

4.1.4 The City will fully award and construct the Improvements to the Project Site in accordance with the Plan and the terms of this Agreement following receipt of the funds from First Tee. The City, in accordance with state competitive bid laws, agrees to solicit, review, and accept competitive sealed proposals and/or competitive sealed bids and enter into one or more contracts for the construction of the Improvements to the Project Site. The City will obtain from the contractor the cost of construction of the Improvements to the Project Site (the "*Contract Sum*"). Prior to the City awarding the contracts, First Tee shall provide the City with the *Contract Sum* to ensure sufficient funds are encumbered to meet the obligation when it becomes due and payable. Upon receipt of First Tee's *Contract Sum*, the City will award the contracts. The City will be solely responsible for assuring all phases of construction are properly contracted and performed and that the work done and the materials used are in conformance with all applicable laws that govern the performance of the work, including (to the extent applicable) the requirements of the Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

4.1.5 If the Design Costs and Contract Sum for Improvements exceed the sum of \$934,000, the parties will meet to discuss options available for funding and determine whether to proceed. If the Parties fail to reach satisfactory terms, the Parties may opt out and this Agreement may be terminated without incurring any additional costs or liability to any of the Parties, except for those costs already incurred.

4.1.6 In the event there are material changes to the Plan (a "*Change Order*") and such Change Order is within the Contract Sum, the City will solely process the Change Orders subject to the approval requirements set forth in Section 4.1.2 if there are design changes. In the event the costs of the Improvements increase beyond the Contract Sum ("*Change Order Excess Amount*"), the City will submit to First Tee the Change Order Excess Amount for approval by First Tee, through its representatives. If the material changes to the design, if any, are approved by the Parties, First Tee will contribute 100 percent of the Change Order Excess Amount. Upon the City's receipt of written documentation that First Tee has received the Change Order Excess Amount or has obtained bridge financing, the City will authorize the Change Order Excess Amount. The Agreement shall impose no obligation on the City for payment of the Improvements.

4.1.7 The Parties agree to the estimated following timeline: Design to be completed by February 29, 2024. Construction for Improvements will commence in accordance with the project timeline identified and approved during the design process. Construction is anticipated to begin April 30, 2024, with a final completion date of May 1, 2025. The exact project schedule will be mutually agreed upon at the end of the design process and may be adjusted due to unexpected site conditions identified during construction. If the design is not completed by February 29, 2024, and the Parties are not able to agree upon a design completion extension, either Party may terminate this Agreement upon delivery to the other party of written notice of termination. If the construction has not commenced by April 30, 2024, and the Parties are not able to agree upon an extension, either Party may terminate this Agreement upon delivery to the other Party of written notice of termination.

4.1.8 The City will provide to First Tee periodic written construction status reports.

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Section Five Conditions

5.1 The City's acceptance of the gift described above is conditioned upon the following:

5.1.1 First Tee provides to the City the funding necessary to construct the Improvements.

5.1.2 The City shall own and maintain the Improvements on the Project Site per terms and conditions of the lease agreement between the City's golf course management company and the First Tee.

5.1.3 First Tee may, subject to the recommendation by the Sioux Falls Parks and Recreation Board and the approval of the Sioux Falls City Council and in accordance with subchapter "Naming Facilities," Section 30.060 at sequence of the Code of Ordinances of Sioux Falls, SD, establish and assign naming rights for the Improvements to enhance private fund-raising efforts. The terms and conditions associated with the naming rights and the manner in which the naming rights are displayed on the site are also subject to approval of the Sioux Falls Parks and Recreation Board and the city council. A separate naming agreement shall be entered into between the City and the proposed naming sponsor. The parties recognize and agree that city council approval shall be sought for such naming agreement. The parties agree that naming rights shall only become effective when the city council approval is obtained and becomes final.

5.1.4 The City agrees First Tee and Landscapes Golf Management, LLC, the golf facilities manager, will enter into a First Tee Building Lease Agreement.

Section Six Hold Harmless

6.1 To the fullest extent permitted by law, First Tee hereby agrees to defend, indemnify, and hold the City and its respective officers, directors, employees, agents, elected, and appointed officials harmless from any and all claims, damages, losses and judgments of third parties, including attorneys' fees and expenses recoverable under applicable law arising out of the construction and completion of the Improvements furnished under this Agreement, and for bodily injury or property damage arising out of services, work, or products furnished under this Agreement, providing that such claims or liability are the result of an act, error, or omission of First Tee and/or its employees/contractors/agents arising out of the gift(s) and/or work described in the Agreement. First Tee's obligations in this section shall survive termination or expiration of this Agreement.

Section Seven Default Remedies

8.1 A Party will be in default if it breaches any of its obligations under this Agreement. In the event of a default, the other Party will give to the Party in default written notice of the default. If the Party in default has not cured the default within 10 (ten) days of receipt of the notice of default, or commenced to cure and then proceed to complete the cure of the default within a reasonable period of

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time in the event the default is not capable of being cured within the 10- (ten) day period, then the Party not in default may terminate this Agreement and seek any other remedy allowed under applicable laws or equity, including the recovery of attorneys' fees.

Section Eight Notice

9.1 All notices, requests, demands, or other communications required or permitted under this Agreement must be in writing and delivered either: (i) personally; (ii) by certified or registered mail, return receipt requested, or postage prepaid; (iii) by a recognized overnight courier service (such as Fed Ex); or (iv) by email transmission made during normal business hours with a copy to follow by registered or certified mail, return receipt requested, postage prepaid, or by overnight courier service, addressed as follows:

If to City: City of Sioux Falls
 224 West Ninth Street, P.O. Box 7402
 Sioux Falls, SD 57117-7402
 Attention: Mayor
 Email: pth@siouxfalls.gov

If to Donor: First Tee-South Dakota
 P.O. Box 88938
 Sioux Falls, SD 57109-8938
 Email: _____

The above parties or legal counsel may change their contact information at any time by giving to the other parties and legal counsel written notice of the updated contact information.

Section Nine Force Majeure

10.1 The City will not be responsible for delays in the completion of the Improvements to the Project Site resulting from causes beyond its reasonable control ("Force Majeure"). Force Majeure will include, but not be limited to, strikes, walk outs, other industrial disturbances, civil disturbances, fires, unusual climatic conditions, epidemics or pandemics, epidemics, acts of God, acts of public enemy, compliance with any governmental regulation, order, or requirement, or inability to obtain labor, transportation, or necessary materials in the open market.

Section Ten Entire Agreement

11.1 This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party, or an agent or either Party, that is not contained in this Agreement will be valid or binding. This Agreement may not be enlarged, modified, or altered, except in writing signed by the parties.

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**Section Eleven
Binding Effect**

12.1 This Agreement will inure to the benefit of, and be binding upon, the assignees and successors of the respective parties.

City of Sioux Falls

**South Dakota Golf Association
Junior Golf Foundation
D/B/A First Tee – South Dakio**

MAYOR

By: _____
Its: President

ATTEST:

Federal Tax Id No. _____

CITY CLERK

EXHIBIT A

First Tee Building Addition - Elmwood Clubhouse

Shell Only						
First Tee	ENTRY / Vestibule	SF	1	52	50.00	2,600
Post Frame	Office - SDGA	SF	1	285	50.00	14,250
	Office - SDGA Private	SF	1	95	50.00	4,750
Bldg	Office First Tee	SF	1	286	50.00	14,300
	Office First Tee Private	SF	1	95	50.00	4,750
	Storage - First Tee	SF	1	97	50.00	4,850
	RESTROOMS	SF	1	116	50.00	5,800
	Classroom	SF	1	1,204	50.00	60,200
	Breakroom	SF	1	197	50.00	9,850
	Workroom	SF	1	101	50.00	5,050
	Chair Storage - First Tee	SF	1	113	50.00	5,650
	Club Storage - First Tee	SF	1	239	50.00	11,950
	First Tee Covered Patio	SF	1	130	50.00	6,500
	MECHANICAL / ELECT. ROOM	SF	1	107	50.00	5,350
	Circulation / CORRIDORS	SF	1	60	50.00	4,000
	Net/Gross	SF	1	239	50.00	11,950
				3,306		
	1 - Mechanical Equipment	SF		2,937	14.00	41,118
	1 - Electrical	SF		2,937	11.00	32,307
	1 - Plumbing	SF		2,937	6.00	17,622
	1 - Fire Sprinkler & Service	SF		2,937	-	-
				per sf	79.51	262,847
	CONTINGENCY				5.00%	13,142
	CM, General Conditions, Permit				12.00%	33,119
	Professional Fees estimate					45,000
	Reimbursables					10,000
	Sub Total - First Tee	SF		0	TOTAL:	364,108
	First Tee Building			Price per sq ft		110.14

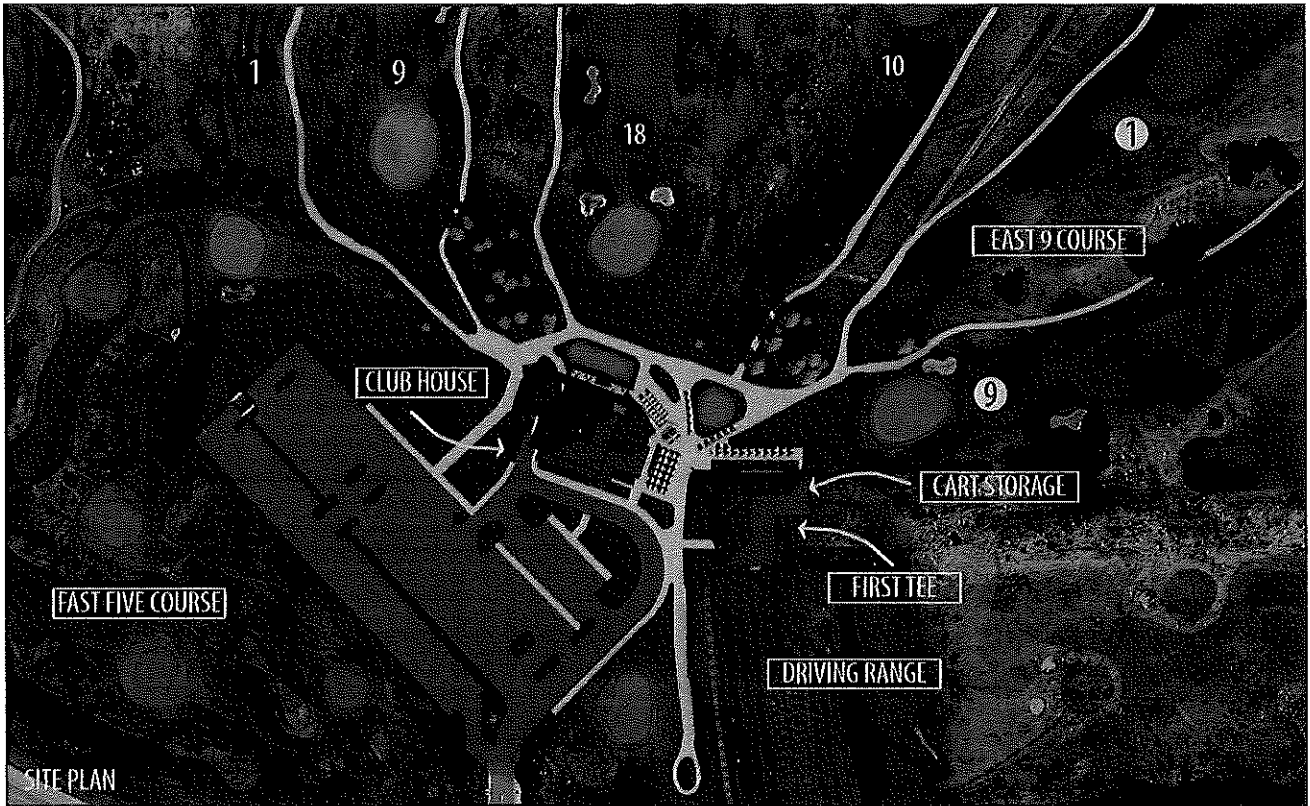
Tenant Build Out					
ENTRY / Vestibule	SF	1	52	50.00	2,600
Office First Tee - SDGA	SF	1	285	50.00	14,250
Office - SDGA Private	SF	1	95	50.00	4,750
Office First Tee	SF	1	286	50.00	14,300
Office First Tee Private	SF	1	95	50.00	4,750
Storage - First Tee	SF	1	97	50.00	4,850
RESTROOMS	SF	1	116	50.00	5,800
Classroom	SF	1	1,204	50.00	60,200
Breakroom	SF	1	197	50.00	9,850
Workroom	SF	1	101	50.00	5,050
Chair Storage - First Tee	SF	1	113	50.00	5,650
Club Storage - First Tee	SF	1	239	50.00	11,950
First Tee Covered Patio	SF	1	130	50.00	6,500
MECHANICAL / ELECT. ROOM	SF	1	107	50.00	5,350
Circulation / CORRIDORS	SF	1	80	50.00	4,000
Net/Gross	SF	1	239	50.00	11,950
			3,306		
1 - Mechanical Equipment	SF		3,067	14.00	42,938
1 - Electrical	SF		3,067	11.00	33,737
1 - Plumbing	SF		3,067	6.00	18,402
1 - Fire Sprinkler & Service	SF		3,067	-	-
			per sf	80.73	266,877
CONTINGENCY				5.00%	13,344
CM, General Conditions, Permit				12.00%	33,627
Professional Fees estimate					45,000
Reimbursables					10,000
Owner Provided Equipment	Allow	1	1	-	-
Artificial Turf	SF	1	0	15.00	-
Golf Simulators	Allow	1	1	-	-
Furniture and Art Work, etc.	Allow	1	3,067	-	-
Sub Total - First Tee	SF		0	TOTAL:	368,847
First Tee Building			Price per sq ft		111.57

Project Items					
Rigid Inclusion in lieu of Geopiers	allow	1	1	78,252.00	78,252
drain tile, methane mitigate & Monitoring	sf	1	3,306	3.36	11,108
Landscape, seed, sod, irrigation	Allow	1	1	10,000.00	10,000
Flatwork	SF	1	600	10.00	6,000
AV/IT costs	allow	1	1	7,500.00	7,500
Building Signage	allow	1	1	5,000.00	5,000
Utilities & Services	allow	1	1	15,245.00	15,245
Covered Patio	SF	1	200	50.00	10,000
Planters LF w/ landscape block	LF	1	110	100.00	11,000
SUB TOTAL			per sf	46.61	154,105
CONTINGENCY				5.00%	7,705
CM, General Conditions, Permit				15.00%	24,272
Professional Fees					10,000
Estimated Reimbursables					4,963
Sub Total - Site Items	SF			TOTAL:	201,045
City of Sioux Falls			Price per sq ft		60.81

Total Cost:

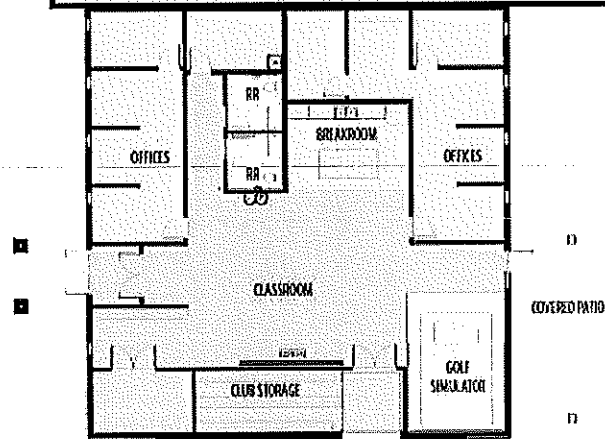
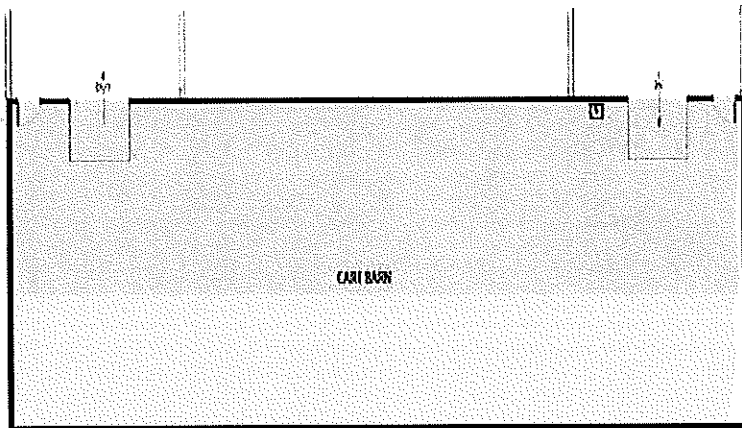
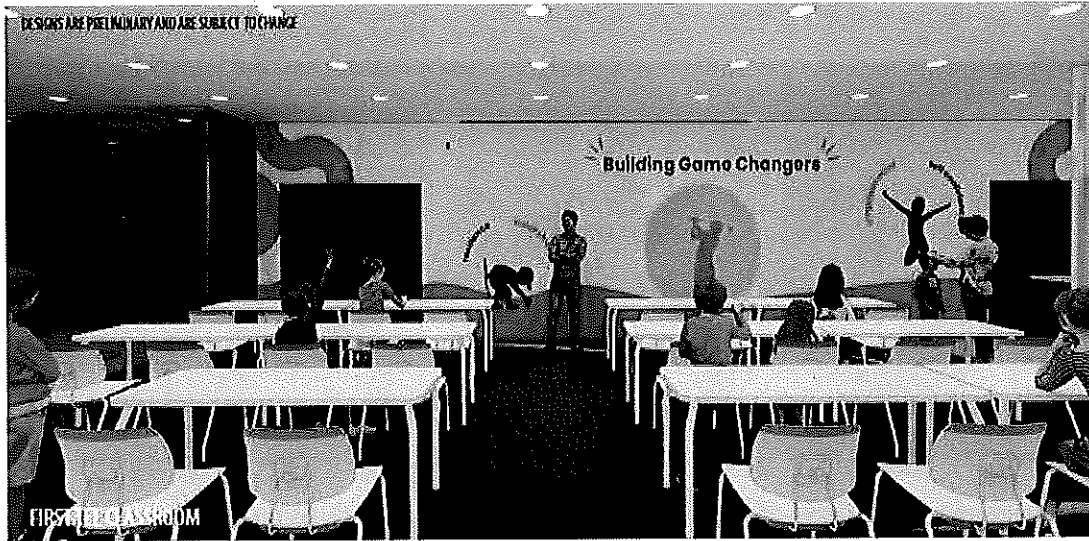
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**Exhibit B
Project Site**

