

**SIOUX FALLS NAMING COMMITTEE**

Friday, July 22, 2022, 11:00 AM

Conference Room 116

Sioux Falls, SD

MEETING ASSISTANCE: UPON REQUEST, ACCOMMODATIONS FOR MEETINGS WILL BE PROVIDED FOR PERSONS WITH DISABILITIES. PLEASE CONTACT THE HUMAN RELATIONS OFFICE, FIRST FLOOR, CITY HALL, 224 WEST 9<sup>TH</sup> STREET, SIOUX FALLS, SD AT 367-8745 (VOICE) OR 367-7039 (TDD) 48 HOURS IN ADVANCE OF THE MEETING.

**MEETING AGENDA**

ITEM 1. CALL TO ORDER AND QUORUM DETERMINATION

ITEM 2. WELCOME AND INTRODUCTIONS

ITEM 3. APPROVAL OF REGULAR AGENDA for July 22, 2022 Meeting

ITEM 4. REVIEW &amp; ACTION ON June 10, 2022 Meeting Minutes

ITEM 5. PUBLIC INPUT ON NON-AGENDA ITEMS (Chairperson)  
(5-minute comment period per individual)ITEM 6. REVIEW & ACTION for Conditional Gifting and Naming Agreement for Startup  
Sioux Falls Foundation, Sioux Falls, SD

ITEM 7. OTHER BUSINESSSS

ITEM 8. ANNOUNCEMENTS

NEXT MEETING – Date to be determined based upon receipt of new application(s)  
or business.

ITEM 10. ADJOURNMENT

**CONDITIONAL GIFTING AND NAMING AGREEMENT  
FOR A FUTURE CASH GIFT  
TO THE STARTUP SIOUX FALLS FOUNDATION**

This Conditional Gifting and Naming Agreement for a Future Cash Gift to the Startup Sioux Falls Foundation (the “*Agreement*”) is dated May 11, 2022, and is made and entered into between **Matthew D. Paulson**, (“*Paulson*”), **American Consumer News, LLC**, a South Dakota limited liability company (“*MarketBeat*”), **Zeal**, a South Dakota non-profit corporation, d/b/a Startup Sioux Falls (“*Startup Sioux Falls*”), **Startup Sioux Falls Foundation**, a South Dakota non-profit corporation (“*SUSF Foundation*”), the **City of Sioux Falls, South Dakota**, a home-ruled chartered municipality (the “*City*”), the **Greater Sioux Falls Chamber of Commerce**, a South Dakota non-profit corporation (the “*Chamber*”), and the **Sioux Falls Development Foundation**, a South Dakota non-profit corporation (the “*Development Foundation*”).

**RECITALS**

- A. SUSF Foundation has received a commitment from Paulson and MarketBeat (collectively, the “*Donors*”) whereby the Donors will contribute funds to be used for the specific purposes of (i) funding the development of the future home of Startup Sioux Falls, to be located at 100 East 6<sup>th</sup> Street, Sioux Falls, South Dakota 57104 (the “*Building*”), and (ii) paying a portion of the costs associated with the operation of the Building in fiscal years 2023-2024 through 2026-2027;
- B. SUSF Foundation is a tax-exempt entity pursuant to Section 501(c)(3) of the Internal Revenue Code, as amended, and was formed to serve as a supporting organization of Startup Sioux Falls; SUSF Foundation’s mission and objective is to directly support Startup Sioux Falls;
- C. The Building will consist of the building located at 100 East 6<sup>th</sup> Street, Sioux Falls, South Dakota 57104, and will include the steps, ramp, deck, and loading dock appurtenant to the building itself;
- D. The Building previously served as the offices of the Parks & Recreation Department of the City, and is owned by the City;
- E. The City, following a first reading on January 4, 2022, and a second reading on January 11, 2022, approved the lease of the Building to Startup Sioux Falls by adopting Ordinance 7-22; and
- F. The parties to this Agreement, in consideration of the mutual covenants and stipulations set forth in this Agreement, agree as follows:

NOW, THEREFORE, the parties enter into the following

## AGREEMENT

### ARTICLE ONE

#### The Gift

1.1 The Donors conditionally agree to gift to SUSF Foundation, and SUSF Foundation conditionally agrees to accept a gift from the Donors of One Million Dollars (\$1,000,000) (the "*Gift Amount*") for the specific purposes and subject to the specific conditions set forth in this Agreement (the "*Gift*"). The parties agree and recognize this is a future gift that will be paid as and after certain conditions are met.

