

Let's Play!

December 10, 2021

TO: Commissioners Gilbertson, Jordan, Munson, Zimmerman and President Jeske  
FROM: Kevin Klipfel, Executive Director   
SUBJECT: December 16, 2021 Park Board Meeting Packet and Overview

Commissioners:

Enclosed you will find the packet of information and overview for the Board of Park Commissioners meeting on December 16, 2021 at 5:15 pm at the Tom Baker Meeting room.

**Item 1.** Call Meeting to Order and Roll Call

**Item 2.** Approval of Agenda

**Item 3.** Featured Partners and Programs – Fast Trax BMX – Jamy Mills

**Item 4.** ADA Access Audit and Transition Plan Update  
Mark Trieglaff with ACT Services, Inc. will join us remotely to review the 2021 ADA Access Audit and Transition Plan information.

**Item 5.** Disposition of Bids

- 2022 Maintenance Equipment, Golf Carts and Irrigation Control Equipment – Please see the memo provided by Operations Director David Mayer and Facilities and Programs Director Mike Wald. David Mayer will review the bids.
- Sertoma Tennis Court Improvements – Mike Berg from Apex Engineering will review the bids received. A memo is included in the packet.
- Concessions/Vending Machines – A bid summary is included in your packet. I will review the bids with the Board.

**Item 6.** Year End Transfer Requests  
Please see the attached memo provided by Finance Director Kathy Feist.

**Item 7.** Service Animal Policy Update  
Recreation Manager RaNae Jochim will review the information provided in the Board packet.

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### Our Vision

Be the leader and premier provider of public parks, programs, facilities and leisure services.

### Our Mission

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### Core Purpose

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### Our Values

Accountability	Diversity
Collaboration	Integrity
Community	Professionalism

**Item 8.** Accounting Policy and Procedure Handbook Proposed Change  
Community Relations Manager Dana Schaar Jahner will review the information provided in the Board packet.

**Item 9.** Consent Agenda  
A variety of items have been placed in a consent agenda. A consent agenda can be approved with one motion, or an item or items can be removed for additional discussion and separate action. Staff recommends approval of the following items:

- Consideration of November 18, 2021 and November 23, 2021 Board Meeting Minutes  
The minutes are included for your consideration.
- Request Board Authorization to Select Consultants for the Following Projects – Please see the memo from Operations Director David Mayer.
  - Sertoma Park – North Restroom Sanitary Sewer Connection
  - Hay Creek Trail Improvements Projects
  - Clairmont Family Conservation Park/Sheila Schafer Junior Links
- Approval of Consultant Selection for Joann Hetzel Memorial 4-H Building Air Conditioning Project and Agreement and Call for Bids on the Project – Please see the memo and proposed agreement provided by Finance Director Kathy Feist.

**Item 10.** Approval of Bills

Individuals or organizations who wish to appear before the Board on an existing agenda item will also make the request in writing or emailed, delivered to the Bismarck Parks and Recreation District office by 12:00 noon, 2 days prior to the regular monthly meeting of the Board of Park Commissioners.

Next Regular Board Meeting: January 20, 2022 at 5:15 pm in the Tom Baker Meeting Room

Let's Play!

DATE: December 8, 2021

TO: Commissioners Gilbertson, Jordan, Munson, Zimmerman and President Jeske  
 Kevin Klipfel, Executive Director

FROM: Mike Wald, Facilities and Programs Director *mw*  
 David Mayer, Operations Director *DM*

RE: 2020 Equipment Bid

Staff opened equipment bids from eleven vendors on November 30, 2021, for a variety of equipment. The bids have been reviewed with the golf and operations staff.

Summaries of each bid component are listed below. All recommendations are based on the lowest bid submitted that met all the advertised specifications.

ITEM	A	B	C	D	E
Vendor	One (1) Turf Mower (10.5)	One (1) Utility Work Machine	Two (2) Utility Vehicles	One (1) Utility Vehicle	One (1) Athletic Field Conditioner
Bobcat of Mandan		<b>\$75,830.16</b>		\$18,767.80	
Ferguson Waterworks					
Ivers Plumbing & Sprinkler System					
MTI	\$79,544.40		<b>\$17,799.60 – Unit Cost \$35,599.20 – Total Cost</b>	<b>\$13,048.21</b>	\$28,739.76
Northern Plains Equipment					
Turfwerks/Davis Equipment	<b>\$66,879.00</b>				<b>\$28,248.00</b>
RDO Equipment	*			*	

Bold item indicates lowest bid that met all specifications.

\*Did not meet specifications/incomplete bid.

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Item	F	G	H
Vendor	One (1) Tri-Plex Greens Mower	One (1) Utility Tractor	Irrigation Central Control System
Bobcat of Mandan		\$51,276.63 Option: \$3,382.70	
Ferguson Waterworks			*
Ivers Plumbing & Sprinkler System			\$91,370.00
MTI	\$46,239.76		
Northern Plains Equipment		<b>\$49,300.00</b> Option: <b>\$1,415.00</b>	
Turfwerks/Davis Equipment	<b>\$38,297.00</b>	*	
RDO Equipment		*	

Bold item indicates lowest bid that met all specifications.