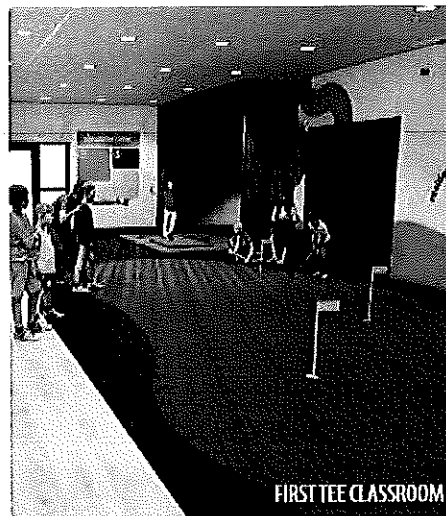


Conditional Gifting Agreement for Future Cash Gift for
the Constructing of the First Tee Building to be Located
at Elmwood Golf Course
Exhibits

Exhibit C First Tee Site Plan

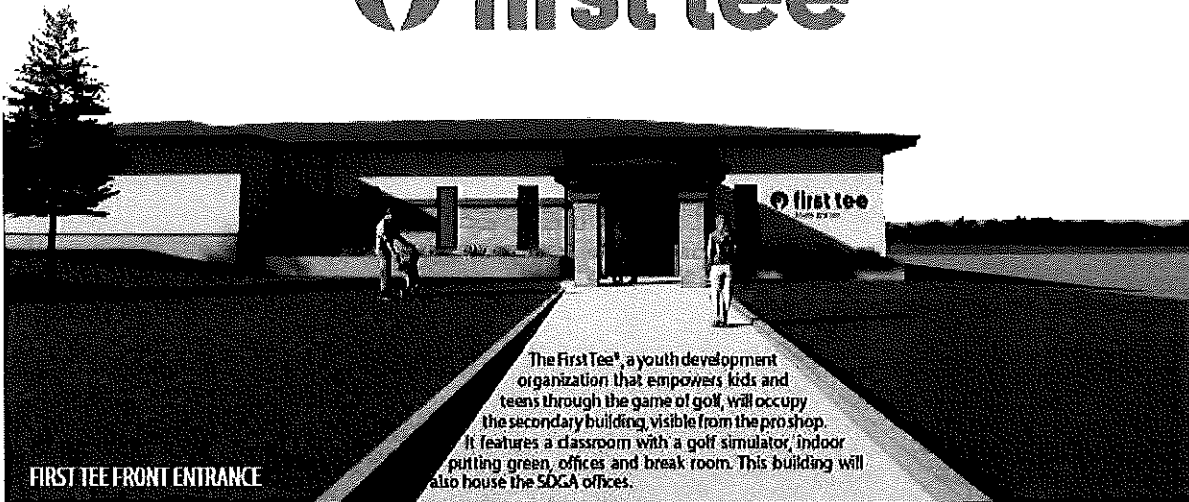


FIRST TEE / CART BARN FLOOR PLAN



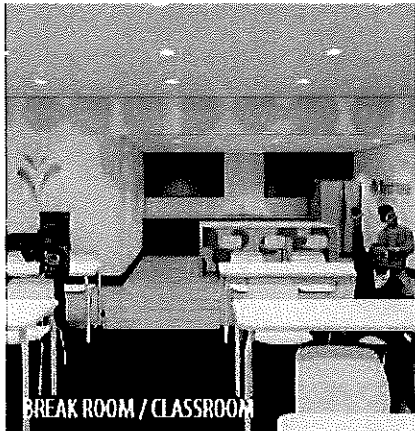
Conditional Gifting Agreement for Future Cash Gift for
the Constructing of the First Tee Building to be Located
at Elmwood Golf Course
Exhibits

first teeSM

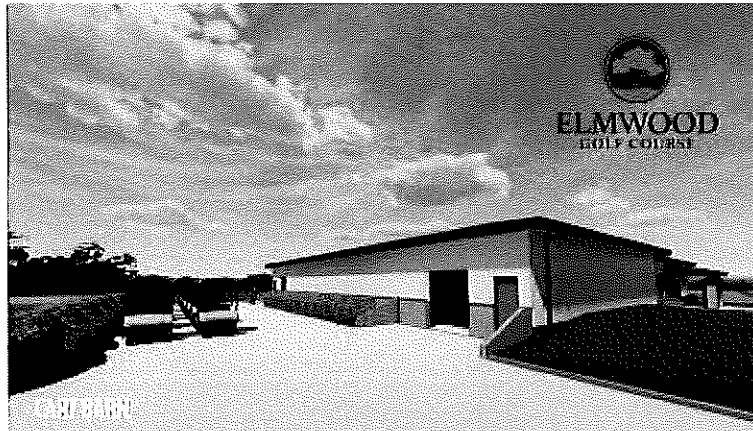


FIRST TEE FRONT ENTRANCE

The First TeeSM, a youth development organization that empowers kids and teens through the game of golf, will occupy the secondary building, visible from the pro shop. It features a classroom with a golf simulator, indoor putting green, offices and break room. This building will also house the SOGA offices.

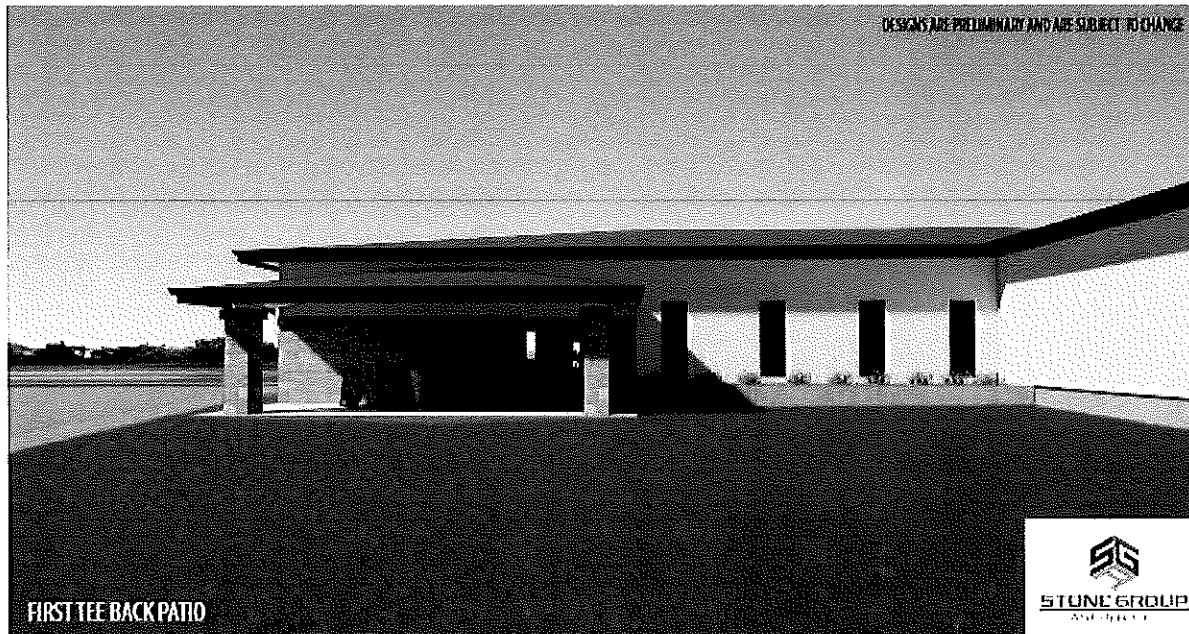


BREAK ROOM / CLASSROOM



CART BARN

DESIGNS ARE PRELIMINARY AND ARE SUBJECT TO CHANGE



FIRST TEE BACK PATIO



Conditional Gifting Agreement for Future Cash Gift for the Constructing of the First Tee Building to be Located at Elmwood Golf Course Exhibits

LEASE AGREEMENT

Agreement made _____, 2024, between the Landscapes Golf Management Company of Lincoln, NE, LLC (the "Lessor"), and South Dakota Golf Association Junior Golf Foundation dba First Tee – South Dakota, PO Box 88938, Sioux Falls, SD 57109-8938, (the "Lessee").

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

Section One Premises

Lessor, in consideration of the terms and conditions hereof, hereby leases to Lessee and Lessee hereby leases from Lessor, a portion of 2600 West Russell Avenue, Sioux Falls, SD 57104, as shown on the attached Exhibit A and described as First Tee Lease and First Tee Lease Area (the "Lease Area"). The legal description of this City-owned property is as follows: A portion of the W1/2NE1/4 of Section 7-T101N-R49W of the 5th P.M., Minnehaha County, South Dakota.

Section Two Term and Rent

This lease shall be effective for a term of five (5) years from the effective date of this lease, with an additional three (3), five (5) year terms. The additional five-year options are at the discretion of the lessee. The effective date of this Lease shall be the date the certificate of occupancy is issued.

Lessor will have the option to buyout and terminate the Lease, effective at the end of the second five-year option (10 years) and the third five-year option (15 year) If Lessor desires to exercise its option to buyout and terminate the Lease hereunder, it shall provide written notice of that fact to Tenant not later than one hundred eighty (180) days prior to Early Termination Date. In the event lessor exercises this option, it shall pay Tenant the pro-rata cost of Tenant capital investment, which shall be based on the Early Termination Date as follows:

- If terminated, at the discretion of the Lessor, after the second five-year option (10 Years), Lessors shall pay to Lessee \$530,000.00;
- If terminated, at the discretion of the Lessor, after the third five-year option (15 years), Lessors shall pay to Lessee \$282,000.00.

It shall terminate on the expiration of the lease term, including all renewals, or upon notification of termination provided by Lessee, whichever occurs first. Lessee shall provide a minimum of 30 days' notice of intended vacate date. Based on the Lessees' estimated capital investment of \$934,000.00 the rent shall be for one dollar and other valuable considerations during the initial and renewal terms. Lessee will be responsible for all utilities which shall be separately metered to include but not be limited to gas,

Agreement No. _____

water, electricity, cable, internet, custodial, and cleaning, Upon expiration of the lease, it is the party's intent to renegotiate the lease for any subsequent terms. Further, Lessee agrees to pay Lessor's third-party golf course management company (hereinafter, the "Manager"), \$2,500 annually on August 31 for golf course usage provided at Elmwood Golf Course for Lessee. This rate shall include an annual inflationary factor based on the CPI-U from the preceding year. Lessor controls the Lease Area pursuant to a Management Agreement entered into with the City of Sioux Falls and approved via Resolution 124-17. Section 2.1 c) (i) requires Lessor to include within this agreement the right of Lessor to assign, without cost, all of its rights and obligations contained within this agreement to the City of Sioux Falls, or any successor management company retained by the City of Sioux Falls upon the expiration or termination of the Management Agreement entered into pursuant to Resolution 124-17. Pursuant to the right afforded by the aforementioned Management Agreement, Lessor hereby assigns, without cost, all of its rights and obligations contained within this agreement to the City of Sioux Falls or any successor management company retained by the City of Sioux Falls upon the expiration or termination of the Management Agreement entered into pursuant to Resolution 124-17 and the parties to this Lease Agreement acknowledge that this assignment is an integral and critical part of this agreement and that Lessee will suffer significant damage if such assignment fails to effectively allow Lessee to receive the benefit of the lease term (with options for renewal) listed in Section Two.

Section Three Use

The Lease Areas of outdoor usage as listed in Exhibit A (page 11) in addition to indoor space shown in Exhibit B (pages 12, 13) shall be used by Lessee in the ordinary course of Lessee's business, including without limitation, providing and administering golf instruction and/or classroom instruction for minors, mentor programming/services, and other related uses incorporating the First Tee Life Skills and Golf Experience curriculum. Lessee agrees to provide a minimum of 250 hours of said instruction per calendar year at golf facilities. In cooperation with Lessee, Lessor, by and through its Manager, agrees to provide discounted green fees on the (Fast Five) for \$2.00 and (Kuehn Park) for \$8.50 during the programming months of *June, July, and August*. These discounted fees will be paid by the participants before play or otherwise subsidized by Lessee or a third party. Lastly, golf voucher cards for these courses will be produced and provided for selected participants that may not be able to afford the discounts. This is noted in the value of the \$2,500 usage fee due to Lessor, through its Manager, each year of the Agreement. The voucher cards will be distributed by Lessee to the appropriate students that are in need of financial assistance. These cards will expire annually and cannot be transferred.

Lessor, in addition to course and practice facility use for programming, will provide Lessee participants a range token for \$1.00, good at all Sioux Falls golf facilities outside of program hours, to practice during non-busy times. Program participants (minors) must show their badge to receive the token at a discounted price. Participants will also have the ability to play the Fast Five course for free outside

of program hours on Sunday & Monday nights after 6 p.m.

Lessee and Lessor and/or its Manager will annually review & specify any hours of operation in which the above-described access and use criteria are to be satisfied and cooperate on all other program and operating matters together. Lessor and/or its Manager will have the ability to change and modify rates, arrangements, and usage as needed but will communicate changes and needs agreement to Lessee. Lessor and/or its Manager shall follow the same process set forth in the golf course Management Agreement to change and modify rates, arrangements, and usage in this agreement.

In determining reasonable access and use, the parties will use their best efforts to adhere to the Lessee access guidelines of fully integrating Lessee participants' use into the rhythm of play of the other patrons at the golf facilities, which means balancing the need for Lessor to exclude "peak times" with convenient times for young people.

Lessee offers curriculum, programming and/or services to minors and shall not provide any services which compete or conflict with Lessor's golf facilities except with written approval of Lessor or its Manager approval.

Lessee acknowledges and agrees that it has been given the opportunity to perform all inspections and investigations concerning the Lease Area to its satisfaction and accepts possession in its current condition, subject to any repairs or maintenance identified during the inspections and agreed to be performed by Lessor prior to the commencement of the Lease.

Section Four Independent Contractor

The parties agree that Lessee operates a golf instruction program for minors to promote and advance life skills, along with providing young people life skills through the game of golf and its values, without being subject to the control of Lessor. The relationship between Lessor and Lessee shall be that as between an independent contractor and the Lessor and not as an employer-employee relationship.

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Section Five Repair Replacement and Maintenance

In exchange for use of the Lease Area, Lessee shall make interior improvements to the Lease Area. Lessee's interior building improvements are subject to approval by the City and/or its Manager. Lessee shall be responsible for all routine repairs, replacements, and maintenance within the Lease Area. However, lessee responsibility for repairs, replacements and maintenance expenses shall be limited to the following:

- \$2,500.00 for each individual occurrence for the first five years the area is leased,

- \$5,000.00 for each individual occurrence for years six through ten of the area leased.
- \$5750.00 for each individual occurrence for years 11 through 15 years of the area leased.
- \$6,500.00 for each individual occurrence for years 16 through 20 years of the leased area.

Lessor for each individual occurrence for repairs, replacements and maintenance shall be responsible for the additional cost which exceeds the dollar amount during the lease term as set forth above. Lessee shall maintain the leased area commensurate with standards of the industry. Lessee shall use licensed reputable firms or persons for repairs and maintenance of Lease Area. Lessee shall keep the Lease Area in a clean condition. Lessor shall have the exclusive right to determine if a proposed repair, replacement and maintenance expenses for which the Lessor is obligated is necessary for occupancy and use of the leased area by the Lessee. Selection of materials, supplies, equipment, and contractors shall be at the sole discretion of the Lessor when such costs are the responsibility of the Lessor.

Upon mutual agreement by parties, all expenses for capital improvement for the City's Cart barn and the Lessees area which are deemed necessary for replacement based on the normal useful life will be shared equally between lessor and lessee to include but not limited to siding, painting, roof replacement and foundational repairs.

Section Six Premises Construction or Modifications

No construction, modifications or alterations of the Lease Area may be made without the written approval of Lessor and/or its Manager, which consent shall not be unreasonably withheld or delayed by Lessor. Lessee shall provide plans and drawings for construction, modifications, or alterations of the Lease Area. Lessee shall use licensed reputable firms or persons for construction, modifications, or alterations of the Lease Area. All trade fixtures, including without limitation simulators, putting/chipping green, interior and outdoor furnishings, and furniture, installed by Lessee may be removed at the end of the lease term, provided that, Lessee repairs any damage caused by such removal. All structural changes or alterations to the Lease Area shall, at the expiration of the lease, remain upon the Lease Area and become the property of Lessor. Lessor and/or its Manager will have no obligation to finance or otherwise contribute toward the costs of any approved alteration, improvement, or addition.