1.2 The Gift Amount will be paid as follows:

(a) Donors will transfer to SUSF Foundation a sum of Seven Hundred Thousand Dollars (\$700,000.00) on or before December 31, 2022, to be paid after designs for the remodel and buildout of the Building (the "*Improvements*") have been completed and before work on the Improvements begins (the "*Initial Contribution*"). The Initial Contribution will fund the Improvements.

(b) Donors will transfer to SUSF Foundation the following sums (each an "*Annual Contribution*") on the dates, and for the specific purposes, noted below:

(i) An Annual Contribution in the amount of Seventy-Five Thousand Dollars (\$75,000.00), on or before September 15, 2023, for the partial payment of operating expenses associated with the Building during fiscal year 2023-2024.

(ii) An Annual Contribution in the amount of Seventy-Five Thousand Dollars (\$75,000.00), on or before September 15, 2024, for the partial payment of operating expenses associated with the Building during fiscal year 2024-2025.

(iii) An Annual Contribution in the amount of Seventy-Five Thousand Dollars (\$75,000.00), on or before September 15, 2025, for the partial payment of operating expenses associated with the Building during fiscal year 2025-2026.

(iv) An Annual Contribution in the amount of Seventy-Five Thousand Dollars (\$75,000.00), on or before September 15, 2026, for the partial payment of operating expenses associated with the Building during fiscal year 2026-2027.

Startup Sioux Falls, SUSF Foundation and Donors expressly acknowledge that the gifts contemplated in paragraphs (b)(i) to (iv) should not create the expectation that Donors will fund operating expenses beyond fiscal year 2026-2027.

**ARTICLE TWO**  
**The Lease**

2.1 The City has agreed to lease to Startup Sioux Falls the Building and surrounding property, on the terms embodied in the Lease attached hereto as EXHIBIT A (the “Lease”).

2.2 Section 10 of the Lease expressly approves the remodel and buildout of the Building contemplated in ARTICLE FIVE of this Agreement.

**ARTICLE THREE**  
**Effectiveness of Agreement**

3.1 This Agreement will commence on the last to occur of the (i) the signing of this Agreement by all parties; and (ii) the execution of the Lease between Startup Sioux Falls and the City and will continue in full force and effect pursuant to the terms set forth in Article 4.2, unless this Agreement is terminated earlier pursuant to the provisions contained herein.

3.2 Because the Gift carries the condition of naming certain of the interior facilities within the Building, and otherwise binds the City, this Agreement and the naming condition set forth herein must be approved by the City.

**ARTICLE FOUR**  
**Recognition of and Conditions Upon the Gift**

4.1 The specific purpose of the Gift Amount gifted by the Donors to Startup Sioux Falls is to pay for the Improvements and to cover a portion of the operating expenses associated with the Building in fiscal years 2023-2024 through 2026-2027.

4.2 In recognition of the Gift, which will make the Improvements, and related updates and changes to the Building possible, Startup Sioux Falls agrees the Building itself, following the completion of the Improvements, will acknowledge the Gift in the following ways (the “*Building Benefits*”), subject to the terms and conditions of this Agreement:

(a) A display or memorial will be located in the lobby of the Building identifying and explaining MarketBeat’s (i) collaboration in the redevelopment of the Building, and (ii) significant contributions to the Sioux Falls startup ecosystem. The form and content of the display will be mutually agreed upon by Startup Sioux Falls and the Donors.