\*Did not meet specifications/incomplete bid.

Staff recommendations awards bids as follows:

- Items A, E and F to Turfwerks/Davis Equipment in the amount of \$133,424.
- Item B to Bobcat of Mandan for \$75,830.16.
- Items C and D to MTI for a total of \$48,647.41.
- Item G to Northern Plains Equipment, including the option of an 84" loader mounted snow pusher for a total of \$50,715.

Items A - G fall within the amount budgeted for 2022.

No bids were received for the golf cart fleet. Staff requests Board approval to re-bid this item.

We received two bids for the irrigation control system. One bid did not meet specifications, and the other bid was over the budgeted amount. Staff recommends adjusting the specifications and requests Board authorization to re-bid this item.





Water | Transportation | Municipal | Facilities

701.323.3950  
600 South 2<sup>nd</sup> Street – Suite 145  
Bismarck, ND 58504

December 8, 2021

Mr. Kevin Klipfel – Executive Director  
Bismarck Parks and Recreation  
400 E Front Ave.  
Bismarck, ND 58504

**Re: Sertoma Park Outdoor Tennis Court and Park Improvements  
Bismarck Parks and Recreation District  
Bismarck, North Dakota**

Dear Mr. Klipfel:

The bids have been reviewed for the Sertoma Park Outdoor Tennis Court and Park Improvements project at Sertoma Park and are summarized on the attached Bid Tabulation. One general bid, and four electrical bids were received.

The only general bid was from Knife River. The base bid was \$967,722.55, the bid for Alternate 1 was \$84,591.00, and the bid for Alternate 2 was \$186,464.75.

After reviewing the electrical bids and correcting the math errors discovered therein, the low electrical bid was Edling Electric for \$244,812.00.

The bids are summarized in the following table.

Summary of Base Bids and Alternates	
General Contractor Base Bid	\$967,722.55
Alternate 1 – Obstacle Course	\$84,591.00
Alternate 2 – Fit Lot	\$186,464.75
Electrical Contractor Base Bid	\$244,812.00
Summary of Award Combinations	
General Base Bid + Electrical Base Bid	\$1,212,534.55
General Base Bid + Electrical Base Bid + Alt 1	\$1,297,125.55
General Base Bid + Electrical Base Bid + Alt 2	\$1,398,999.30
General Base Bid + Electrical Base Bid + Alt 1 + Alt 2	\$1,483,590.30

Based on the bids received, the Land and Water Conservation Fund Grant requirements, and the BPRD’s available budget, we recommend the Bismarck Parks and Recreation District reject the bids and consider rebidding the project in the future.

If you have any questions regarding this matter, please feel free to call me at 701-323-3952.

Sincerely,

A handwritten signature in black ink that reads "Mike Berg". The signature is written in a cursive, slightly slanted style.

Mike Berg, PE  
Apex Engineering Group, Inc.

Cc: File



Value | International Management Solutions

Bid Tabulation

**Bismark Parks and Recreation District / Sertoma Park Outdoor Tennis Court and Park Improvements**  
 December 8, 2021 / 10:30 AM / Bismark Parks and Recreation District Office - 400 E Front Ave, Bismark, ND