Section Seven Lien

Lessee shall not permit or allow any mortgage, judgment, lien, mechanic's, or materialmen's liens relating to construction, modifications or alterations made by or at the direction of Lessee to be filed or established or to remain against the Lease Area. Lessee may, in good faith, contest any such liens filed or established as long as

Lessor's interest is not at imminent risk of forfeiture during the pendency of such contest.

Section Eight Signage

Lessor agrees that Lessee may erect such signage as may be reasonably necessary or desired by Lessee for Lessee's purposes provided Lessor's written consent to all proposed signage and changes thereof is first obtained, which shall not be unreasonably withheld by Lessor. All signage must be in compliance with applicable law and regulations.

Section Nine Naming Rights

Lessee may, subject to the recommendation by the Sioux Falls Parks and Recreation Board and the approval of the Sioux Falls City Council, and in accordance with Subchapter "Naming Facilities," Section 30.060 at sequence of the Code of Ordinances of Sioux Falls, SD, establish and assign naming rights for the Lease area. Any naming rights agreement(s) entered into by Lessee shall not exceed the term of this Lease. The terms and conditions associated with the naming rights and the manner in which the naming rights are displayed in the Lease Area are also subject to approval of the Sioux Falls Parks and Recreation Board and the City Council.

Section Ten Default and Reentry

If Lessee breaches this Agreement, Lessor may, after providing Lessee with written notice of the breach and a reasonable opportunity to cure the breach, reenter the Lease Area and repossess and enjoy the Lease Area as previously enjoyed by the Lessor. Any reentry and repossession shall not be construed as a termination of this lease or a release of Lessee from any obligation contained herein.

Section Eleven Transfer, Assignment, and Sublease

Lessee shall not transfer or assign this lease and shall not sublet the Lease Area or any part of it except on the written prior consent of Lessor, and any transfer, assignment, or sublease to the contrary shall be voidable at the option of the Lessor Lessee may sublet office space to South Dakota Golf Association consist with the terms with this lease.

Section Twelve Rights to Grant

Lessor may grant easements or rights-of-way on the Lease Area for any purpose authorized by law, provided that such easements or rights-of-way do not unreasonably interfere with Lessee's use of the Lease Area. Lessor will provide Lessee advance

written notice if the need occurs by Lessor.

Section Thirteen Inspection

Lessor, through its authorized agents, may enter the Lease Area to inspect the premises, provided that Lessor provides reasonable notice to Lessee and conducts the inspection at a time that minimizes disruption to Lessee's operations.

Section Fourteen Quiet Possession

Lessor agrees that upon compliance with the terms and conditions of this Lease, Lessee shall and may peacefully and quietly have, hold, and enjoy the Lease Area for the term of this Lease and any renewal of said term.

Section Fifteen Surrender of Possession

Lessee shall, on the last day of the term, or sooner on termination of this Lease, peaceably and quietly surrender and yield to Lessor the Lease Area in good order, condition, and repair, reasonable use and wear thereof, damage by acts of God or the elements, and any damages caused by third parties not under the control of the Lessee excepted.

Section Sixteen Holding-Over

Any holding-over after the expiration of the term by Lessee with the consent of Lessor shall be construed to be a tenancy from month to month and shall otherwise be on the terms and conditions herein specified.

Section Seventeen Termination of Use/Sale

If Lessee terminates the use of the Lease Area as a facility for a golf instruction program or the property is sold by City, the Lease may be terminated by either party, with a written notice of at least ninety (90) days.

Section Eighteen Notices

Any notices by either party to the other shall be made in writing and sent by certified or registered mail, to the respective address of each party as set forth below. In addition to certified or registered mail, notices may also be sent via secured electronic mail (email)

with read receipt to the designated representative of each party. Personal service is also acceptable.

Notice to City of Sioux Falls:

Landscapes Golf Management
c/o City of Sioux Falls
Attn: Tom Everett, President
1201 Aries Drive
Lincoln, NE 68512

Notice to Landscapes Golf Management:

Attn: Tom Everett, President
1201 Aries Drive
Lincoln, NE 68512

Notice to South Dakota Golf Association Junior Golf Foundation:

South Dakota Golf Association Junior Golf Foundation dba First Tee – South Dakota
PO Box 88938
Sioux Falls, SD 57109-8938

**Section Nineteen
Time of the Essence**

Time is of the essence in the terms of this Lease, and the terms of this Lease shall extend to, be binding on, and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties.

**Section Twenty
Insurance**

The Lessee, at its cost, shall secure the insurance specified below and otherwise comply with Sioux Falls Executive Order 109. All insurance secured by the Lessee under the provisions of this section shall be issued by insurance companies acceptable to the Lessor. 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 Lessor upon execution of this Lease.

- a. Lessee shall keep any betterments and improvements located at the Lease Area insured for their full insurable value against fire, lightning, wind, and extended coverage, with the understanding that the Lessee may adjust the coverage as necessary to reflect changes in the value of the improvements and betterments; provided, however, that Lessee shall not be responsible for, and shall not be obligated to insure against, any loss of or damage to any real property of Lessor.

- b. Workers' compensation insurance providing the statutory limits required by South Dakota law. In addition, it shall provide Coverage B, Employer's Liability Coverage, of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limits. The required limit may be met by excess liability (umbrella) coverage.
- c. Commercial general liability insurance providing occurrence form contractual, personal injury, bodily injury, and property damage liability coverage with limits of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. The required limit may include excess liability (umbrella) coverage. The policy shall name Lessor and its representatives as an additional insured.
- d. Architecture/engineering ("A/E firms") design consultants hired by Lessee to perform service directly or indirectly associated with Lessee building or improvements must procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by a negligent error, act, or omission with limits as follows:
 - 1. Lessee improvements or building with an estimated construction cost of less than \$1,500,000: A/E firms shall maintain professional liability insurance coverage with a limit of not less than \$250,000 each occurrence, \$250,000 aggregate.
 - 2. Lessee improvements or building with an estimated construction cost of \$1,500,000 or more: A/E firms shall maintain professional liability insurance coverage with a limit of not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
 - 3. Lessor may require for particular Lessee improvements or building that the A/E firms provide additional coverage amounts or for coverage to be effective for a greater period of time.
 - 4. A/E firms which are required to provide professional liability insurance coverage are those firms engaged in any service involving the preparation of plans or specifications for bidding purposes, development of architectural reports or engineering recommendations, or those engaged in the practice of architectural engineer or land surveying.
- e. A true and correct copy of an executed payment bond and performance bond provided by Lessee's contractor in the penal amount of not less than one hundred (100%) percent of the aggregate of the contract price for construction of the Lessee improvements, written by a bonding company or bonding companies licensed to do business in the state of South Dakota, and which names Lessor as an additional beneficiary thereof.

Lessee will provide Lessor with certificates of insurance or copies of said policies, naming Lessor as additional insured as set forth above, and provide for thirty (30) days' written notice of an insurer's intent to cancel or not renew any of the insurance coverages. Lessee agrees to hold Lessor harmless from any liability, including additional premium due because of the Lessee's failure to maintain the coverage limits required. Said certificates or policies shall be delivered to Lessor on or before the effective date hereof or as otherwise agreed by Lessor in writing.

Lessor's approval or acceptance of certificates of insurance does not constitute Lessor's assumption of responsibility for the validity of any insurance policies, nor does the Lessor represent that the above coverage and limits are adequate to protect any individual/group/business, its consultants' or subcontractors' interests. The Lessee, on the other hand, assumes the responsibility of ensuring that the coverage and limits are adequate for its operations and assumes liability for any inadequacies therein.

Section Twenty-One Hold Harmless

Lessee hereby agrees to hold Lessor harmless from any and all claims or liability including attorneys' fees arising out of Lessee's use of the Lease Area furnished under this Lease, provided that such claims or liability do not arise out of the willful misconduct of the Lessor or Manager, or the employees, agents, or representatives of Lessor or Manager, and for all bodily injury or property damage arising out of Lessee's use of the Lease Area, providing that such claims or liability are the result of an act, error, or omission of Lessee and/or his employees/agents and/or permitted guests arising out of Lessee's use of the property. Lessee shall be liable for damages caused by its own willful misconduct or negligence or the willful misconduct or negligence of its permitted guests. In addition, absent gross or willful misconduct by Lessor or its employees, Lessee agrees to hold Lessor harmless from any claim of loss of property owned by Lessee due to theft, fire, or any other cause.

Lessor is not liable for loss, expense, or damage to any person or property, except where such loss, expense, or damage is caused by the or willful misconduct of the Lessor, its employees, agents, or representatives.

Section Twenty-Two Notification of Damage

Lessee shall report any defects or damage to the Lease Area within 24 hours after discovery of such defect or damage or as soon as reasonably practical. Lessee shall use reasonable diligence in the care and maintenance of the Lease Area.

Section Twenty-Three Rules

Lessee shall conform to all applicable local, state, and federal laws.

**Section Twenty-Four
Human Relations**

Lessee shall be subject to the provisions of Chapter 98 of the Code of Ordinances of the City of Sioux Falls. It is declared to be discrimination for Lessee because of race, color, sex, creed, religion, ancestry, national origin, or disability, to fail or refuse to hire, to discharge an employee, or to accord adverse hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment.

If Lessee is guilty of discrimination, this Agreement may be terminated in whole or in part by Lessor, and Lessee shall be liable for any costs or expense incurred by Lessor in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to Lessor under the Agreement so terminated or canceled.

Lessee 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 the Commission, its agencies or representatives, to ascertain compliance with the above provisions. This Section shall be binding on all subcontractors or suppliers.

IN WITNESS WHEREOF, the parties have executed this agreement. This contract embodies all agreements between the parties, and no modification of the same shall be binding unless in writing and signed by the parties hereto.

Lessor: Landscapes Golf Management

Lessee: South Dakota Golf Association
Junior Golf Foundation
dba First Tee – South Dakota

By: _____
Its: President

By: _____
Its: CEO

Exhibit A - Golf Usage Facilities

- Elmwood Golf Course
2604 West Russell Street
Sioux Falls, South Dakota 57104

- *5 Hole Short Course (Fast 5)*
- *18 Hole Championship Course*
- *9 Hole East Course*
- *Putting & Chipping Greens*
- *Driving Range*

- Kuehn Park Golf Course
2901 S. Kuehn Park Road
Sioux Falls, SD 57106

- *9 Hole Executive Course*
- *Practice Hole*
- *Putting & Chipping Greens*
- *Driving Range*

- Prairie Green Golf Course
600 E. 69th Street
Sioux Falls, SD 57108

- *18 Hole Championship Course*
- *Putting & Chipping Greens*
- *Driving Range*

Exhibit B

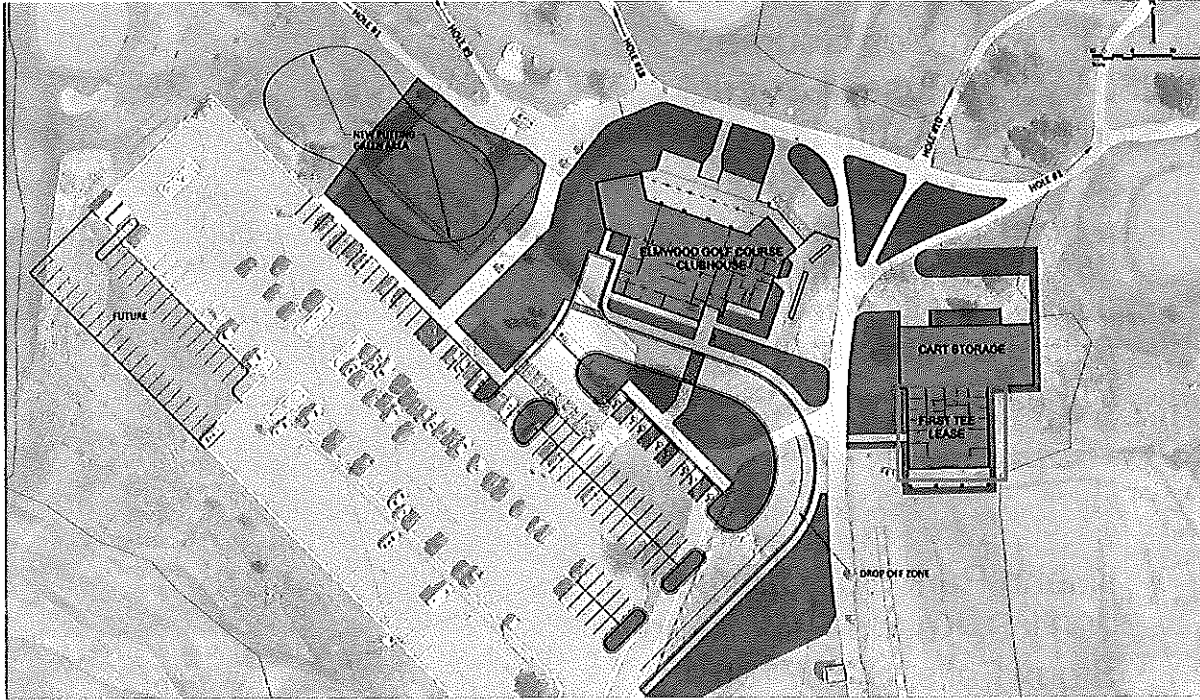
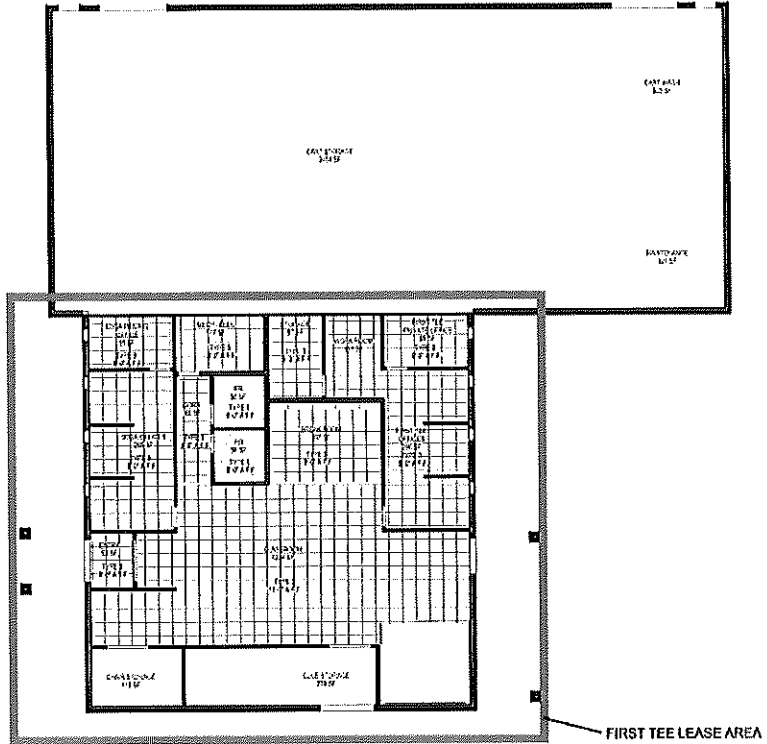


Exhibit B



THE FIRST TEE BUILDING NAMING AGREEMENT

Agreement made March ____, 2024, between the City of Sioux Falls, SD (the "City"), and South Dakota Golf Association Junior Golf Foundation d/b/a First Tee – South Dakota ("First Tee").

WHEREAS, First Tee has entered into a conditional gifting agreement with the City wherein the City conditionally agrees to accept a gift of a building which includes furniture, fixtures and equipment which is to be located adjacent the Elmwood Clubhouse (the "Improvements" or "First Tee Building"); and

WHEREAS, the First Tee Building will be owned by the City and leased to First Tee; and

WHEREAS, as part of the conditional gifting agreement, First Tee may establish and assign naming rights for the First Tee Building to enhance private fund-raising efforts subject to Sioux Falls Parks and Recreation Board and City Council approval; and

WHEREAS, T. Denny Sanford (the "Donor") made a significant contribution to First Tee in consideration for the naming rights to the First Tee Building; and

WHEREAS, the City and First Tee find it desirable to name the First Tee Building adjacent to the Elmwood Clubhouse the "Denny Sanford Learning Center".

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

Section One

The parties enter into this Agreement for the purpose of the generation of revenue for the construction of the Improvements as consideration for a naming opportunity of the First Tee building. The Donor has contributed to First Tee six hundred thousand dollars (\$600,000) to go toward the construction of the Improvements described above.

Section Two

Exclusive Naming. The parties agree that the First Tee Building shall be referred to exclusively as the "Denny Sanford Learning Center" (the "Name") during the term of this Agreement. The Name shall be displayed on the First Tee Building as determined by mutual agreement of the Director of Parks and Recreation and First Tee. Except as otherwise set forth herein, the Name will be displayed at all public events held at the First Tee building during the Term. The rendering of the signage is set forth in Exhibit A, attached hereto and incorporated herein by this reference.

Unless otherwise mutually agreed to by the City and First Tee, the City will specifically refer to the Name in all applicable channels, including, but not limited to, print material (newsletters, brochures, activity guides, etc.), website, media exposure, and all other relevant and applicable collateral/promotional mediums and materials.