(b) The largest conference room in the Building will be named the Homegrown Capital Room, or such other name as may be designated by Donors.

(c) The event space in the Building will be named the MarketBeat Theater, or such other name as may be designated by Donors.

Startup Sioux Falls and the City agree that each of the Building Benefits will remain in place until the earlier of (i) the termination of the Lease, or (ii) December 31, 2031.

4.3 In addition to the Building Benefits, Startup Sioux Falls and SUSF Foundation agree to acknowledge the Donors in the following ways (the “*Donor Recognition*”), subject to the terms and conditions of this Agreement:

(a) Prominently recognizing the Donors and the Gift on the Startup Sioux Falls website, and the website of any related entity.

(b) Acknowledging MarketBeat and Homegrown Capital LLC as sponsors of Startup Sioux Falls and donors to SUSF Foundation, and including both in the highest donor/sponsor tier that may be established.

Startup Sioux Falls and SUSF Foundation agree that the Donor Recognition contemplated above will remain in place until December 31, 2031.

4.4 In order to ensure the implementation of the Gift is in keeping with the Donors’ shared intent, Startup Sioux Falls will permit Paulson to appoint one member of the Startup Sioux Falls board of directors at all times between the effective date of this Agreement and December 31, 2029. Until the conclusion of his term in December 2023, such position on the Startup Sioux Falls board of directors will be held by Paulson personally. Upon the conclusion of Paulson’s service as a member of the board of directors for Startup Sioux Falls, Paulson will be permitted to nominate a member to serve in one of the seats designated as a mutually agreed-to appointment by the Chamber and Development Foundation, as contemplated by Article IV, Section 2 of the Second Amended and Restated By-Laws of Zeal (the “*By-Laws*”). The foregoing nomination by Paulson will still be subject to the mutual consent of the Chamber and Development Foundation, which consent may not be unreasonably withheld. Such director will be subject to all the provisions of the By-Laws applicable to corporate directors, except that in the case of removal, resignation, or death, prior to December 31, 2029, the successor will be nominated by Paulson and subject to the consent of the Chamber and Development Foundation, which consent may not be unreasonably withheld, as provided above.

## ARTICLE FIVE

### Design, Construction and Payment Process

5.1 The design, construction, and payment process for the Improvements to be made to the Building will include the following requirements:

(a) Startup Sioux Falls and SUSF Foundation will fund the cost of design of the Improvements to the Building from their own funds (the “*Design Costs*”).

(b) Startup Sioux Falls will enter into an agreement with a qualified design firm to develop design documents, construction documents, schedule and budget of the Improvements to the Building. Startup Sioux Falls 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. Startup Sioux Falls will provide design documents to the Donors for comment, which comments will be advisory in nature, prior to approval of the final Plan in writing prior to the development of the bid/construction documents and commencement of construction of the Improvements to the Building.

(c) The Donors will have no obligation to disburse the Initial Contribution until the Plan is approved by Startup Sioux Falls. Upon receipt, Startup Sioux Falls will proceed diligently with the construction process described below. For clarity, the disbursement of the Initial Contribution is not conditioned on the implementation of such comments as Donors may provide during the Plan development phase described above.

(d) Once receipt of the Initial Contribution is confirmed, Startup Sioux Falls will fully construct the Improvements to the Building in accordance with the Plan and the terms of this Agreement. Startup Sioux Falls will obtain from the contractor the cost of construction of the Improvements to the Building. Startup Sioux Falls 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 Lease, the Americans with Disabilities Act, and any other federal or state laws requiring access for the disabled to public accommodations.

(e) The parties agree to the estimated timeline set forth in this Section: Design to be completed by the end of the third quarter of 2022. Construction will commence in accordance with the project timeline identified and approved during the design process. Construction is anticipated to begin in the fourth quarter of 2022, with a substantial completion date in the summer of 2023, and a final completion date of September 30, 2023. The exact project schedule will be mutually agreed upon at the end of the design process and will be adjusted due to unexpected site conditions identified during construction.