Bid	Item	Quantity	Unit	Engineer's Opinion of Probable Cost		Knife River	
				Unit Price	Extended Price	Unit Price	Extended Price
General Base Bid	General Conditions	1	LSUM	\$20,000.00	\$ 20,000.00	\$ 150,000.00	\$ 150,000.00
	Site Grading	1	LSUM	\$1,000.00	\$ 1,000.00	\$ 38,350.00	\$ 38,350.00
	Demolition / Removal Youth Courts	1	LSUM	\$12,000.00	\$ 12,000.00	\$ 25,105.00	\$ 25,105.00
	Remove Nets, Net Posts, Post Footings	1	LSUM	\$5,000.00	\$ 5,000.00	\$ 30,000.00	\$ 30,000.00
	Class 5 Aggregate Base	1,521	SY	\$17.00	\$ 25,857.00	\$ 26.50	\$ 40,306.50
	Concrete Pavement	8,587	SF	\$6.50	\$ 55,815.50	\$ 11.15	\$ 95,745.05
	Reinforced Concrete Pavement	5,100	SF	\$8.50	\$ 43,350.00	\$ 19.60	\$ 99,960.00
	Chain Link Fencing	1,536	LF	\$100.00	\$ 153,600.00	\$ 163.50	\$ 251,136.00
	Surface Coating / Lines	1	LSUM	\$90,000.00	\$ 90,000.00	\$ 215,000.00	\$ 215,000.00
	Nets	8	EA	\$500.00	\$ 4,000.00	\$ 1,990.00	\$ 15,920.00
Active Benches	2	EA	\$1,500.00	\$ 3,000.00	\$ 3,100.00	\$ 6,200.00	
				<b>Total \$ 413,622.50</b>		<b>Total \$ 967,722.55</b>	
Alternate 1 Obstacle Course	Site Grading	1	LSUM	\$1,000.00	\$ 1,000.00	\$ 15,000.00	\$ 15,000.00
	Curb & Gutter Border	225	LF	\$45.00	\$ 10,125.00	\$ 78.00	\$ 17,550.00
	Engineered Wood Fiber	1	LSUM	\$3,800.00	\$ 3,800.00	\$ 7,195.00	\$ 7,195.00
	Equipment	1	LSUM	\$30,000.00	\$ 30,000.00	\$ 39,134.00	\$ 39,134.00
	Class 5 Aggregate	4	SY	\$17.00	\$ 68.00	\$ 1,185.00	\$ 4,740.00
Reinforced Concrete Pavement	36	SF	\$8.50	\$ 306.00	\$ 27.00	\$ 972.00	
				<b>Total \$ 45,299.00</b>		<b>Total \$ 84,591.00</b>	
				<b>Total \$ 458,921.50</b>		<b>Total \$ 1,052,313.55</b>	
Alternate 2 Fit Lot	Site Grading	1	LSUM	\$1,000.00	\$ 1,000.00	\$ 7,000.00	\$ 7,000.00
	Class 5 Aggregate Base	193	SY	\$17.00	\$ 3,281.00	\$ 51.25	\$ 9,891.25
	Concrete Pavement	1,735	SF	\$6.50	\$ 11,277.50	\$ 12.00	\$ 20,820.00
	Poured-in-Place Rubber Surface	1,735	SF	\$15.00	\$ 26,025.00	\$ 28.10	\$ 48,753.50
	Equipment	1	LSUM	\$120,000.00	\$ 120,000.00	\$ 100,000.00	\$ 100,000.00
				<b>Total \$ 161,583.50</b>		<b>Total \$ 186,464.75</b>	
				<b>Total \$ 575,206.00</b>		<b>Total \$ 1,154,187.30</b>	
				<b>Total \$ 620,505.00</b>		<b>Total \$ 1,238,778.30</b>	

Certification:

I certify that these bids were received and opened on Wednesday December 8, 2021 at 10:30 AM CT at Bismark Parks and Recreation District Office

*Mike Berg*

Mike Berg, PE

Bid	Item	Qty	Unit	Engineer's Opinion of Probable Cost		Grid Electrical		Edling Electric		Denny's Electric		Skeels Electric	
				Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
	General Conditions	1	LSUM	\$	-	\$ 7,935.16	\$ 7,935.16	\$ 5,300.00	\$ 5,300.00	\$ 9,500.00	\$ 9,500.00	-	\$ 34,861.00
	Musco Lighting	1	EA	\$155,000.00	\$ 155,000.00	\$ 153,672.67	\$ 153,672.67	\$ 150,000.00	\$ 150,000.00	\$ 147,963.75	\$ 147,963.75	-	\$ 129,500.00
	Pole Installation	8	EA	\$2,500.00	\$ 20,000.00	\$ 1,777.36	\$ 14,218.88	\$ 1,970.00	\$ 15,760.00	\$ 2,500.00	\$ 20,000.00	-	\$ 26,500.00
	Foundation	8	EA	\$2,500.00	\$ 20,000.00	\$ 837.24	\$ 6,697.92	\$ 1,550.00	\$ 12,400.00	\$ 1,650.00	\$ 13,200.00	-	-
	Player Activation System	3	EA	\$1,000.00	\$ 3,000.00	\$ 2,255.07	\$ 6,765.21	\$ 4,700.00	\$ 14,100.00	\$ 3,825.00	\$ 11,475.00	-	-
	Service Modifications	1	EA	\$1,500.00	\$ 1,500.00	\$ 4,952.19	\$ 4,952.19	\$ 4,150.00	\$ 4,150.00	\$ 15,000.00	\$ 15,000.00	\$ 5,000.00	\$ 5,000.00
	Panelboard	3	EA	\$3,500.00	\$ 10,500.00	\$ 2,214.54	\$ 6,643.62	\$ 2,550.00	\$ 7,650.00	\$ 1,756.61	\$ 5,269.83	\$2,500.00	\$ 7,500.00
	Trenching	100	LF	\$5.00	\$ 500.00	\$ 25.15	\$ 2,515.00	\$ 7.00	\$ 700.00	\$ 2.75	\$ 275.00	\$ 3.00	\$ 300.00
	Boring	900	LF	\$15.00	\$ 13,500.00	\$ 30.37	\$ 27,333.00	\$ 10.00	\$ 9,000.00	\$ 9.00	\$ 8,100.00	\$ 20.00	\$ 18,000.00
	In-ground Boxes	9	EA	\$1,000.00	\$ 9,000.00	\$ 854.53	\$ 7,690.77	\$ 918.00	\$ 8,262.00	\$ 900.00	\$ 8,100.00	\$ 380.00	\$ 3,420.00
	1" Conduit	600	LF	\$1.75	\$ 1,050.00	\$ 14.48	\$ 8,688.00	\$ 4.35	\$ 2,610.00	\$ 1.75	\$ 1,050.00	\$ 11.25	\$ 6,750.00
	2" Conduit	1,130	LF	\$2.25	\$ 2,542.50	\$ 14.10	\$ 15,933.00	\$ 6.00	\$ 6,780.00	\$ 2.30	\$ 2,599.00	\$ 3.90	\$ 4,407.00
	#8 Conductors	4,500	LF	\$2.50	\$ 11,250.00	\$ 2.50	\$ 11,250.00	\$ 1.80	\$ 8,100.00	\$ 3.44	\$ 15,480.00	\$ 5.20	\$ 23,400.00
				Total \$	247,842.50	Total*	\$ 274,295.42	Total	\$ 244,812.00	Total*	\$ 258,012.58	Total*	\$ 259,638.00

\*Differs from Bid Form due to math errors on Bid Form



Let's Play!