Agreement No. _____

First Tee and the City will mutually agree upon and disseminate a press release and/or press conference announcing the partnership.

The City will provide Name recognition on the City's Parks and Recreation website as a partner of the First Tee Building.

Section Three

Costs. First Tee shall pay the initial costs of construction and installation of any signage, including any monument signage, depicting the Name of the First Tee Building, along with the costs of any subsequent change in the signage.

First Tee will, at its expense, be responsible for the routine maintenance and repairs of the signage.

First Tee agrees to any costs associated with any changes to naming identification and signage caused by the named organization's merger, consolidation, acquisition, or other actions that result in a name change.

First Tee agrees to the Name appearing before the City property's commonly known name.

All positioning and placement of the signage is at the sole discretion of the City, subject to the terms of this Agreement. Except as specifically provided herein, in no event will any adjustment, replacement, or refund be made because of the position of placement of any signage.

The signage shall contain (i) no misleading, unwarranted, exaggerated, or doubtful claims or statements, and First Tee guarantees the truth of all claims and statements; (ii) no 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.

Section Four

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 ordinance adopted by the City Council, and the expiration of time within which the City Council's approval of this Agreement may be challenged by referendum following the publishing of the ordinance (the "Effective Date"). This Agreement shall be effective on the Effective Date; however, naming rights shall be for a term (the "Term") of the length of the First Tee lease which is estimated to be for five (5) years, with options to extend the lease for three (3) additional five (5) year terms from the substantial completion date of the Improvements unless this Agreement is terminated earlier pursuant to the provisions contained herein. At the end of the First Tee lease, the City may identify alternative naming of the First Tee Building at its sole discretion.

Section Five

Default. In the event the Donor (i) files any petition in bankruptcy; (ii) makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act; (iii) becomes subject to the appointment of a receiver or trustee for itself of any of its property; or (iv) if the Donor (including their respective subsidiaries) by the actions of any of its officers or officials has committed, or will commit, any act tending to shock, insult, or offend a majority of the people of Sioux Falls, which act materially and adversely affects the operation or use of the Tennis Complex and materially and adversely impacts the attendance of activities or events at the Denny Sanford Learning Center, then the City may terminate the naming rights granted herein effective immediately upon notice of the termination delivered in writing to First Tee and the Donor. Other than as set forth in the immediately preceding sentence, in the event of a default by either party in the performance of any of the terms of this Agreement (except as provided in Section Nine below), which default shall not have been remedied within ten (10) business days after notice and without prejudice to any other remedies that may, under the circumstances, be available to it, terminate this Agreement effective immediately upon notice of termination delivered in writing to the other party.

Section Six

Relationship of the Parties. The relationship of the parties hereto shall be that of independent contractors and nothing herein shall be construed to create or imply an employer/employee, agency, joint venture, partnership, or other relationship, it being acknowledged that each of the parties is engaged in its own separate and distinct business and is not under the control of the other party in the performance of the agreements herein contained. First Tee nor Donor have made no payment directly or indirectly to any elevated official, officer, or employee of the City or of any public trust where the City is a beneficiary or money of any other thing of value to procure this Agreement.

Section Seven

Indemnification. First Tee hereby agrees to defend, indemnify, and hold harmless the City from and against any and all loss, liability, damage, claim, demand, and/or expenses (including, without limitation, reasonable attorneys' fees and expenses) arising out of or relating to (i) the character, content, or subject matter of any advertising, naming sponsorship, or promotional material published or displayed pursuant to this Agreement, including, without limitation, any violation or alleged violation or infringement or alleged infringement of any copyright, trademark, trade name of other proprietary right or any claim for libel, slander, unfair or illegal trade practice, unfair or illegal competition, or invasion or violation of any right of privacy; or (ii) the negligence or willful misconduct of First Tee.

Section Eight

Film/Video Production. First Tee hereby acknowledges that the Denny Sanford Learning Center may be rented or used for the production of motion pictures, films, and/or videos (each a "Film") and hereby consents to such use. First Tee recognizes that, in connection

with the production of a Film, its signage may be required to be covered, shrouded, or not operated, and Donor hereby consents thereto. In the event that Donor's signage is not required to be covered, shrouded, or not operated in connection with the production of a Film, and provided that First Tee and the Donor shall not be required to pay a fee or charge in connection with the production, distribution, or exhibition of the Film, First Tee and the Donor hereby releases all claims arising from the exhibition or appearance of Donor's signage in a Film that is produced pursuant to a contract with the City; provided, however, that such signage may be exhibited or appear in such Film only with First Tee's and the Donor's prior written consent and in the absence of such consent, such signage shall be covered, shrouded, or not operated in connection with such Film

Section Nine

Force Majeure. If the City shall be temporarily prevented, in whole or in part, from performing its obligations hereunder by virtue of any cause beyond its reasonable control, including, without limitation, any act of God, emergency, war, act of terrorism, accident, player strike, referee strike, labor difficulty, legal restriction, government action, pandemic or epidemic, or mechanical difficulty, each such cause being a ("Force Majeure Event"), then the City's obligations under the Agreement shall be excused for a period of time equal to the period during which it shall have been prevented from performing. In no event shall First Tee be entitled to any damages, payment, or remedy hereunder as a result of any such Force Majeure Event.

If any Force Majeure Event makes it permanently impractical or impossible for the City to fulfill its obligations under this Agreement, the City shall give prompt written notice thereof to First Tee, and, as of the date of such written notice, this Agreement shall terminate, and the parties hereto shall be relieved from further performance hereunder.

Section Ten

Retention of Rights. Except as specifically provided by this Agreement, First Tee does not obtain by virtue of this Agreement any right, title, or interest in the First Tee Building of any of the trademarks used in the First Tee Building, nor does this Agreement give First Tee the right to use, refer to, or incorporate in marketing or other materials any name, logo, trademark, or copyright used by the First Tee Building without the prior written consent of the City.

Section Eleven

Notices. All notices permitted or required hereunder shall be given in writing and shall be addressed to the parties at their respective addresses. All notices shall be actually delivered in person or by a nationally recognized overnight delivery service or sent postage prepaid by registered or certified mail with return receipt requested and shall be deemed effective upon delivery of five (5) business days after such mailing.

Section Twelve

The parties acknowledge that they are entering into this Agreement freely and voluntarily, that they have had 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 Thirteen

The validity, performance, and enforcement of this Agreement are governed by the laws of the state of South Dakota. Jurisdiction and venue of any legal proceeding involving the parties in connection with this Agreement will lie exclusively with the state and federal courts located in Sioux Falls, South Dakota.

Section Fourteen

Should any section or provision of this Agreement be declared by the courts to be invalid, the same will not affect the validity of the Agreement as a whole or any part thereof, other than the part declared to be invalid.

Section Fifteen

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

Section Sixteen

This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, assignees, and successors of the respective parties, provided, however, that First Tee may not assign any of its rights and obligations under this Agreement without the prior written consent of the City, which consent may be withheld in the City's sole discretion.

Section Seventeen

The parties agree that electronic transmission via facsimile or email to the other party of a copy of this Agreement bearing such parties' signature shall suffice to bind the party transmitting 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

FIRST TEE-SOUTH DAKOTA

BY: _____

BY: _____

PRINTED NAME: _____

PRINTED NAME: _____

TITLE: Mayor

TITLE: _____

FEDERAL TAX ID NO. _____

ATTEST:

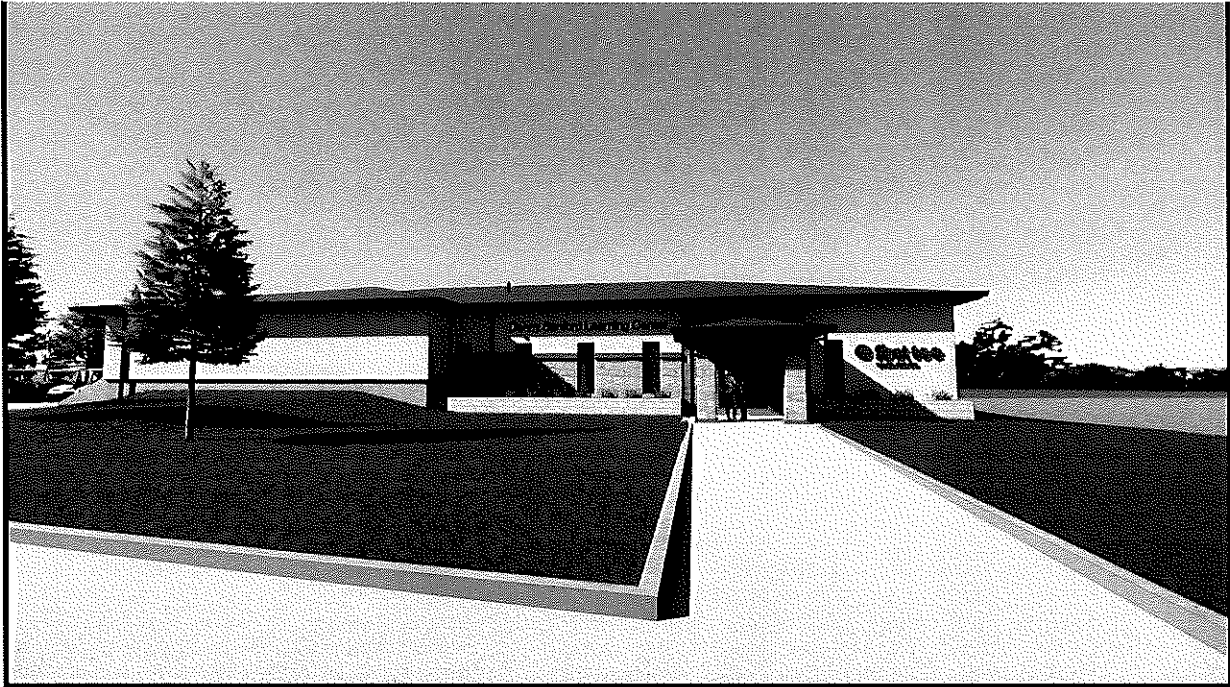
CITY CLERK
PRINTED NAME: _____

T. DENNY SANFORD, THE DONOR, SIGNS ON TO THIS AGREEMENT FOR THE LIMITED PURPOSE OF AGREEING TO UNDERTAKE THE OBLIGATIONS SET FORTH IN SECTIONS 2, 3, 5, 8 AND 10. T. DENNY SANFORD FURTHER SIGNS BELOW TO CONFIRM HIS APPROVAL OF THIS AGREEMENT.

ACKNOWLEDGED AND AGREED,
INTENDING TO BE LEGALLY BOUND HEREBY:

By: _____
Name: T. Denny Sanford

Exhibit A
Asset Rendering



South Dakota Golf Association Hall of Fame Lease Agreement

Agreement made _____, 2024, between Landscapes Golf Management of Lincoln, NE (the "Lessor"), and South Dakota Golf Association, PO Box 88938, Sioux Falls, SD 57109-8938, (the "Lessee").

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

Section One Premises

Lessor, in consideration of the terms and conditions hereof, hereby leases to Lessee and Lessee hereby leases from Lessor, a portion of the Elmwood Golf Course Clubhouse at 2600 West Russell Avenue, Sioux Falls, SD 57104, as shown on the attached Exhibit A and described as the SDGA Golf Hall of Fame (the "Lease Area"). The legal description of this City-owned property is as follows: A portion of the W1/2NE1/4 of Section 7-T101N-R49W of the 5th P.M., Minnehaha County, South Dakota.

Section Two Term and Rent

This lease shall be effective for a term of five (5) years from the effective date of this lease, with an option to renew, on the same terms and conditions, for two additional five (5) year terms. The effective date of this Lease shall be the date signed as required. It shall terminate on the expiration of the lease term or upon notification of termination provided by Lessee, whichever occurs first. Lessee shall provide a minimum of 30 days' notice of intended vacate date. Based on the Lessees' estimated capital investment of \$100,000 toward improvements made to the Lease Area, the rent shall be one dollar and other valuable considerations during the initial and renewal terms. Lessor controls the Lease Area pursuant to a Management Agreement entered into with the City of Sioux Falls and approved via Resolution 124-17. Section 2.1 c) (i) requires Lessor to include within this agreement the right of Lessor to assign, without cost, all of its rights and obligations contained within this agreement to the City of Sioux Falls, or any successor management company retained by the City of Sioux Falls upon the expiration or termination of the Management Agreement entered into pursuant to Resolution 124-17. Pursuant to the right afforded by the aforementioned Management Agreement, Lessor hereby assigns, without cost, all of its rights and obligations contained within this agreement to the City of Sioux Falls or any successor management company retained by the City of Sioux Falls upon the expiration or termination of the Management Agreement entered into pursuant to Resolution 124-17 and the parties to this Lease Agreement acknowledge that this assignment is an integral and critical part of this agreement and that Lessee will suffer significant damage to effectively allow Lessee to receive the benefit of the lease term (with options for renewal) listed in Section Two.

Section Three

Use

The Lease Area, as illustrated in Exhibit A, shall be used by Lessee only for the purposes of providing and administering visual and physical elements of the SDGA Golf Hall of Fame. The Leased area as illustrated in Exhibit B shall be a "Hall of Fame" tribute to inductees and highlight golf championship events and winners throughout South Dakota history in a fashion unlike a museum.

Section Four Repair and Maintenance

In exchange for use of the Lease Area, Lessee shall make interior improvements to the Lease Area. Lessee's interior building improvements are subject to approval by the City or Lessor. Lessee shall be responsible for all routine cleaning and upkeep of the space relating to the SDGA Golf Hall of Fame space & displays within the Lease Area which become necessary during Lessee's occupancy of said Lease Area. The lessor will notify the lessee if they discover any maintenance, repairs or damage to Hall of Fame displays or items. All damage, repairs and maintenance of Hall of Fame items are the sole responsibility of the SDGA and shall use licensed reputable firms or persons for repairs and maintenance of Lease Area. Lessee shall keep the SDGA Golf Hall of Fame displays in the Lease Area in a clean and functional condition. Lessee will inspect the Lease Area at least monthly with representatives of the Lessor to evaluate the condition of the SDGA Golf Hall of Fame displays. Lessor shall perform all other routine maintenance in the Lease Area as they would in other areas of the clubhouse.

Section Five Premises Construction or Modifications

No construction, modifications or alterations of the Lease Area may be made without the written approval of Lessor, of which consent may be withheld at the sole discretion of Lessor. Lessee shall provide plans and drawings for construction, modifications, or alterations of the Lease Area. Lessee shall use licensed reputable firms or persons for construction, modifications, or alterations of the Lease Area. All trade fixtures, including, but not limited to, cabinetry, display cases, interactive displays and the like installed by Lessee may be removed at the end of the lease term, provided that Lessee repairs any damage caused by such removal. All structural improvements, changes, alterations, or major repairs to the Lease Area shall, at the expiration of the lease, remain upon the Lease Area and become the property of The City of Sioux Falls. Lessor will have no obligation to finance or otherwise contribute toward the cost of any approved alteration, improvement, or addition.

Section Six Lien

Lessee shall not permit or allow any mortgage, judgment, lien, mechanic's, or materialmen's liens relating to construction, modifications or alterations made by or at the direction of Lessee to be filed or established or to remain against the Lease Area. Lessee may, in good faith, contest any such liens filed or established as long as Lessor's interest is not at imminent risk of forfeiture during the pendency of such contest.

Section Seven Signage

Lessor agrees that Lessee may erect such signage as may be reasonably necessary or desired by Lessee for Lessee's purposes provided Lessor's written consent to all proposed signage and changes thereof is first obtained, which shall not be unreasonably withheld by Lessor. All signage must be in compliance with applicable law and regulations.

Section Eight Naming Rights

Lessee may, subject to the recommendation by the Sioux Falls Parks and Recreation Board and the approval of the Sioux Falls City Council, and in accordance with Subchapter "Naming Facilities," Section 30.060 at sequence of the Code of Ordinances of Sioux Falls, SD, establish and assign naming rights for the Lease area. Any naming rights agreement(s) entered into by Lessee shall not exceed the term of this Lease. The terms and conditions associated with the naming rights and the manner in which the naming rights are displayed in the Lease Area are also subject to approval of the Sioux Falls Parks and Recreation Board and the City Council.

Section Nine Transfer, Assignment, and Sublease

Lessee shall not transfer or assign this lease and shall not sublet the Lease Area or any part of it except on the written prior consent of Lessor, and any transfer, assignment, or sublease to the contrary shall be voidable at the option of the Lessor.

Section Ten Rights to Grant

Lessor may grant easements or rights-of-way on the Lease Area for any purpose authorized by law and will provide Lessee advance written notice if the need occurs by Lessor.

**Section Eleven
Quiet Possession**

Lessor agrees that upon compliance with the terms and conditions of this Lease, Lessee shall and may peacefully and quietly have, hold, and enjoy the Lease Area for the term of this Lease and any renewal of said term.

**Section Twelve
Surrender of Possession**

Lessee shall, on the last day of the term, or sooner on termination of this Lease, peaceably and quietly surrender and yield to Lessor the Lease Area in good order, condition, and repair, reasonable use and wear thereof and damage by acts of God or the elements excepted.

**Section Thirteen
Holding-Over**

Any holding-over after the expiration of the term by Lessee with the consent of Lessor shall be construed to be a tenancy from month to month and shall otherwise be on the terms and conditions herein specified.