(f) Startup Sioux Falls will provide written construction status reports to the Donors upon request.

## **ARTICLE SIX Conditions**

6.1 The making and acceptance of the Gift are further conditioned upon the following:

(a) The intent of the parties is for the Improvements to be maintained and replaced until the earlier of (i) the termination of the Lease, or (ii) until December 31, 2031.

(b) If any of the Donors commits any act tending to shock, insult or offend a majority of the people of Sioux Falls, which act materially and adversely affects the operations or use of the Building, and materially and adversely impacts the attendance of activities or events at the Building, the City may terminate the naming rights granted herein. Before effecting such termination, the City will give to the Startup Sioux Falls and

the Donors written notice of its intent to terminate the naming rights and afford Donors the opportunity to appear and be heard before the City Council. Should the naming rights be terminated prior to project completion, the Donors will pay Improvement costs incurred on or before the termination date as provided in this Agreement. Should the City elect to terminate naming rights following completion of the Improvements in accordance with the standards set forth above, the Donors will have no further obligation to provide Annual Contributions.

(c) Startup Sioux Falls shall pay the initial costs of construction and installation of any signage depicting the names in Article 4.2 (b) and (c), along with the costs of any subsequent change in the signage.

(d) Startup Sioux Falls will, at its expense, be responsible for the routine maintenance and repairs of the signage.

(e) Startup Sioux Falls agrees to any cost 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.

(f) At the end of the term of the lease or if earlier terminated, alternative naming may be identified by the City at its sole discretion.

(g) The parties agree because the contribution of the Gift Amount contains the condition of naming rooms, this Agreement and naming condition set forth herein must be approved by the Sioux Falls City Council by ordinance. The parties recognize and agree City Council approval will be sought for this conditional future gift, but this Agreement will not be executed by the Mayor on behalf of the City, until such approval is obtained and becomes final.

(h) Should Startup Sioux Falls (i) cease to be, or (ii) materially change its nature as, a startup ecosystem organization with the mission of supporting founders, startups, and entrepreneurs, Donors may terminate the Gift and cease making any part of the Gift not yet transferred to SUSF Foundation. The definition of "materially change" is limited to a change in the overall strategic mission that eliminates or replaces the mission goals identified above. "Materially change" expressly does not include programmatic, operational, daily management, or personnel decisions made by Startup Sioux Falls. Before effecting such termination and cessation, Donors will give to Startup Sioux Falls written notice of their intent to terminate and cease making any then-unpaid portion of the Gift and afford Startup Sioux Falls the opportunity meet with Donors to discuss the termination and cessation so noticed. Should Donors elect to terminate the Gift and cease making any part of the Gift not yet transferred to SUSF Foundation, the obligations of Startup Sioux Falls with respect to naming rights related to Donors shall terminate.

**ARTICLE SEVEN**  
**Default Remedies**

7.1 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 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 time in the event the default is not capable of being cured within the 10 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.

**ARTICLE EIGHT**  
**Notice**

8.1 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, 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 provided on EXHIBIT B. The 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.

**ARTICLE NINE**  
**Indemnification**

9.1 Startup Sioux Falls and SUSF Foundation 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 (1) 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 the (ii) negligence or willful misconduct of Startup Sioux Falls and SUSF.

**ARTICLE TEN**  
**Force Majeure**

9.1 Startup Sioux Falls will not be responsible for delays in the completion of the Improvements to the Building 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, 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.



**ARTICLE ELEVEN**  
**Miscellaneous**

10.1 This Agreement contains the entire Agreement between the parties, and no statement, promise or inducement made by either party, or an agent of 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.