DATE: December 9, 2021

TO: Commissioners Gilbertson, Jordan, Zimmerman, Munson and President Jeske

FROM: Kevin Klipfel, Executive Director *(VK)*

RE: Concessions and Vending Machine Bid Summary

Commissioners:

On December 9, 2021, bids to operate concession stands and food service facilities at the following locations were opened:

- Softball Complexes
- Cottonwood Park Soccer Complex
- Scheels Sports Complex
- Vending Machine Services

Following is a summary of the bids received:

<b>Softball Complexes</b>	
<b>Vendor</b>	<b>% of Sales (15% was minimum bid)</b>
No bid	

<b>Cottonwood Park Soccer Complex</b>	
<b>Vendor</b>	<b>% of Sales (15% was minimum bid)</b>
No bid	

<b>Scheels Sports Complex</b>	
<b>Vendor</b>	<b>% of Sales (15% was minimum bid)</b>
Legacy Hockey Boosters	15%

<b>Vending Machine Services</b>	
<b>Vendor</b>	<b>% of Sales (15% was minimum bid)</b>
Green Food 2 Go	17.5%

Staff recommends awarding the bids submitted by Legacy Hockey Boosters and Green Food 2 Go. Staff also recommends approval of the enclosed agreements for these services. Park District staff will look at options to provide concessions at the other locations. Please contact me if you have any questions.

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**Scheels Sports Complex Concessions Operation Agreement  
With Legacy Hockey Boosters  
2022-2024**

1. **Parties:** The parties to this agreement are the Park District of the city of Bismarck, North Dakota (herein after Park District) and Legacy Hockey Boosters (herein after Concessionaire), Bismarck, ND.
2. **Purpose of this Agreement:** This agreement will establish basic guidelines for Concessionaire to manage the concession stand operations at the Scheels Sports Complex. Concessionaire will manage the concession stand operation in cooperation with the current concession agreement between the Park District and its exclusive soft drink provider.
3. **Length of Agreement:** Concessionaire will manage the concession stand operations at said locations for the 2022, 2023 and 2024 seasons. The Park District or Concessionaire may terminate this agreement with a 90 day written notice by either party. Concessionaire may request an additional two year extension to this agreement for the 2025 and 2026 seasons by providing a written letter of request to the Park District's Executive Director by September 1, 2024. This request will need to be considered by the Board of Park Commissioners at a Park Board meeting.
4. **Concession Locations:** Concessionaire will manage the permanent concession stand at Scheels Sports Complex located at 2000 Shiloh Drive.
5. **Concession Operation:** Concessionaire shall be responsible for the total operation of the concession stand at said locations to include staffing, stocking and selling of concession supplies, and cleaning of concession stand.
6. **Concession Hours:** Monday – Sunday for baseball or softball games. Hours and locations dependent on tournament/facility schedules. Concession stand must be open a minimum of 30 minutes prior to start of games and remain open until event is completed. The concession hours may fluctuate due to league schedules, tournament schedules, and the weather.
7. **Tournament Schedule:** Schedule will be provided by March 1<sup>st</sup> of each year. Events may be added throughout the year with notice given to the Concessionaire.
8. **Sam McQuade Sr. Charity Tournament:** The Park District and Concessionaire will jointly develop an expanded concession menu for this tournament.
9. **Vending Machines:** The pop machines and other vending machines at all sites will be under the full-service maintenance agreement with the approved vendors and are under the control of the Park District.
10. **Exclusive Provider:** The Park District has a contract with a vendor to provide supplies of soda, juice, and water products in Park District facilities. Concessionaire must comply with the Park District's soft drink supply agreement. Concessionaire must purchase beverages

through the local exclusive soft drink supplier. This agreement does not allow the use of any pre-mix or post-mix soda dispensing system.