**Section Fourteen
Termination of Use/Sale**

If Lessee terminates the use of the Lease Area as the site of the SDGA Golf Hall of Fame or the property is sold by the owner of the building, the Lease may be terminated by either party.

**Section Fifteen
Notices**

Any notices by either party to the other shall be made in writing and sent by certified or registered mail, to the respective address of each party as set forth below. Nothing herein contained shall preclude the giving of any notice by personal service.

Notice to Landscapes Golf Management:

**Attn: Tom Everett, President
1201 Aries Drive
Lincoln, NE 68512**

Notice to South Dakota Golf Association:

**South Dakota Golf Association
PO Box 88938
Sioux Falls, SD 57109-8938**

Section Sixteen Time of the Essence

Time is of the essence in the terms of this Lease, and the terms of this Lease shall extend to, be binding on, and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties.

Section Seventeen Insurance

The Lessee, at its cost, shall secure the insurance specified below and otherwise comply with Sioux Falls Executive Order 109. All insurance secured by the Lessee under the provisions of this section shall be issued by insurance companies acceptable to the Lessor. 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 Lessor upon execution of this Lease.

- A. Lessee shall at all times keep any betterments and improvements located at the Lease Area insured for their full insurable value against fire, lightning, wind, and extended coverage; provided, however, that Lessee shall not be responsible for, and shall not be obligated to insure against, any loss of or damage to any real property of Lessor.
- B. Lessee shall also maintain general liability insurance through a commercial agent with policy limits of \$1,00,000 per occurrence and \$3,000,000 aggregate and will provide Lessor with certificates of insurance or copies of said policies, naming Lessor as additional insured as set forth above, and provide for thirty (30) days' written notice of an insurer's intent to cancel or not renew any of the insurance coverages. Lessee agrees to hold Lessor harmless from any liability, including additional premium due because of the Lessee's failure to maintain the coverage limits required. Said certificates or policies shall be delivered to Lessor on or before the effective date hereof or as otherwise agreed by Lessor in writing.

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

Section Eighteen Hold Harmless

Lessee agrees to hold Lessor harmless from any and all claims or liability including attorneys' fees against any claims for bodily injury or property damage made by third parties provided such claims or liability arise from an act, error, or omission of Lessee and/or its employees or agents. In the same fashion, and to the same degree, Lessor agrees to hold Lessee harmless from any and all claims or liability including attorneys'

fees against any claims for bodily injury or property damage made by third parties provided such claims or liability arise from an act, error, or omission of Lessor and/or its employees or agents. Lessee agrees to hold Lessor harmless from any claim of loss of property owned by Lessee due to theft, fire, or any other cause.

Section Nineteen Notification of Damage

Lessee shall report any defects or damage to the Lease Area within 24 hours after discovery of such defect or damage or as soon as reasonably practical. Lessee shall use reasonable diligence in the care and maintenance of the Lease Area. Lessor, being responsible for the janitorial maintenance of the Lease Area, will notify the Lessee if they notice any damage, theft, or non-functionality of the displays.

Section Twenty Rules

Lessee shall conform to all applicable local, state, and federal laws.

Section Twenty-One Human Relations

Lessee shall be subject to the provisions of Chapter 98 of the Code of Ordinances of the City of Sioux Falls. It is declared to be discrimination for Lessee because of race, color, sex, creed, religion, ancestry, national origin, or disability, to fail or refuse to hire, to discharge an employee, or to accord adverse hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment.

If Lessee is guilty of discrimination, this Agreement may be terminated in whole or in part by Lessor, and Lessee shall be liable for any costs or expense incurred by Lessor in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to Lessor under the Agreement so terminated or canceled.

Lessee 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 the Commission, its agencies, or representatives, to ascertain compliance with the above provisions. This Section shall be binding on all subcontractors or suppliers.

IN WITNESS WHEREOF, the parties have executed this agreement. This contract embodies all agreements between the parties, and no modification of the same shall be binding unless in writing and signed by the parties hereto.

Lessor: Landscapes Golf Management

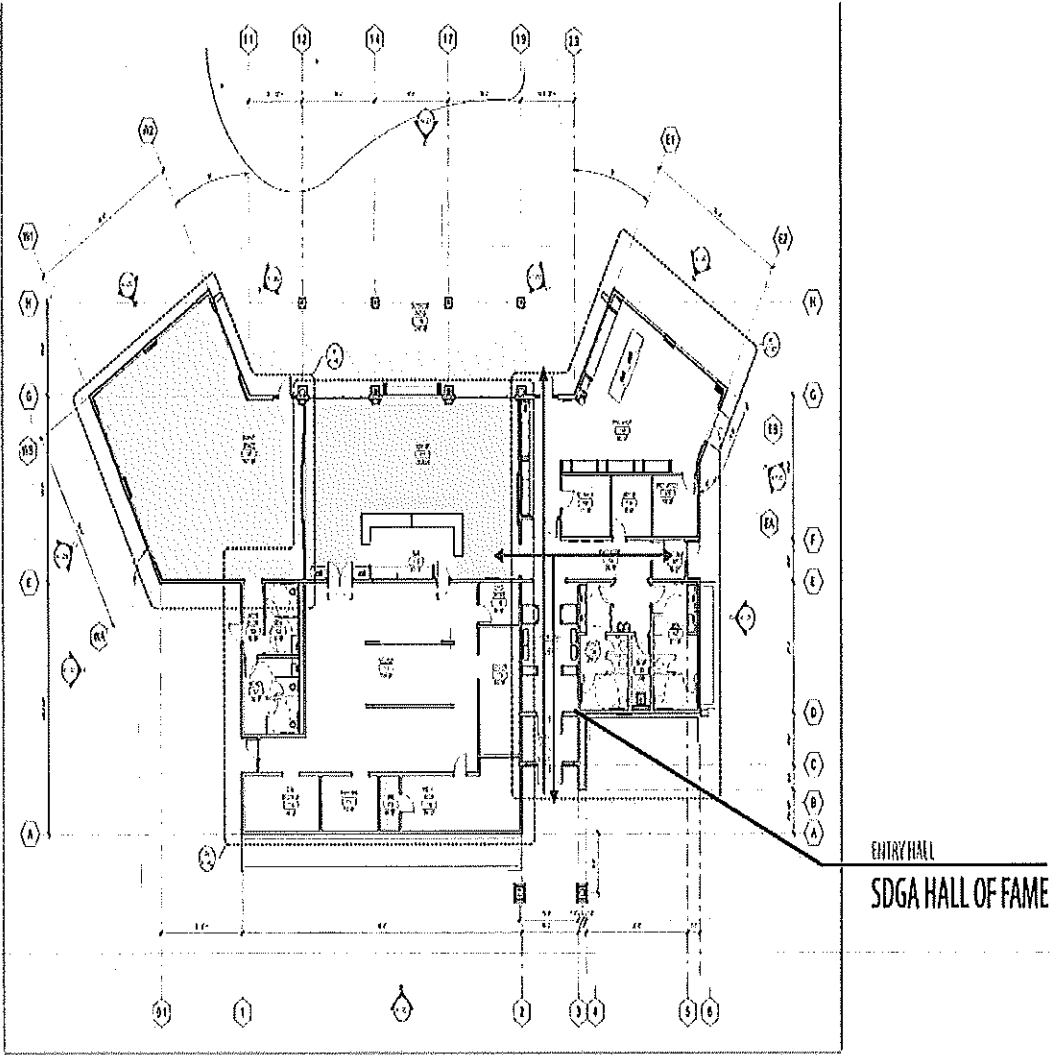
Lessee: South Dakota Golf Association

By: _____
Its: President

By: _____
Its: Executive Director

ATTEST:

Exhibit A – Elmwood Golf Course Clubhouse and SDGA Golf Hall of Fame – Floor Plans



CLUBHOUSE FLOORPLAN ◀

Exhibit B – SDGA Golf Hall of Fame – Indoor Space Plans



**CONDITIONAL GIFTING AND NAMING AGREEMENT
FOR A FUTURE CASH GIFT FOR THE RENOVATION
AND EXPANSION OF THE LOCKER ROOMS LOCATED
AT THE MIDCO® AQUATIC CENTER**

This Conditional Gifting and Naming Agreement for a Future Cash Gift for the Renovation and Expansion of the locker rooms located at the Midco® Aquatic Center (the “*Agreement*”) is dated _____, 2024, and is made and entered into between the **City of Sioux Falls**, South Dakota, a home-ruled chartered municipality (the “*City*”), and the **Sioux Falls Area Community Foundation**, a South Dakota non-profit corporation (the “*Foundation*”). The City and the Foundation are referred to herein individually as a “Party” or collectively as the “Parties.”

WHEREAS, the Foundation has separately entered into with Jennifer and Joe Kirby (the “Donors”) an agreement whereby the Donors will release funds to be administered by the Foundation for the specific purpose of funding a portion of the cost of designing and constructing the Improvements (as defined below) located at the Midco® Aquatic Center.

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

TERMS

Section One

The Gift/City Contribution

1.1 The Foundation agrees to gift to the City, and the City conditionally agrees to accept a gift of an amount of five hundred thousand dollars (\$500,000) for locker room improvements (the “*Gift Amount*”). The Parties agree and recognize this is a future gift that will be fully vested when all conditions are met.

1.2 The City has included approximately \$750,000 in the City’s Capital Improvement Plan (“CIP Funds”) for the year 2024 and the City Council has appropriated the funding for fiscal year 2024. The City’s total contribution is described in this Agreement as (the “*City’s Contribution*”).

Section Two

Term of Agreement

2.1 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 ordinance adopted by the City Council, and the expiration of time within which the City Council’s approval of this Agreement may be challenged by referendum following the publishing of the City Council’s ordinance (the “*Effective Date*”), Agreement is terminated earlier pursuant to the provision contained herein.

{atk15005}

Section Three Purposes of the Gift

3.1 The specific purpose of the Gift Amount gifted by the Foundation to the City and the City's Contribution are to provide for the renovation and expansion of the locker rooms located at the Midco® Aquatic Center, Sioux Falls, South Dakota, located at 1602 S. Western Avenue (the "Project Site"). The Project Site will be known as the "**Kirby Locker Rooms.**" The Improvements to the Project Site, upon agreement of the parties, may include, but are not limited to, those amenities shown on Exhibit A and described as follows:

3.1.1 Constructing a new addition onto the existing facility; renovate and combine existing men's and women's locker rooms into a singular locker room.

3.1.2 Examples of what the Improvements may look like are reflected in **Exhibit A**, attached to and made a part of this Agreement. The City will design and construct all Improvements to be made to the Project Site utilizing the Gift Amount and the City's Contribution.

Section Four Design, Construction and Payment Process of the Improvements

4.1 The design, construction and payment process for the Improvements to the Project Site will include the following requirements:

4.1.1 The City and the Foundation will jointly fund the cost of design of the Improvements to the Project Site from the Gift Amount (the "Design Costs").

4.1.2 The Parties will be engaged in the design process through periodic design review meetings to gather feedback and address concerns. Prior to developing the construction documents for bid, a final design and site plan (the "Plan") will be created. Each Party must approve the final Plan in writing prior to the development of the bid/construction documents and commencement of construction of the Improvements to the Project Site. Following approval of the final version of the Plan by all Parties, subsequent significant or material changes to the Plan will require the mutual written approval of the Parties.

4.1.3 Other than the funds the City has budgeted and appropriated for its share of the Improvement costs in 2024, the City will have no obligation to award other agreements, disburse funds or commence construction of the Improvements to the Project Site until the Foundation has confirmed it has received from the Donors the Gift Amount. Upon confirmation the Foundation has received the Gift Amount, the City will proceed diligently with bidding the construction described below for the Improvements.

4.1.4 The City's Contribution has been appropriated and available for spending for construction combined with the Gift Amount from the Foundation, the City will fully award and construct the Improvements to the Project Site in accordance with the Plan and the terms of this

{atkl5005}

Agreement using City funds and the funds from the Foundation. The City, in accordance with state competitive bid laws, agrees to solicit, review and accept competitive sealed proposals and/or competitive sealed bids and enter into one or more contracts for the construction of the Improvements to the Project Site. The City will obtain from the contractor the cost of construction of the Improvements to the Project Site (the “*Contract Sum*”). Prior to the City awarding the contracts, the Foundation shall provide the City with the remaining Gift Amount to ensure sufficient funds are encumbered to meet the obligation when it becomes due and payable. The City will be solely responsible for assuring all phases of construction are properly contracted and performed and that the work done and the materials used are in conformance with all applicable laws that govern the performance of the work, including (to the extent applicable) the requirements of the Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

4.1.5 If the Design Costs and Contract Sum for Improvements exceed the sum of \$1,250,000.00, the parties will meet to discuss options available for funding and determine whether to proceed. If the Parties fail to reach satisfactory terms, the Parties may opt out and this Agreement may be terminated without incurring any additional costs or liability to any of the Parties.

4.1.6 The Parties agree to the estimated following timeline: Design to be completed by June 30, 2024. Construction for Improvements will commence in accordance with the project timeline identified and approved during the design process. Construction is anticipated to begin July 1, 2024, with a final completion date of January 31, 2025. The exact project schedule will be mutually agreed upon at the end of the design process and may be adjusted due to unexpected site conditions identified during construction. If the design is not completed by June 30, 2024, and the Parties are not able to agree upon a design completion extension, either Party may terminate this Agreement upon delivery to the other party of written notice of termination. If the construction has not commenced by July 1, 2024, and the Parties are not able to agree upon an extension, either Party may terminate this Agreement upon delivery to the other Party of written notice of termination.

Section Five Conditions

5.1 The City’s acceptance of the gift described above is conditioned upon the following:

5.1.1 The intent of the parties is for the City to own, maintain and replace the Improvements on the Project Site for 40 years from the final completion date, which is the useful life of the Improvements. The Project Site will be known as the “**Kirby Locker Rooms**” for the life of the locker rooms. The terms and conditions associated with the naming rights and the manner in which the naming rights are displayed on the site are also subject to recommendation by the Sioux Falls Parks and Recreation Board and approval of the city council by ordinance. The Parties agree that naming rights shall only become effective when the city council approval is obtained and become final.

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5.1.2 The Donors agree they are responsible for costs associated with any future requests received by the City from the Donors that would necessitate a change in the naming identification or applicable signage.

5.1.3. If it is discovered the named persons, Joe and Jennifer Kirby, had in the past committed any act which, at the time of discovery, tends to shock, insult or offend a majority of the people of Sioux Falls, which act materially and adversely affects the operations or use of **Kirby Locker Rooms**, and materially and adversely impacts the attendance of activities or events at the **Midco® Aquatic Center or the Kirby Locker Rooms**, the City may terminate the naming rights granted herein. Before effecting such termination, the City will give to the Foundation and the Donors written notice of the City's intent to terminate the naming rights and will give the Foundation and the Donors an opportunity to be heard before the City Council. The authority to terminate the naming rights will be vested in the City Council. Should the City determine to terminate naming rights and the Project prior to completion in accordance with the standards set forth above, the Foundation will pay its share of the costs incurred to the termination date as provided in this Agreement.

5.1.4 Unless otherwise mutually agreed to by the City and the Foundation, the City will specifically refer to the Project Site for the life of the locker rooms as the "**Kirby Locker Rooms**" in all publications, news releases, and documents relative to the Project Site, the Project Improvements and the events and activities to be conducted on the Project Site.

Section Six Hold Harmless

6.1 To the fullest extent permitted by law, the Foundation hereby agrees to defend, indemnify and hold the City and its respective officers, directors, employees, agents, elected and appointed officials harmless from any and all claims, damages, losses and judgments of third parties, including attorneys' fees and expenses recoverable under applicable law arising out of the construction and completion of the Improvements furnished under this Agreement, and for bodily injury or property damage arising out of services, work, or products furnished under this Agreement, providing that such claims or liability are the result of an act, error, or omission of the Foundation and/or its employees/contractors/agents arising out of the gift(s) and/or work described in the Agreement. The Foundation's obligations in this section shall survive termination or expiration of this Agreement.

Section Seven Funds Appropriation

7.1 Notwithstanding any provision of this Agreement to the contrary, any financial obligation of the City, if any, under this Agreement is contingent upon all funds necessary for the performance of this Agreement being budgeted, appropriated and otherwise made available. If funds are not budgeted or appropriated for any fiscal year for services under the terms of this Agreement, this Agreement will impose no obligation on the City for payment. This Agreement

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**Section Ten
Force Majeure**

10.1 The City will not be responsible for delays in the completion of the Improvements to the Project Site resulting from causes beyond its reasonable control (“Force Majeure”). Force Majeure will include, but not be limited to, strikes, walk outs, other industrial disturbances, civil disturbances, fires, unusual climatic conditions, epidemics or pandemics, epidemics, acts of God, acts of public enemy, compliance with any governmental regulation, order, or requirement, or inability to obtain labor, transportation, or necessary materials in the open market.

**Section Eleven
Entire Agreement**

11.1 This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party, or an agent or either Party, that is not contained in this Agreement will be valid or binding. This Agreement may not be enlarged, modified, or altered, except in writing signed by the parties.

**Section Twelve
Binding Effect**

12.1 This Agreement will inure to the benefit of, and be binding upon, the assignees and successors of the respective parties.