10.2 This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

10.3 This Agreement may be amended only by an instrument in writing executed by the parties.

10.4 No party hereto will assign this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party, and any purported assignment contrary thereto will be null and void and of no force or effect. No person or entity other than the parties is or will be entitled to bring any action to enforce the provisions of this Agreement, and the covenants and agreements set forth herein will be solely for the benefit of, and will be enforceable only by, the parties or their respective successors and assigns as permitted hereunder.

10.5 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

10.6 This Agreement will be construed in accordance and governed by the laws of the State of South Dakota.

10.7 This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

[Signature Page Follows]

**PAULSON**

**Matthew Paulson**

Matthew D. Paulson

**STARTUP SIOUX FALLS**  
ZEAL

**Brienne Maner**

Brienne Maner, its Executive Director

**CHAMBER**  
GREATER SIOUX FALLS CHAMBER OF  
COMMERCE

**Jeff Griffin**

Jeff Griffin, its President

**SUSF FOUNDATION**  
STARTUP SIOUX FALLS FOUNDATION

**Brienne Maner**

Brienne Maner, its Executive Director

**MARKETBEAT**  
AMERICAN CONSUMER NEWS, LLC

**Matthew Paulson**

Matthew D. Paulson, its Manager

**CITY**  
CITY OF SIOUX FALLS, SOUTH DAKOTA

Paul TenHaken, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**DEVELOPMENT FOUNDATION**  
SIOUX FALLS DEVELOPMENT FOUNDATION

**Bob Mundt**

Bob Mundt, its President

**EXHIBIT A**  
**The Lease**

[See Attached]

**EXHIBIT B**  
**Notice Addresses**

If to Paulson: Matthew D. Paulson  
1401 S. Discovery Avenue  
Sioux Falls, South Dakota 57106  
Email: matt@mattpaulson.com

If to MarketBeat: American Consumer News, LLC  
326 East 8th Street #105  
Sioux Falls, South Dakota 57103  
Attention: Matthew D. Paulson  
Email: matt@mattpaulson.com

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

With a copy to: Finance Director  
SPritchett@siouxfalls.org

If to SUSF Found.: Startup Sioux Falls Foundation  
100 East 6<sup>th</sup> Street  
Sioux Falls, South Dakota 57104  
Attention: Brienne Maner  
Email: brienne@startupsiouxfalls.com

If to Startup SF: Startup Sioux Falls  
100 East 6<sup>th</sup> Street  
Sioux Falls, South Dakota 57104  
Attention: Brienne Maner  
Email: brienne@startupsiouxfalls.com

If to Chamber: Greater Sioux Falls Chamber of Commerce  
200 North Phillips Avenue, Suite 200  
Sioux Falls, South Dakota 57104  
Attention: Jeff Griffin  
Email: jgriffin@siouxfalls.com

If to Dev. Found.: Sioux Falls Development Foundation  
200 North Phillips Avenue, Suite 101  
Sioux Falls, South Dakota 57104  
Attention: Bob Mundt  
Email: bobm@siouxfalls.com

Signature:   
Matthew Paulson (May 11, 2022 17:19 CDT)

Email: matt@mattpaulson.com

Signature: *Bob Mundt*

Email: bobm@siouxfalls.com

Signature: *Jeffrey M. Griffin*  
Jeffrey M. Griffin (May 11, 2022 13:18 CDT)

Email: jgriffin@siouxfalls.com

Signature: *Brienne Maner*  
Brienne Maner (May 11, 2022 14:39 CDT)

Email: brienne@startupsiouxfalls.com

# Conditional Gifting and Naming Agreement - Startup Sioux Falls final 5.11.22


Final Audit Report

2022-05-11


Created:	2022-05-11
By:	Brienne Maner (brienne@realzeal.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAArR5oHdXw6a7saO2RFkZT0QmwsVCm1hzD

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-  Document created by Brienne Maner (brienne@realzeal.com)  
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 Document e-signed by Brienne Maner (brienne@startupsiouxfalls.com)

Signature Date: 2022-05-11 - 7:39:58 PM GMT - Time Source: server- IP address: 184.83.17.116

 Agreement completed.

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