11. **Concession Fee:** Concessionaire will pay the Park District 15% of gross sales on concessions after local and state sales tax.
12. **Payment Schedule:** The concession payment is payable to the Park District on the 10<sup>th</sup> of each month along with a detailed statement of receipts.
13. **Concession Stand Area Clean Up:** The Park District will be responsible for removing of garbage and pickup of litter around concession stand. Concessionaire must place all refuse in the proper containers.
14. **Utilities:** The Park District will pay utility costs for concession stand and pop machines.
15. **Concession Workers:** A minimum of one (1) worker, qualified according to Federal Labor Laws, is needed to work all times the concession stand is open. Additional workers are required during special events and activities to provide adequate and proper service.
16. **Concession Menu:** The concession menu must be presented to the Executive Director along with prices prior to opening of concession stand. The Executive Director must approve any changes to the menu in writing.
17. **Concession Equipment:** Equipment owned by the Park District will be the responsibility of the Park District for major repairs and the Concessionaire will be responsible for their equipment. The Concessionaire will be responsible for the general maintenance and cleaning of all equipment in the concession stand.
18. **Keys:** Concessionaire will be given two keys to the permanent concession stand for use during the terms of this agreement.
19. **Ordinances and Rules:** Concessionaire shall comply with all ordinances enacted by the Park District and all rules adopted by the Park District concerning concessions and the related facilities (see Exhibit A for current Park District ordinances).
20. **Property Damage:** Concessionaire agrees to pay, in addition to regular concession fees, any other costs for any damage sustained to the concession stand or grounds which is a direct result of Concessionaire's employees or volunteers.
21. **Indemnification and Hold Harmless:** Concessionaire agrees that it will fully indemnify and hold harmless the Park District from all claims, actions, causes of actions, lawsuits, etc. which may arise as a result of Concessionaire's management and operation of the concession operation at the facility. This indemnification and hold harmless agreement includes, but is not limited to, an agreement to indemnify and hold the Park District harmless for all costs, expenses, damages, economic and non-economic losses as defined under North Dakota law, including attorney's fees, and any other consequences which may arise as a result of Concessionaire's management and operation of the concession operation at the facility. It is

expressly understood that Concessionaire shall be responsible for full indemnification of the Park District and will hold the Park District harmless from any and all such claims.

22. **Personal Property Insurance:** Concessionaire will purchase renter's insurance for personal property owned by the concessionaire. Concessionaire understands that its property is not insured under any of the Park District's insurance policies.
23. **Building Insurance:** The Park District will insure the buildings and contents owned by the Park District.
24. **Workforce Safety and Insurance:** The amount required by state law.
25. **Comprehensive General Liability Insurance:** Concessionaire, at its own expense, shall carry a general liability insurance policy with the amount of coverage per person and per occurrence to meet or exceed the liability limit amounts for political subdivisions as provided in section 32-12.1-03 of the North Dakota Century Code concerning the operation of the concession stand and shall name the Park District as an additional insured. The policy shall contain product liability. The policy shall require the insurance company to notify the Park District in writing prior to any cancellations. Concessionaire shall provide the Park District with a certificate of insurance upon agreement signing and upon annual insurance renewal.
26. **Permits/Licenses:** Concessionaire shall secure the proper permits and licenses from local and state government to operate concession stand that sell food and soft drinks and provide copies to the Park District at contract signing and annually thereafter.
27. **Non-Discrimination Policy:** Vending shall not exclude anyone from participating in, deny anyone the benefits of, or otherwise subject anyone to discrimination on the basis of race, color, national origin, age, religion, sex, physical or mental disability, or status with respect to marriage or public assistance.
28. **Taxes:** Concessionaire will be responsible for City and State sales taxes on all concession sales. Concessionaire will be responsible for the City of Bismarck real estate taxes allocated to the concession stand, pro-rated for the number of months of operation by Concessionaire.
29. **Signage:** Concessionaire must provide signage at concession stand (permanent and portable) identifying Concessionaire as the operator of the stand. Suggested language is as follows: "The concession and food service are operated under contract by Legacy Hockey Boosters."
30. **Default:** The occurrence of any of the following shall constitute a default by Concessionaire:
  - a). Abandonment and vacation of the premises during the contract year.
  - b). Failure to perform any other provisions of this agreement, if the failure to perform is not cured within 10 days after notice has been given Concessionaire. If the default cannot reasonably be cured within 10 days, Concessionaire shall not be in default of this agreement if Concessionaire commences to cure the default within the 10-day period and diligently and in good faith continues to cure the default.



- c). Failure to maintain insurance coverage as required by the agreement shall be cause for the immediate termination of the agreement.
- d). Concessionaire files a petition in bankruptcy or insolvency or for reorganization under the bankruptcy laws.
- e). Involuntary proceedings are instituted against Concessionaire under any bankruptcy act.
- f). Concessionaire fails to pay any rent when due and does not make the delinquent payment within five days after receipt of notice from the Park District.
- g). Failure to maintain all required licenses and permits.

31. **Remedies:** In the event of default, the Park District shall give a written notice of default to Concessionaire. Concessionaire shall have ten days after the receipt of such notice to cure said default. No such notice shall be deemed a forfeiture or termination of this agreement unless the Park District so elects in the notice. In the event Concessionaire does not cure the said default within the allowed ten-day period, the Park District shall have the following remedies. These remedies are not exclusive; they are in addition to any remedies now or later allowed by law:

- a.) The Park District can continue this agreement in full force and effect, and the agreement will continue in effect as long as the Park District does not specifically elect in writing to terminate this agreement on account of Concessionaire's default.
- b.) The Park District can terminate Concessionaire's right to possession of the premises at any time. No act by the Park District other than giving notice to Concessionaire shall terminate this agreement.
- c.) The Park District, at any time after Concessionaire commits default, can cure the default at Concessionaire's cost. If the Park District at any time, by reason of Concessionaire's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the Park District shall be immediately due from Concessionaire to the Park District at the time the sum is paid, and if paid at a later date shall bear interest at the rate of 18% per annum from the date the sum is paid by the Park District until the Park District is reimbursed by Concessionaire. The sum together with interest on it shall be additional rent.
- d.) In the event of default, the Park District shall be entitled to recover for all amounts, including attorney's fees expended by the Park District on account of such default.