[Signature Page Follows]

{atkl5005}

CITY OF SIOUX FALLS

SIOUX FALLS AREA COMMUNITY FOUNDATION

BY: _____

BY: _____

PRINTED NAME: _____

PRINTED NAME: _____

TITLE: Mayor

TITLE: Vice President, Philanthropy

FEDERAL TAX ID NO. 31-1748533

ATTEST:

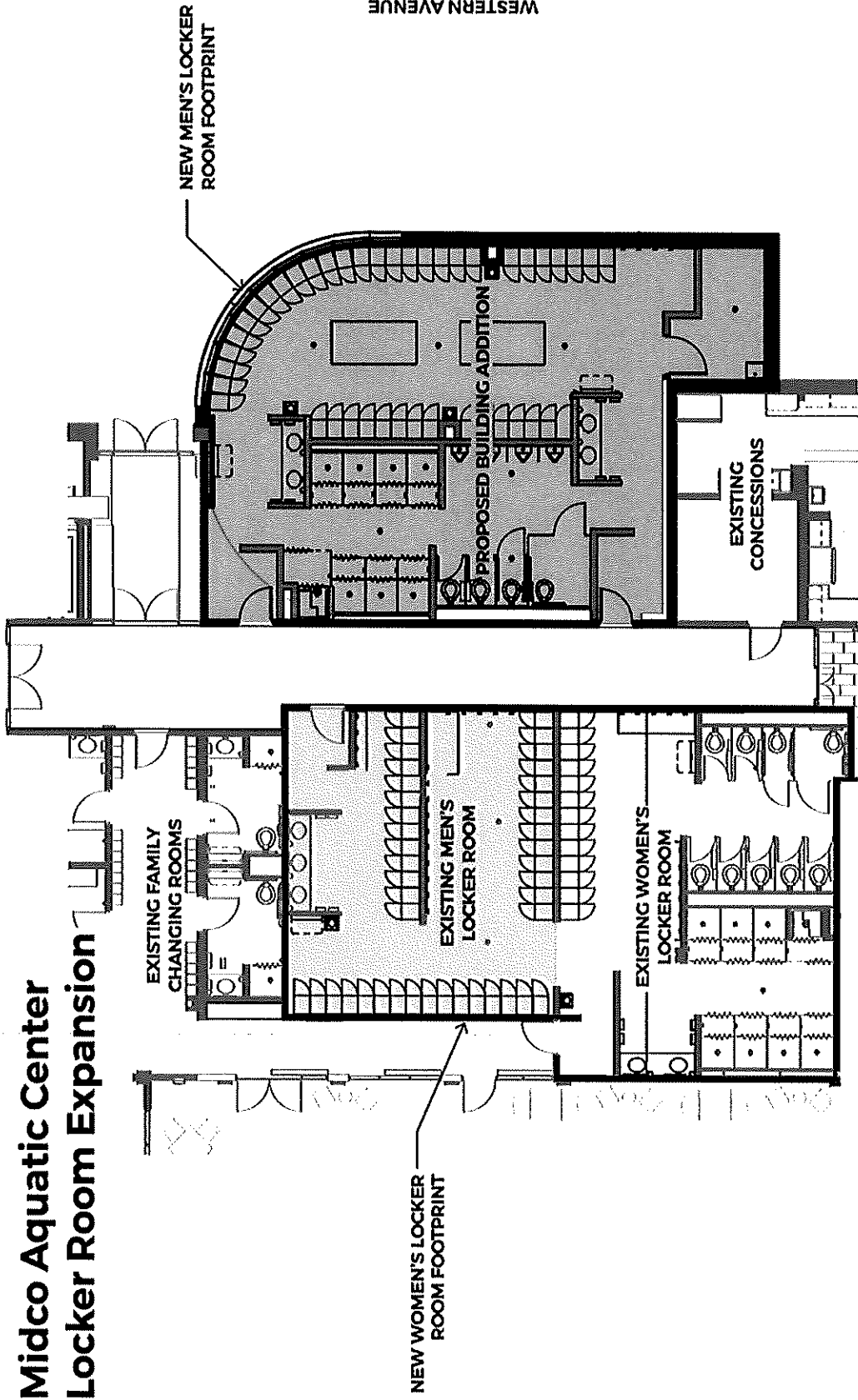
CITY CLERK
PRINTED NAME: _____

{atk15005}

EXHIBIT A

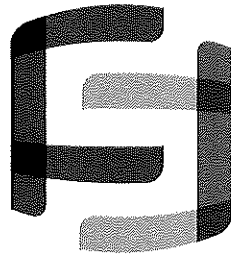
Locker Room Improvements

**Midco Aquatic Center
Locker Room Expansion**



{art15005}

Conditional Gifting and Naming Agreement for Future Cash Gift for
the Remodeling of the Locker Rooms Located
at the Midco® Aquatic Center
Exhibit A



**CITY OF
SIOUX FALLS
PARKS & RECREATION**

**2024 POLICIES AND GUIDELINES
*EXCERPTS OF REVISED PORTIONS***

MINOR REVISIONS NOT INCLUDED AS EXCERPTS INCLUDE:

- UPDATING WEBSITE ADDRESS FROM .ORG TO .GOV
- REMOVING REFERENCES TO COMMUNITY CENTERS

PARK FACILITY RESERVATIONS AND GENERAL POLICIES

Added new language providing guidance for breastfeeding in parks and facilities.

General Park Use Information

[NEW LANGUAGE]

- Breastfeeding is allowed at the mother's discretion anywhere in the park or pool facility where the mother and child are authorized to be, including in the pool and pool deck area. So long as the user is in compliance with all state and municipal laws, a breastfeeding mother will not be asked by pool staff to relocate while breastfeeding for any reason except safety.

Falls Park Open Air Shelter Information and Rules

Increased number of picnic tables provided at Falls Park shelter to match user trends.

- There are 44 16 seven-foot picnic tables under the shelter. These 44 16 tables will remain in the shelter at all times including during the Farmer's Market on Saturdays. Two of these tables are ADA accessible.
 - An additional 16 tables can be moved to the shelter during certain times if requested. A nonrefundable reservation fee of \$100 will be charged at the time of reservation for any event requesting more than 14 tables for a total of 30 tables.
 - Reservations of the shelter for events requiring more than 14 tables will be allowed on Sundays through Thursdays from 8 a.m. to 12 midnight and on Saturdays from 5 p.m. until 12 midnight.
 - Reservations of the shelter for events not requiring more than 14 tables will be allowed on Sundays through Fridays from 8 a.m. to 12 midnight and Saturdays from 5 p.m. to 12 midnight. No additional tables will be moved to the shelter for a Friday event because of the Farmer's Market use of the shelter on Saturdays.

Park Wedding Information and Rules

Revised language to specify four-hour time blocks at wedding locations. Also added flexibility to Tuthill House availability from Oct – Apr and weekdays to promote utilization outside of wedding season and weekends.

[PREVIOUS]

A wedding/wedding rehearsal cannot reserve both four-hour time blocks during any one day at any of the four wedding park locations.

- ~~○ McKennan Park Sunken Garden (reservation fee \$75 for a four-hour time block)~~
- ~~○ Sherman Park Garden (reservation fee \$75 for a four-hour time block)~~
- ~~○ Terrace Park Japanese Garden (reservation fee \$75 for a four-hour time block)~~
- ~~○ Tuthill Garden (reservation fee \$75 for a four-hour time block)~~
- ~~○ Tuthill House (reservation fee \$100 for a four-hour time block)~~
- ~~○ Tuthill House and Garden (reservation fee \$175 for a four-hour time block)~~

[NEW]

A wedding/wedding rehearsal cannot reserve both four-hour time blocks during any one day at any of the four wedding park locations.

- **Tuthill Garden (Reservation fee of \$75)**
 - 10 a.m. to 2 p.m.
 - 4 p.m. to 8 p.m.
- **McKenna Park Sunken Garden (Reservation fee of \$75)**
 - 12 p.m. to 4 p.m.
 - 6 p.m. to 10 p.m.
- **Sherman Park Gazebo (Reservation fee of \$75)**
 - 10 a.m. to 2 p.m.
 - 4 p.m. to 8 p.m.
- **Terrace Park Japanese Garden (Reservation fee of \$75)**
 - 10 a.m. to 2 p.m.
 - 4 p.m. to 8 p.m.

*Add-On Rental Locations

- **Tuthill House (Reservation fee \$100 per four-hour time block on weekends/holidays)**
 - 10 a.m. to 2 p.m.
 - 4 p.m. to 8 p.m.

May 1 through September 30	House & Garden Combo Fridays, Saturdays, Sundays, or Holidays Four-hour time blocks. • 10 a.m. to 2 p.m. • 4 p.m. to 8 p.m.	\$175
October 1 through April 30	House Only Daily Hourly Reservations Accepted	\$25 per hour
Year-Round Weekday	House Only Monday through Thursday	\$25 per hour

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 70: GENERAL PROVISIONS AND CHAPTER 95: PARKS AND RECREATION TO ALLOW CLASS II E-BICYCLES ON THE RECREATION TRAIL.

Section 1. That Section 70.001 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 70.001 DEFINITIONS.

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

ADULT TRICYCLE. Every ~~vehicle-conveyance~~ having three wheels, propelled solely by human power, upon which any adult may ride, except scooters, children's tricycles, and similar devices.

AUTHORIZED EMERGENCY VEHICLE. Vehicles of a fire department, police vehicles, and ambulances and emergency vehicles of city departments or public service corporations as are designated or authorized by the department.

BICYCLE. Every wheeled conveyance having two tandem wheels, propelled solely by human power, upon which any person may ride, except scooters and similar devices, but also including adult tricycles.

BICYCLE LANE. An exclusive space for bicyclists and e-bicyclists through the use of pavement markings and signage. The bicycle lane is located adjacent to motor vehicle travel lanes.

BUSINESS DISTRICT. The territory contiguous to a highway when 50% or more of the frontage thereon for a distance of 300 feet or more is occupied by buildings in use for business.

CROSSWALK. The part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

CURB. The extreme edge or lateral boundary of a roadway, whether marked by curbing or not so marked.

CURB LOADING ZONE. The space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

CYCLE TRACK. A cycle track is an exclusive bicycle facility that combines the user experience of a separated path with the on-street infrastructure of a conventional bicycle lane. A cycle track is physically separated from motor vehicle traffic and distinct from the sidewalk.

DELIVERY VEHICLE. Any vehicle used for deliveries in a business district and displaying a sign on the curb side of the vehicle. The sign must be of a permanent material, show the company name, indicate that the vehicle is a delivery vehicle, and have a minimum size of six inches by 12 inches.

DEPARTMENT. The police department.

DRIVER. Any person who is in actual physical control of a vehicle.

E-BICYCLE. A wheeled conveyance having two tandem wheels or two parallel wheels and one forward or rearward wheel, and two of which are not less than 12 inches in diameter, with operable pedals for propulsion, and with an electric motor of 750 watts or less.

An e-bicycle is a Class I e-bicycle if the motor provides assistance only when the person is pedaling and ceases to provide assistance when a speed of 20 miles per hour is achieved.

An e-bicycle is a Class II e-bicycle if the motor is capable of propelling the bicycle without the person pedaling and ceases to provide assistance when a speed of 20 miles per hour is achieved.

An e-bicycle is a Class III e-bicycle if the motor provides assistance only when the person is pedaling and ceases to provide assistance when a speed of 28 miles per hour is achieved.

ELECTRONIC COMMUNICATION DEVICE. Wireless or cellular phones, PDAs, BlackBerrys, smartphones, MP3 players, laptop or notebook computers utilizing VoIP (Voice-over Internet Protocol) technology, wireless and cellular phones utilizing push-to-talk technology, and any other mobile communication device that uses shortwave analog or digital radio transmission between the device and a transmitter to permit wireless communications to and from the user of the device.

ELECTRONIC MESSAGE. A self-contained piece of digital communication that is designed or intended to be transmitted between two physical devices. An **ELECTRONIC MESSAGE** includes, but is not limited to, email, a text message, an instant message, a command or request to access a World Wide Web page, or other data that uses a commonly recognized electronic communications protocol. An **ELECTRONIC MESSAGE** does not include the use of global positioning or navigation systems or voice or other data transmitted as a result of making a phone call

or data transmitted automatically by a wireless communication device without direct initiation by a person.

INTERSECTION. The area embraced within the prolongation of the lateral curblines or, if none, then of the lateral boundary lines of two or more highways which join one another at an angle, whether or not one highway crosses the other. However, the area in the case of the point where an alley and a street meet within the city is not an **INTERSECTION**.

LANED STREET. A street, the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.

MOTORCYCLE. Every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any vehicle as may be included within the term "tractor."

MOTOR VEHICLE. Every vehicle which is self-propelled. The term does not include an electric bicycle

OBSTRUCTIONS. Include, but not limited to, fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes that make it unsafe to continue along the right-hand curb or edge.

OFFICIAL TRAFFIC SIGNALS. All signals, not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction, for the purpose of directing, warning, or regulating traffic.

OFFICIAL TRAFFIC SIGNS. All signs and markings, other than signals, not inconsistent with this chapter, placed or erected by a public body or official having jurisdiction for the purpose of guiding, directing, warning, or regulating traffic.

PARK or PARKING. The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

PARKWAY. The paved or unpaved strip of land paralleling the roadway and located between the roadway and sidewalk area.

PEDESTRIAN. Any person afoot.

POLICE OFFICER. Every officer of the city police department or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

PRIVATE ROAD or DRIVEWAY. Every road or driveway not open to the use of the public for purposes of vehicular travel.

RECREATION TRAILS. Any publicly owned pathway within the floodplain of the Big Sioux River and the pathways which lead directly into this pathway system which are open to the public for recreation or travel and which prohibit motorists from travelling upon them.

RESIDENCE DISTRICT. The territory contiguous to a highway not comprising a business district when the frontage on the highway for a distance of 300 feet or more is mainly occupied by dwellings or by dwellings and buildings in use for business.

RIGHT-OF-WAY. The right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under those circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.

ROADWAY. The portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate **ROADWAYS**, the word **ROADWAY** shall refer to any **ROADWAY** separately but not to all **ROADWAYS** collectively.

SIDEWALK. The portion of a street between the curblines, or the lateral lines of a roadway, and the adjacent property lines intended for use of pedestrians.

SIDEPATH. A sidepath is a path next to the street, like a sidewalk, except that the sidepath is 8 to 12 feet in width and designated by signage as a sidepath. A sidepath allows and is designed for pedestrian, bicycle, and e-bicycle traffic.

STANDARD WIDTH LANE. A lane that is wide enough for a bicycle or e-bicycle and another vehicle to travel safely side by side within the same lane.

STREET or HIGHWAY. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public as a matter of right for purposes of vehicular travel.

SUBSTANDARD WIDTH LANE. A lane that is too narrow for a bicycle or e-bicycle and another vehicle to travel safely side by side within the lane.

THROUGH STREET. Any street or part of a street that has an intersecting street controlled by traffic control signals or stop or yield signs.

TRAFFIC. Pedestrians, ridden animals, herded animals, and vehicles while using any street for purpose of travel.

TRAFFIC CONTROL SIGNAL. Any device using colored lights, or words, or any combination thereof, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

VEHICLE. Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks, including bicycles, e-bicycles, and ridden animals.

Section 2. That Section 70.009 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 70.009 WHEELED MOTOR VEHICLES PROHIBITED ON FLOOD PROTECTION LEVEES.

It shall be unlawful for any person to drive or operate any motorized or motor driven, wheeled vehicle except a Class I e-bicycle and Class II e-bicycle on any of the flood protection levees. The maximum speed allowed on any the flood protection levees is found in § 76.003.

This section shall not apply to or limit authorized vehicles on the levees for maintenance, patrolling, and flood emergency purposes.

Section 3. That Section 76.003 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 76.003 MAXIMUM LIMITS GENERALLY.

Except as may otherwise be provided by this subchapter, it shall be unlawful for any person to operate or drive any vehicle at a rate of speed greater than the following:

(a) Fifteen miles per hour when approaching within 50 feet of a grade crossing of any railway when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last 200 feet of his or her approach to the crossing, he or she does not have a clear and uninterrupted view of any traffic on the railway for a distance of 400 feet in each direction;

(b) Fifteen miles per hour when approaching within 50 feet and in traversing an uncontrolled intersection of highways when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last 50 feet of his or her approach to the intersection, he or she does not have a clear and uninterrupted view of the intersection and of the traffic upon all of the highways entering the intersection for a distance of 200 feet from the intersection;

(c) Fifteen miles per hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours for the school;

(d) Fifteen miles per hour on streets adjacent to schools while children are present on school property, streets adjacent to school property or in zones near school property established and posted by the city engineer;

(e) Fifteen miles per hour when approaching within 50 feet and in traversing a school crossing when the school crossing is properly established and posted by the city engineer;

(f) Twenty miles per hour on any highway in a business district, unless a different speed is posted by the city engineer;

(g) Fifteen miles per hour in public parks, on any of the flood protection levees and on recreation trails unless a different speed is posted by the city engineer;

(h) Twenty-five miles per hour in a residential district unless a different speed is posted by the city engineer;

(i) Thirty miles per hour on all highways and through streets in a residential district unless a different speed is posted by the city engineer and except as provided in division (c) above; and

(j) Fifteen miles per hour in any public alley.

Section 4. That Section 95.008 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 95.008 VEHICLE OPERATION AND PARKING.