32. **Notice:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first class mail. Any notice, demand, consent, approval, or communication that either desires or is required to give to the other party shall be addressed to the other part at the address set forth in the signature blocks at the end of this agreement. Either party may change its address by notifying the other party of the change of address in writing.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Julie Jeske, President  
Board of Park Commissioners  
400 East Front Avenue  
Bismarck, ND 58504  
701-222-6455

Date: \_\_\_\_\_

By: \_\_\_\_\_

Michael Johnson  
Legacy Hockey Boosters President  
3400 E Calgary Avenue  
Bismarck, ND 58504

**Ordinances of the Park District of the City of Bismarck**  
**Approved by the Board of Park Commissioners on December 15, 2011**  
**Revised June 18, 2015**

WHEREAS, the Park District of the City of Bismarck is a municipal subdivision organized pursuant to chapter 40-49 of the North Dakota Century Code (“N.D.C.C.”); and  
WHEREAS, Section 40-49-13, N.D.C.C., provides for the exercise of the powers of the Board of Park Commissioners by ordinance; and  
WHEREAS, the Park District of the City of Bismarck has heretofore from time to time enacted ordinances pursuant to law and desires to amend and restate such ordinances.  
NOW, THEREFORE, Be it enacted by the Board of Park Commissioners of the Park District of the City of Bismarck:

**1. Authority**

These ordinances are enacted pursuant to Section 40-49-12, N.D.C.C., and shall be known and cited as the ordinances of the Park District of the City of Bismarck.

**2. Existence of the Park District**

The Park District of the City of Bismarck (“Park District”) has been created in accordance with the laws of the State of North Dakota. The Park District includes all of the park territory within the City of Bismarck and such other areas as may be incorporated in the city limits in the future, and such other areas that have been acquired by the Park District or are managed by the Park District and areas that are acquired by or managed by the Park District in the future.

**3. Repeal**

All ordinances previously adopted by the Park District (Section 25-16 through 25-141, Appendix A of Code of Ordinances, City of Bismarck) are hereby repealed as of the date of enactment of these revised ordinances; however, such prior ordinances shall apply to any acts or offenses committed prior to the repeal.

**4. Scope**

The provisions hereof are enacted for the regulation of the use and care of the parks and trees of the Park District of the city by the public, and nothing herein contained shall operate to restrain or hinder the park commission of the Park District, or the individual members thereof, or the employees of such commission, in the performance of their official duties.

**5. Disposition of offenses**

A criminal or non-criminal offense as set forth in the City Code of the City of Bismarck shall be punished pursuant to City Code as determined by the municipal court. Any violations of the North Dakota Century Code shall be dealt with in the district courts of North Dakota pursuant to the laws of North Dakota. Any violations of Park District ordinances shall be punished by a fine not more than five-hundred dollars (\$500.00) pursuant to the maximum penalty set forth in section 40-49-12(3), N.D.C.C. The municipal court of the City of Bismarck shall have jurisdiction over all Park District ordinance violations.

**6. Enforcement**

The Police Department of the City of Bismarck is hereby authorized to enter onto and to enforce all of the Park District ordinances and state statutes in the parks under the operation and control of the Park District in the city. The Burleigh County Sheriff is hereby authorized to enter onto and to enforce all of the Park District ordinances and state statutes in the parks under the operation and control of the Park District that are located in Burleigh County outside the city limits. Park District employees or agents of the Park District are authorized to enforce violations of Park District ordinances.

**7. Meetings of the Board**

The Board of Park Commissioners shall meet the third Thursday of every month at 5:15 p.m. in the City/County Building at 221 North 5<sup>th</sup> Street, Bismarck, unless some other time or place shall be specifically fixed by the board.

**8. Operation of vehicles**

- (1) In addition to the provisions of this ordinance, Title 12, Traffic Ordinances, of the City of Bismarck Code of Ordinances, as amended, shall apply to all Park District property.
- (2) No person shall operate any motorized vehicle on any area within the parks other than the roads, driveways or parking lots provided for such purposes. The prohibitions of this subsection do not apply to medical mobility devices, or vehicles used by peace officers, emergency personnel, maintenance personnel or special event personnel in the performance of their official duties.

**9. Prohibited Acts**

- (1) All offenses and provisions as set forth in Title 3, Animal Control and Protection, and Title 6, Criminal Offenses, of the City of Bismarck Code of Ordinances, as amended, shall apply to all Park District property.
- (2) It shall be unlawful for any person using parks under the operation and control of the Park District to perform any of the following acts:
  - a. Use of glass beverage containers or to break any glass object.
  - b. Consume or possess alcoholic beverages without first obtaining a beverage permit from the Park District.
  - c. Ride or lead horses except in the Horse Arena.
  - d. Build any fire for any purposes, except in such places as may be designated by the Park District.
  - e. Posting of posters and advertisements.
  - f. Maintain any refreshment stand, offer any article of any character for sale, or conduct any business for profit on Park District property without obtaining a permit from the Park District.
  - g. Knowingly carry or discharge any dangerous or concealed weapon, or any firearms, gun, air rifle, slingshot or other similar weapon at an athletic or sporting event or a publicly owned or operated building except for (1) the use of bow and arrow within a designated archery range or with a Special Herd Reduction Deer bow license or a special turkey bow license issued by the North Dakota Game and Fish Department in Bismarck and a trespass permit issued by the Bismarck Chief of Police or (2) the use of approved equipment, such as BB guns, in Park District approved classes.
  - h. Permit any animal to run at large. Dogs must be leashed except in the leash-free area of a dog park.
  - i. Fail to promptly clean up and dispose of the excrement of an animal for which you are responsible that is deposited upon park property.
  - j. Hunting, trapping or killing of animals or birds, except for the use of bow and arrow within a designated area with a Special Herd Reduction Deer Bow license or a special turkey bow license issued by the North Dakota Game and Fish Department in Bismarck and a trespass permit issued by the Bismarck Chief of Police.
  - k. Camp overnight in any parks except General Sibley Park and Eagles Park with a permit from the Park District for overnight camping.
  - l. Enter upon any portion of a park which is temporarily or permanently closed to the public.
  - m. Bring in or dump, deposit or leave waste, garbage, refuse or other trash, except in proper receptacles where provided.
  - n. Deposit snow in any city park.
  - o. Violate posted or printed rules of the Park District.

**10. Park Trees**

The ordinances in Title 13, Trees and Vegetation, of the City of Bismarck Code of Ordinances, as amended, shall apply to all Park District property.

First Reading: November 17, 2011

Second Reading: December 15, 2011

Approved by the Board of Park Commissioners: December 15, 2011

Published in The Bismarck Tribune: December 20, 2011

Effective: December 23, 2011

Revision First Reading: May 21, 2015

Revision Second Reading: June 18, 2015

Approved by the Board of Park Commissioners: June 18, 2015

Published in The Bismarck Tribune: June 23, 2015

Effective: June 26, 2015



## **Vending Machine Agreement Between Bismarck Parks and Recreation District and Green Food 2 Go**

1. **Parties:** The parties to this agreement are Park District of the city of Bismarck, North Dakota located at 400 E. Front Ave, Bismarck, ND 58504 (hereinafter “District) and Green Food to Go located at 203 W Owens Avenue, Bismarck, ND (hereinafter “Vending”).
2. **Term:** The term of this agreement is from January 1, 2022 – December 31, 2024. Vending may request a two-year extension for years 2025 and 2026 by submitting a written request to the District’s Executive Director by September 1, 2024.
3. **Locations:** District here by agrees to allow exclusive placement of vending machines on the business premises at the following locations:
  - a. BSC Aquatic and Fitness Center - 1601 Canary Avenue
  - b. Capital Ice Complex – 1504 Wichita Drive
  - c. Capital Racquet and Fitness Center – 3200 N 10<sup>th</sup> Street
  - d. Fore Seasons Center/Pebble Creek Golf Course – 2525 N. 19th Street
  - e. VFW Sports Center – 1200 N. Washington Street
  - f. Wachter Aquatic Complex – 205 E. Reno Avenue
  - g. World War Memorial Building – 215 N. 6th Street
  - h. Frances Leach High Prairie Arts & Science Complex – 1810 Schafer St.
  - i. Farwest Rotary Community Center – 1021 Mustang DriveAny additional locations will be mutually agreed to by both parties.

All machines must utilize a ground-fault circuit interrupter (GFCI). All plugs shall be three pronged and property grounded. The use of extension cords to plug in machines is not allowed.
4. **Loss:** The District is not to be held responsible for any losses due to fire, theft, or vandalism.
5. **Servicing:** Vending agrees to service the machines at least once a week and to provide all maintenance and repairs as needed. Vending agrees to provide information on each machine on how to report malfunctions, product quality comments and how to request refunds. This may be accomplished using a local telephone number.
6. **Current Locations:** For the machines that are currently in place at the above locations, Vending will maintain them in good, clean working condition.
7. **Commission:** Vending agrees to pay 17.5% commission of all sales after sales tax to the District. A report of the gross amount sold by location will be provided with each check. Payment must be made by the 10<sup>th</sup> of the month for the preceding month.
8. **Pricing:** Pricing of items will be at a reasonable market price of the items identified.