No person shall operate or park any vehicle including ~~Class II and a~~ Class III e-bicycles in any park, except on clearly marked and designated roadways or parking areas therein, or except as authorized by the director.

Section 5. That Section 95.031 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 95.031 BICYCLING.

Bicycle and e-bicycle riders in the parks and upon recreation trails shall abide by the ordinances governing the operation and equipment of bicycles ~~except bicycling, Class I e-bicycling and Class II e-bicycling~~ need not be limited to paved areas. Bicyclists and e-bicyclists shall operate their bicycles or e-bicycles in a prudent manner and with due regard for the safety of others and the preservation of park property. The maximum speed allowed in parks and on a recreation trails is found in § 76.003.

Section 6. That Section 95.031.1 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 95.031.1 WHEELED MOTOR VEHICLES PROHIBITED ON RECREATION TRAIL.

It shall be unlawful for any person to drive or operate any motorized or motor driven, wheeled vehicle except a Class I e-bicycle and Class II e-bicycle on any of the recreation trails. This section shall not apply to or limit authorized vehicles on the levees for maintenance, patrolling, and flood emergency purposes. The director shall authorize a policy to comply with the American with Disabilities Act (ADA) on Other Power-Driven Mobility Devices (OPDMDs). This policy shall be available on the city's webpage.

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 70: GENERAL PROVISIONS AND CHAPTER 95: PARKS AND RECREATION TO ALLOW CLASS II E-BICYCLES ON THE RECREATION TRAIL.

Section 1. That Section 70.001 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 70.001 DEFINITIONS.

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

ADULT TRICYCLE. Every conveyance having three wheels, propelled solely by human power, upon which any adult may ride, except scooters, children's tricycles, and similar devices.

AUTHORIZED EMERGENCY VEHICLE. Vehicles of a fire department, police vehicles, and ambulances and emergency vehicles of city departments or public service corporations as are designated or authorized by the department.

BICYCLE. Every wheeled conveyance having two tandem wheels, propelled solely by human power, upon which any person may ride, except scooters and similar devices, but also including adult tricycles.

BICYCLE LANE. An exclusive space for bicyclists and e-bicyclists through the use of pavement markings and signage. The bicycle lane is located adjacent to motor vehicle travel lanes.

BUSINESS DISTRICT. The territory contiguous to a highway when 50% or more of the frontage thereon for a distance of 300 feet or more is occupied by buildings in use for business.

CROSSWALK. The part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

CURB. The extreme edge or lateral boundary of a roadway, whether marked by curbing or not so marked.

CURB LOADING ZONE. The space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

CYCLE TRACK. A cycle track is an exclusive bicycle facility that combines the user experience of a separated path with the on-street infrastructure of a conventional bicycle lane. A cycle track is physically separated from motor vehicle traffic and distinct from the sidewalk.

DELIVERY VEHICLE. Any vehicle used for deliveries in a business district and displaying a sign on the curb side of the vehicle. The sign must be of a permanent material, show the company name, indicate that the vehicle is a delivery vehicle, and have a minimum size of six inches by 12 inches.

DEPARTMENT. The police department.

DRIVER. Any person who is in actual physical control of a vehicle.

E-BICYCLE. A wheeled conveyance having two tandem wheels or two parallel wheels and one forward or rearward wheel, and two of which are not less than 12 inches in diameter, with operable pedals for propulsion, and with an electric motor of 750 watts or less.

An e-bicycle is a Class I e-bicycle if the motor provides assistance only when the person is pedaling and ceases to provide assistance when a speed of 20 miles per hour is achieved.

An e-bicycle is a Class II e-bicycle if the motor is capable of propelling the bicycle without the person pedaling and ceases to provide assistance when a speed of 20 miles per hour is achieved.

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ELECTRONIC COMMUNICATION DEVICE. Wireless or cellular phones, PDAs, BlackBerries, smartphones, MP3 players, laptop or notebook computers utilizing VoIP (Voice-over Internet Protocol) technology, wireless and cellular phones utilizing push-to-talk technology, and any other mobile communication device that uses shortwave analog or digital radio transmission between the device and a transmitter to permit wireless communications to and from the user of the device.

ELECTRONIC MESSAGE. A self-contained piece of digital communication that is designed or intended to be transmitted between two physical devices.

An **ELECTRONIC MESSAGE** includes, but is not limited to, email, a text message, an instant message, a command or request to access a World Wide Web page, or other data that uses a commonly recognized electronic communications protocol.

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or data transmitted automatically by a wireless communication device without direct initiation by a person.

INTERSECTION. The area embraced within the prolongation of the lateral curblines or, if none, then of the lateral boundary lines of two or more highways which join one another at an angle, whether or not one highway crosses the other. However, the area in the case of the point where an alley and a street meet within the city is not an **INTERSECTION**.

LANED STREET. A street, the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.

MOTORCYCLE. Every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any vehicle as may be included within the term "tractor."

MOTOR VEHICLE. Every vehicle which is self-propelled. The term does not include an electric bicycle.

OBSTRUCTIONS. Include, but not limited to, fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes that make it unsafe to continue along the right-hand curb or edge.

OFFICIAL TRAFFIC SIGNALS. All signals, not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction, for the purpose of directing, warning, or regulating traffic.

OFFICIAL TRAFFIC SIGNS. All signs and markings, other than signals, not inconsistent with this chapter, placed or erected by a public body or official having jurisdiction for the purpose of guiding, directing, warning, or regulating traffic.

PARK or PARKING. The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

PARKWAY. The paved or unpaved strip of land paralleling the roadway and located between the roadway and sidewalk area.

PEDESTRIAN. Any person afoot.

POLICE OFFICER. Every officer of the city police department or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

PRIVATE ROAD or DRIVEWAY. Every road or driveway not open to the use of the public for purposes of vehicular travel.

RECREATION TRAILS. Any publicly owned pathway within the floodplain of the Big Sioux River and the pathways which lead directly into this pathway system which are open to the public for recreation or travel and which prohibit motorists from traveling upon them.

RESIDENCE DISTRICT. The territory contiguous to a highway not comprising a business district when the frontage on the highway for a distance of 300 feet or more is mainly occupied by dwellings or by dwellings and buildings in use for business.

RIGHT-OF-WAY. The right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under those circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.

ROADWAY. The portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate **ROADWAYS**, the word **ROADWAY** shall refer to any **ROADWAY** separately but not to all **ROADWAYS** collectively.

SIDEWALK. The portion of a street between the curblines, or the lateral lines of a roadway, and the adjacent property lines intended for use of pedestrians.

SIDEPATH. A sidepath is a path next to the street, like a sidewalk, except that the sidepath is 8 to 12 feet in width and designated by signage as a sidepath. A sidepath allows and is designed for pedestrian, bicycle, and e-bicycle traffic.

STANDARD WIDTH LANE. A lane that is wide enough for a bicycle or e-bicycle and another vehicle to travel safely side by side within the same lane.

STREET or HIGHWAY. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public as a matter of right for purposes of vehicular travel.

SUBSTANDARD WIDTH LANE. A lane that is too narrow for a bicycle or e-bicycle and another vehicle to travel safely side by side within the lane.

THROUGH STREET. Any street or part of a street that has an intersecting street controlled by traffic control signals or stop or yield signs.

TRAFFIC. Pedestrians, ridden animals, herded animals, and vehicles while using any street for purpose of travel.

TRAFFIC CONTROL SIGNAL. Any device using colored lights, or words, or any combination thereof, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

VEHICLE. Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks; including bicycles, e-bicycles, and ridden animals.

Section 2. That Section 70.009 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 70.009 WHEELED MOTOR VEHICLES PROHIBITED ON FLOOD PROTECTION LEVEES.

It shall be unlawful for any person to drive or operate any motorized or motor driven, wheeled vehicle except a Class I e-bicycle and Class II e-bicycle on any of the flood protection levees. The maximum speed allowed on any the flood protection levees is found in § 76.003.

This section shall not apply to or limit authorized vehicles on the levees for maintenance, patrolling, and flood emergency purposes.

Section 3. That Section 76.003 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 76.003 MAXIMUM LIMITS GENERALLY.

Except as may otherwise be provided by this subchapter, it shall be unlawful for any person to operate or drive any vehicle at a rate of speed greater than the following:

(a) Fifteen miles per hour when approaching within 50 feet of a grade crossing of any railway when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last 200 feet of his or her approach to the crossing, he or she does not have a clear and uninterrupted view of any traffic on the railway for a distance of 400 feet in each direction;

(b) Fifteen miles per hour when approaching within 50 feet and in traversing an uncontrolled intersection of highways when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last 50 feet of his or her approach to the intersection, he or she does not have a clear and uninterrupted view of the intersection and of the traffic upon all of the highways entering the intersection for a distance of 200 feet from the intersection;

(c) Fifteen miles per hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours for the school;

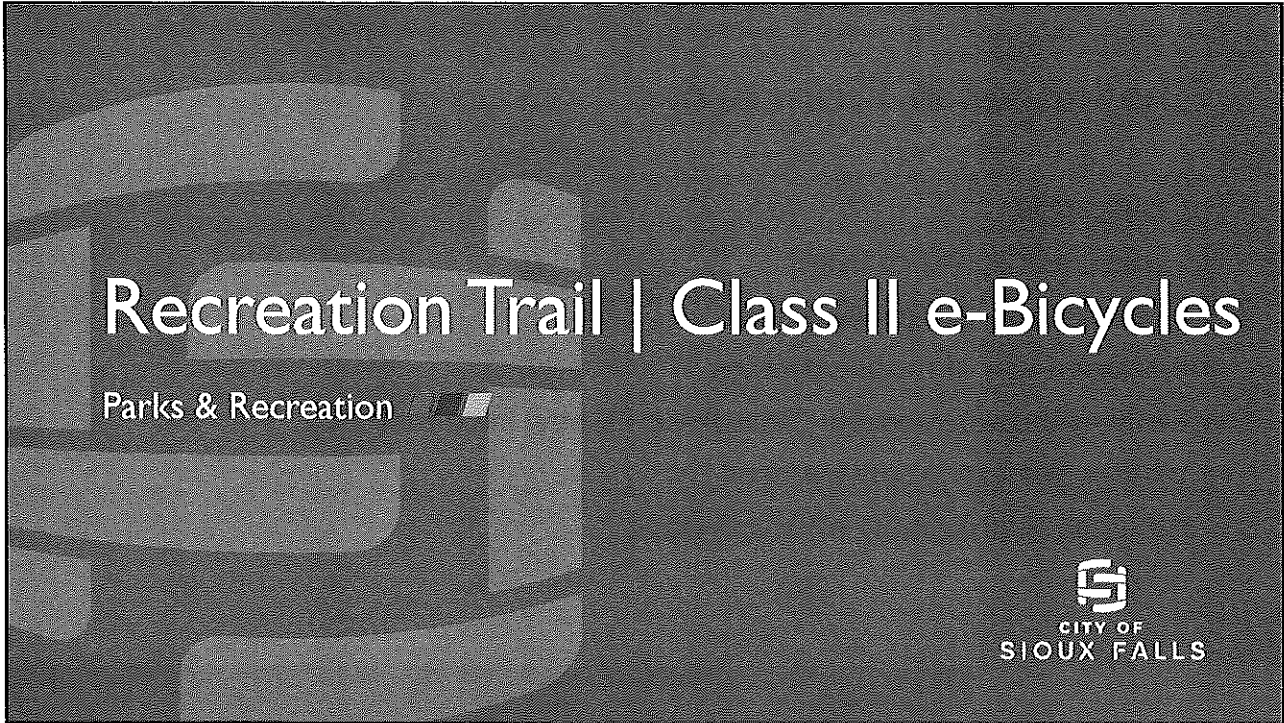
(d) Fifteen miles per hour on streets adjacent to schools while children are present on school property, streets adjacent to school property or in zones near school property established and posted by the city engineer;

(e) Fifteen miles per hour when approaching within 50 feet and in traversing a school crossing when the school crossing is properly established and posted by the city engineer;

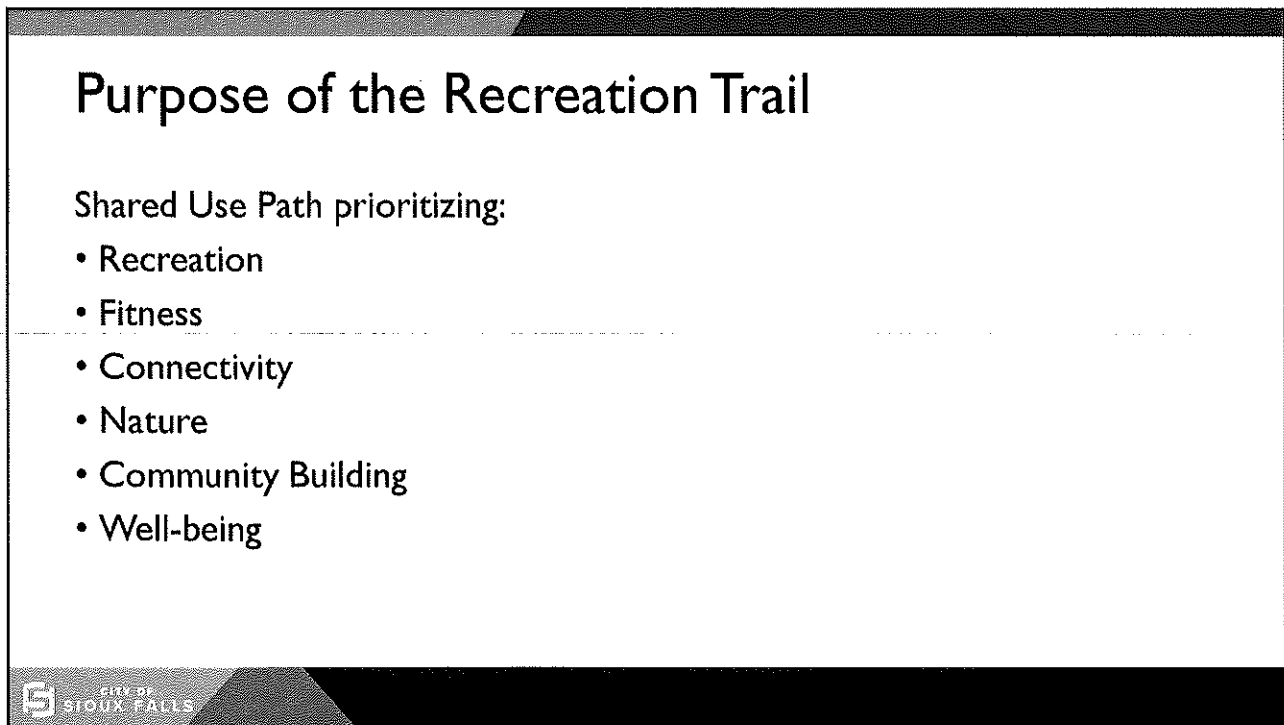
(f) Twenty miles per hour on any highway in a business district, unless a different speed is posted by the city engineer;

(g) Fifteen miles per hour in public parks, on any of the flood protection levees and on recreation trails unless a different speed is posted by the city engineer;

(h) Twenty-five miles per hour in a residential district unless a different speed is posted by the city engineer;



1



2

Challenges & Concerns

- Congestion
- Variation in speed of users
- Increased use of headphones
- Increased use of mobile devices
- Evolving industry (toggle Class II ↔ III, new introductions)
- Weight of electric conveyances
- Difficulty in discerning e-bicycle class

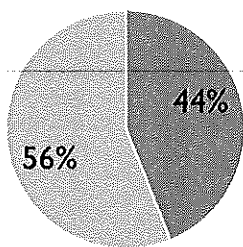


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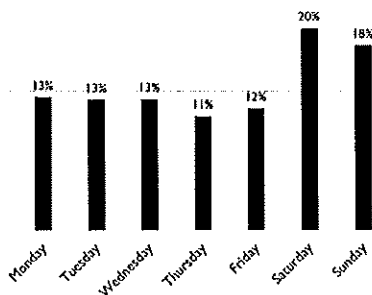
Data 2022

data gathered at single points near Pasley Park and Sanford Sports Complex

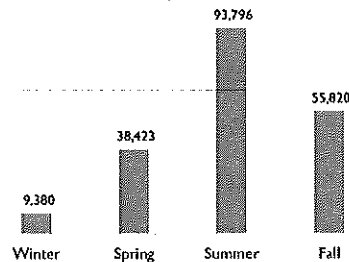
■ Pedestrian ■ Cyclist



Use by Day of Week



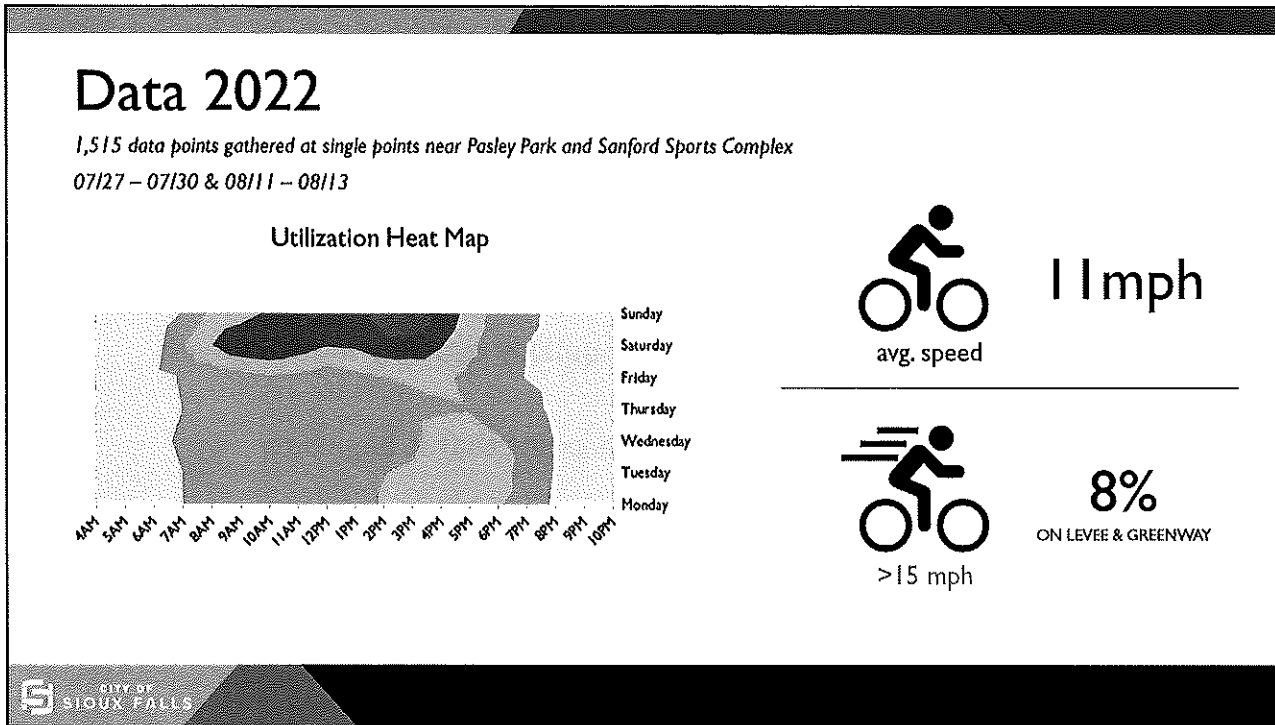
Use by Season



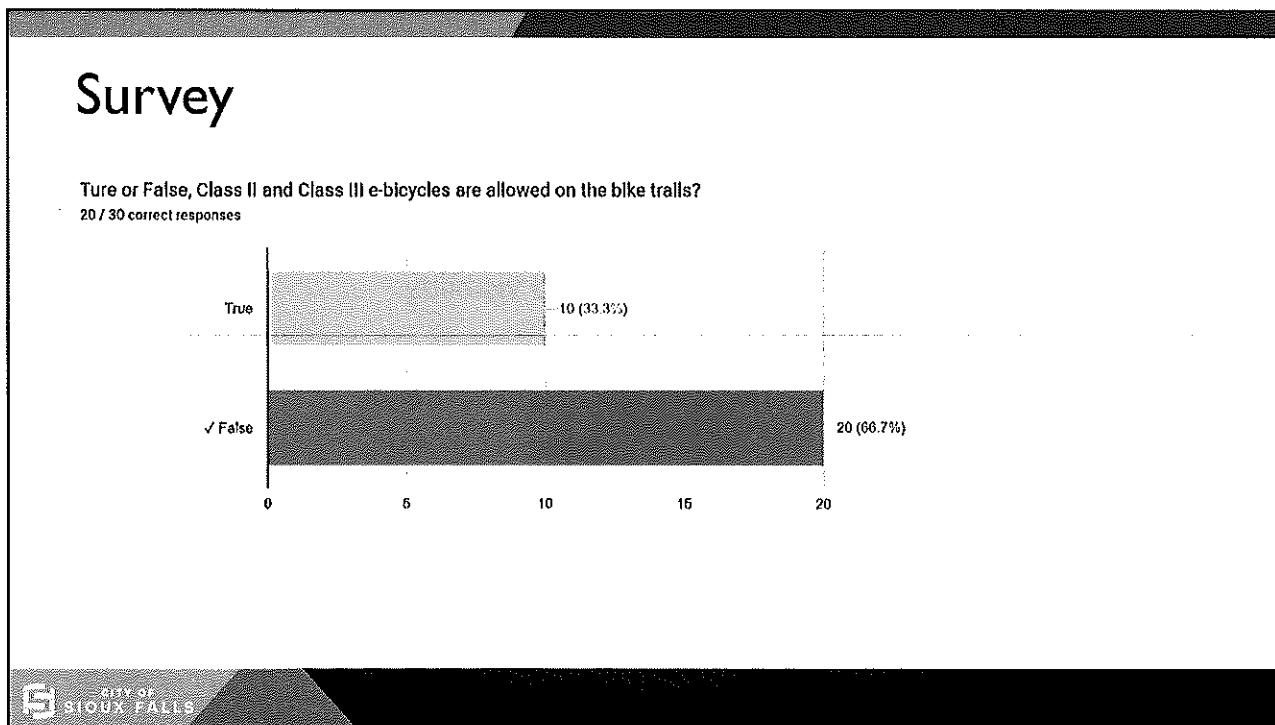
1,000 daily users in peak season
550 daily users annually



4



5



6

Recommendation

Allow Class II e-bicycles on the recreation trail

- Promotes access for persons with mobility challenges
- Defines Parks & Recreation stance in a quickly evolving industry with congestion being primary concern
- Support active transportation up to the point that it begins to negatively impact recreation
- Other Power-Driven Mobility Devices (OPDMD) policy remains

Alternatives Considered

- Add a center line *reduces width of trail, lowers LOS grade, gives impression of trafficway*
- Add a center line to segments with reduced visibility
- Construct two paths *cost prohibitive*
- Keep as is, limit to Class I e-Bicycles *ignores public trends*

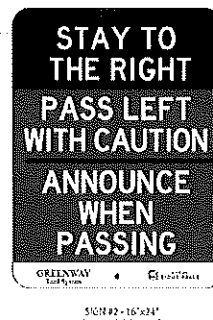
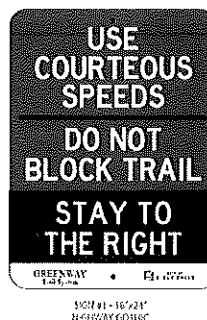
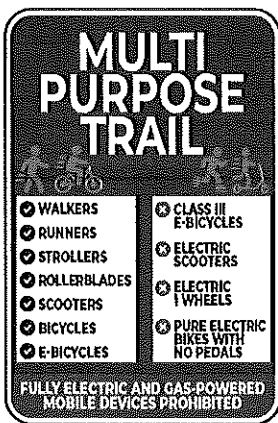
Spring 2024 Initiatives

- Consider effective date that aligns with spring campaigns (June 1)
- Spring 2024 education & awareness campaign
- Spring 2024 signage plan
- Increased enforcement expectations on throttle only motorized conveyances

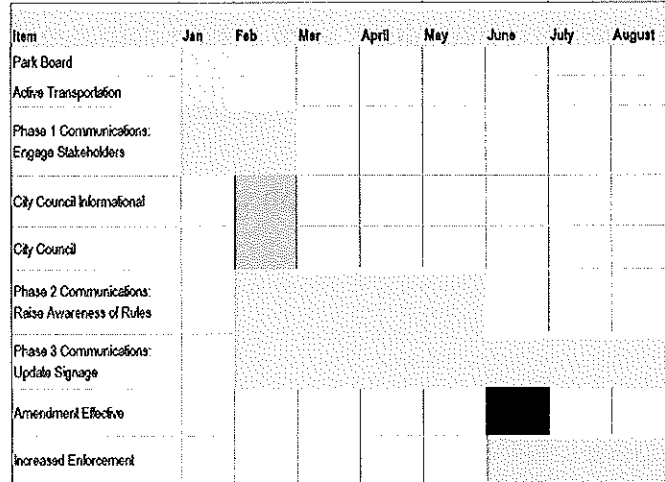


Signage Examples

- Keep to the right
- Control your speed
- Pass on the left
- Announce when passing



Gantt Chart



2023
MIDCO AQUATIC CENTER OPERATING DASHBOARD
(Unaudited)

Statistics

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	YTD Total
Attendance												
Daily Attendance	5,065	5,802	6,810	5,926	4,646	5,648	4,955	4,729	2,991	2,588	3,541	52,701
Swim Pass Attendance	5,029	5,007	6,248	5,578	8,610	14,387	12,818	11,445	5,298	5,201	5,020	84,641
Swim Lesson Attendance	2,694	1,216	3,336	320	8	1,940	1,375	-	-	3,009	571	14,469
Swim Team Attendance	2,794	2,060	838	1,984	1,804	562	264	280	1,910	2,524	2,410	17,430
Swim Meet Attendance	3,900	433	128	2,909	1,692	-	8,655	1	158	876	1,062	19,814
Other Attendance	437	546	664	1,680	823	873	664	507	1,775	1,682	1,710	11,361
Total Attendance	19,919	15,064	18,024	18,397	17,583	23,410	28,731	16,962	12,132	12,132	15,880	200,416
Average Daily Attendance	664	538	581	634	567	780	958	547	404	512	494	835
Passes												
Fall, Winter, Spring Passes Sold	1	-	-	-	-	-	1	3	148	10	8	171
Annual Passes Sold	161	127	194	168	309	437	137	121	20	158	115	1,947
Total Passes Sold	162	127	194	168	309	437	138	124	168	168	123	2,118
Other												
Lesson Registrations	9	-	-	-	-	310	11	-	319	19	5	673
Class/Event Registrations	103	36	3	1	146	183	85	65	105	92	125	944
Meeting Room Reservations	27	27	32	31	33	16	12	16	13	13	24	244
Meeting Room Hours Reserved	65	44	50	50	71	35	53	24	21	17	40	469
Swim Lane Hours Reserved	990	773	412	940	913	342	112	128	1,248	1,359	1,145	8,362

Revenue

Daily Admission	\$ 22,801	\$ 27,117	\$ 30,373	\$ 25,566	\$ 22,707	\$ 27,654	\$ 24,312	\$ 23,205	\$ 13,414	\$ 11,259	\$ 15,494	\$ 243,901
Passes	25,424	17,995	28,500	26,307	58,268	99,178	23,007	16,468	23,125	22,505	17,597	358,375
Programming Registrations	10,075	22,654	5,824	10,477	10,133	16,073	7,155	2,162	21,342	8,439	10,481	124,815
Meeting Room Reservations	2,325	2,200	2,550	2,613	2,850	1,750	1,150	1,200	1,075	925	2,050	20,688
Swim Lane Reservations	4,055	4,972	1,864	4,005	5,533	1,750	1,015	291	4,177	5,739	5,884	39,283
Other	17,570	10,059	123	123	147	134	225,095	72	13	26	5,026	258,391
Total Revenue	\$ 82,250	\$ 84,998	\$ 69,234	\$ 69,090	\$ 99,659	\$ 146,538	\$ 281,734	\$ 43,398	\$ 63,146	\$ 48,893	\$ 56,531	\$ 1,045,451

Expenses

Personnel*	\$ 80,195	\$ 99,521	\$ 98,751	\$ 99,583	\$ 95,897	\$ 174,086	\$ 131,317	\$ 121,961	\$ 90,762	\$ 97,933	\$ 106,445	\$ 1,196,450
Building R&M	3,468	7,823	22,438	12,029	8,775	33,965	25,329	21,010	23,777	53,084	1,376	213,075
Supplies & Materials	3,616	3,550	25,388	14,430	11,534	14,750	10,669	10,770	16,303	19,509	6,825	137,294
Utilities	21,859	37,445	54,191	28,799	27,269	29,179	33,832	13,772	52,861	31,207	22,446	352,861
Other	848	1,574	9,265	3,827	2,210	2,390	5,506	2,747	29,118	3,659	2,573	63,717
Total Expenses	\$ 109,986	\$ 149,914	\$ 210,033	\$ 158,668	\$ 145,686	\$ 254,369	\$ 206,653	\$ 170,210	\$ 212,821	\$ 205,893	\$ 139,666	\$ 1,963,396

*June and Dec have 3 pay periods

Summary

Total Revenue	\$ 82,250	\$ 84,998	\$ 69,234	\$ 69,090	\$ 99,659	\$ 146,538	\$ 281,734	\$ 43,398	\$ 63,146	\$ 48,893	\$ 56,531	\$ 1,045,451
Total Expenses	109,986	149,914	210,033	158,668	145,686	254,369	206,653	170,210	212,821	205,893	139,666	1,963,396
Operating Surplus/(Loss)	\$ (27,736)	\$ (64,915)	\$ (140,799)	\$ (89,578)	\$ (46,026)	\$ (107,831)	\$ 75,081	\$ (126,812)	\$ (149,675)	\$ (156,500)	\$ (83,134)	\$ (917,945)

**City of Sioux Falls Golf Courses
Income Statement
November 30, 2023**

Current Month

Year To Date

	Prairie Green	Elmwood	Kuehn Park	Consolidated	Budget	Prior Year
Rounds Played	276	1,994	-	2,270	-	996
Revenues						
Greens Fees	1,728	11,848	-	13,576	-	20,705
Pro Shop	9,525	6,528	-	16,053	22,000	35,173
Driving Range	203	1,140	-	1,343	900	639
Carts	1,760	9,278	-	11,038	-	12,898
Food & Beverage	3,850	5,972	-	9,822	8,981	4,892
Annual Passes	-	-	-	-	-	-
Total Revenues	17,066	34,766	-	51,832	31,881	74,247
Cost of Goods Sold						
Merchandise	5,393	3,206	-	8,598	14,400	8,473
Food & Beverage	1,604	2,361	-	3,965	2,880	600
Pro Shop	6,996	5,567	-	12,563	17,280	9,073
Gross Profit	10,069	29,199	-	39,269	14,601	65,174
Operating Expenses						
Pro Shop	11,895	12,767	180	24,841	22,045	23,748
Driving Range	-	1,240	29	3,340	-	1,438
Carts	2,034	43,899	66	46,999	3,500	5,054
Course Maintenance	28,204	4,749	10,650	43,603	68,846	67,677
Food & Beverage	1,195	23,485	50	24,730	10,315	9,906
General & Administration	34,929	-	9,080	44,009	64,038	70,076
Membership	-	-	-	-	-	-
Total Operating Expenses	78,256	86,139	20,055	184,450	166,744	197,899
EBITDA	(68,187)	(56,939)	(20,055)	(145,181)	(152,143)	(132,725)
City Purchased Assets	-	-	-	-	-	-
Hotel Lease Income	-	3,558	-	3,558	-	3,816
Interest Income	3,168	-	-	3,168	3,000	-
Depreciation	(6,045)	(3,285)	(1,264)	(10,594)	(17,150)	(24,592)
Interest Expense	-	-	-	-	(200)	-
Gain/Loss on Sale of Asset	-	-	-	-	-	-
Other Income/Expense	-	-	-	-	-	-
Net Income	(71,064)	(56,637)	(21,319)	(149,020)	(166,493)	(153,501)

	Prairie Green	Elmwood	Kuehn Park	Consolidated	Budget	Prior Year
Rounds Played	32,002	56,943	26,707	115,652	100,500	105,998
Revenues						
Greens Fees	372,019	656,002	239,988	1,268,009	1,235,809	1,163,693
Pro Shop	216,279	259,250	36,272	511,801	477,371	492,951
Driving Range	108,129	82,013	68,312	258,454	211,906	212,946
Carts	404,921	553,197	179,388	1,137,506	1,015,609	1,025,005
Food & Beverage	346,807	443,883	63,219	853,909	762,505	673,594
Annual Passes	331,891	309,113	150,862	791,866	692,448	681,593
Total Revenues	1,780,046	2,303,458	738,040	4,821,544	4,395,648	4,249,703
Cost of Goods Sold						
Merchandise	91,558	142,367	18,117	252,042	241,633	213,598
Food & Beverage	115,885	136,017	17,778	269,680	253,805	221,294
Pro Shop	207,443	278,384	35,895	521,722	495,238	434,742
Gross Profit	1,572,603	2,025,074	702,145	4,299,822	3,900,410	3,814,961
Operating Expenses						
Pro Shop	180,013	202,473	95,243	477,729	485,976	441,589
Driving Range	5,590	8,014	4,682	18,286	20,168	15,194
Carts	136,685	158,550	37,088	332,323	322,268	296,533
Course Maintenance	549,894	696,866	127,968	1,374,671	1,231,896	1,063,660
Food & Beverage	119,251	185,927	4,293	309,471	267,992	255,608
General & Administration	409,504	354,671	136,401	910,776	876,299	802,254
Membership	-	918	-	918	-	12,413
Total Operating Expenses	1,400,898	1,617,618	405,675	3,424,181	3,197,012	2,876,838
EBITDA	171,715	407,455	296,471	875,641	703,398	938,123
City Purchased Assets	-	-	-	-	-	-
Hotel Lease Income	-	47,642	-	47,642	43,600	42,986
Interest Income	9,991	-	-	9,991	-	-
Depreciation	(73,833)	(76,862)	(12,752)	(162,947)	(188,690)	(236,139)
Interest Expense	(382)	(1,039)	-	(1,421)	(10,516)	(15,368)
Gain/Loss on Sale of Asset	308	(3,550)	-	(3,242)	-	(1,258)
Other Income/Expense	-	-	-	-	-	-
Net Income	107,799	374,046	283,719	765,563	547,832	728,344