9. **Permits/Licenses:** Vending shall secure the applicable permits and licenses from local and state government to operate vending machines and provide copies to the District upon agreement signing and upon annual insurance renewal.
10. **Personal Property Insurance:** Vending will purchase renter's insurance for personal property owned by Vending. Vending understands that its property is not insured under any of the Park District's insurance policies.
11. **Building Insurance:** The Park District will insure the buildings and contents owned by the Park District.
12. **Comprehensive General Liability Insurance:** Vending, at its own expense, shall carry a general liability insurance policy with the amount of coverage per person and per occurrence to meet or exceed the liability limit amounts for political subdivisions as provided in section 32-12.1-03 of the North Dakota Century Code concerning the operation of the concession stand and shall name the Park District as an additional insured. The policy shall contain product liability. The policy shall require the insurance company to notify the Park District in writing prior to any cancellations. Vending shall provide the Park District with a certificate of insurance upon agreement signing and upon annual insurance renewal.
13. **Indemnification and Hold Harmless:** Vending agrees that it will fully indemnify and hold harmless the District from all claims, actions, causes of actions, lawsuits, etc., which may arise as a result of Vending's management and operation of the vending machines at the facilities. This indemnification and hold harmless agreement includes, but is not limited to, an agreement to indemnify and hold the District harmless for all costs, expenses, damages, economic and non-economic losses as defined under North Dakota law, including attorney's fees, and any other consequences which may arise as a result of Vending's management and operation of the vending machines at the facilities. It is expressly understood that Vending shall be responsible for full indemnification of the District and will hold the District harmless from any and all such claims.
14. **Ordinances and Rules:** Vending shall comply with all ordinances enacted by the District and all rules adopted by the District concerning the use of the facility (current ordinances are found in Exhibit A).
15. **Non-Discrimination Policy:** Vending shall not exclude anyone from participating in, deny anyone the benefits of, or otherwise subject anyone to discrimination on the basis of race, color, national origin, age, religion, sex, physical or mental disability, or status with respect to marriage or public assistance.
16. **Modification:** This agreement may be modified with the written consent of both parties.

DATE: \_\_\_\_\_ BY: \_\_\_\_\_

Julie Jeske, President  
Board of Park Commissioners  
Bismarck Parks and Recreation District  
400 East Front Avenue  
Bismarck, ND 58504  
701-222-6455

DATE: \_\_\_\_\_ BY: \_\_\_\_\_

Paul Waletzko, Owner  
203 W Owens Avenue  
Bismarck, ND 58501

**Ordinances of the Park District of the City of Bismarck**  
**Approved by the Board of Park Commissioners on December 15, 2011**  
**Revised June 18, 2015**

WHEREAS, the Park District of the City of Bismarck is a municipal subdivision organized pursuant to chapter 40-49 of the North Dakota Century Code (“N.D.C.C.”); and

WHEREAS, Section 40-49-13, N.D.C.C., provides for the exercise of the powers of the Board of Park Commissioners by ordinance; and

WHEREAS, the Park District of the City of Bismarck has heretofore from time to time enacted ordinances pursuant to law and desires to amend and restate such ordinances.

NOW, THEREFORE, Be it enacted by the Board of Park Commissioners of the Park District of the City of Bismarck:

**1. Authority**

These ordinances are enacted pursuant to Section 40-49-12, N.D.C.C., and shall be known and cited as the ordinances of the Park District of the City of Bismarck.

**2. Existence of the Park District**

The Park District of the City of Bismarck (“Park District”) has been created in accordance with the laws of the State of North Dakota. The Park District includes all of the park territory within the City of Bismarck and such other areas as may be incorporated in the city limits in the future, and such other areas that have been acquired by the Park District or are managed by the Park District and areas that are acquired by or managed by the Park District in the future.

**3. Repeal**

All ordinances previously adopted by the Park District (Section 25-16 through 25-141, Appendix A of Code of Ordinances, City of Bismarck) are hereby repealed as of the date of enactment of these revised ordinances; however, such prior ordinances shall apply to any acts or offenses committed prior to the repeal.

**4. Scope**

The provisions hereof are enacted for the regulation of the use and care of the parks and trees of the Park District of the city by the public, and nothing herein contained shall operate to restrain or hinder the park commission of the Park District, or the individual members thereof, or the employees of such commission, in the performance of their official duties.

**5. Disposition of offenses**

A criminal or non-criminal offense as set forth in the City Code of the City of Bismarck shall be punished pursuant to City Code as determined by the municipal court. Any violations of the North Dakota Century Code shall be dealt with in the district courts of North Dakota pursuant to the laws of North Dakota. Any violations of Park District ordinances shall be punished by a fine not more than five-hundred dollars (\$500.00) pursuant to the maximum penalty set forth in section 40-49-12(3), N.D.C.C. The municipal court of the City of Bismarck shall have jurisdiction over all Park District ordinance violations.

**6. Enforcement**

The Police Department of the City of Bismarck is hereby authorized to enter onto and to enforce all of the Park District ordinances and state statutes in the parks under the operation and control of the Park District in the city. The Burleigh County Sheriff is hereby authorized to enter onto and to enforce all of the Park District ordinances and state statutes in the parks under the operation and control of the Park District that are located in Burleigh County outside the city limits. Park District employees or agents of the Park District are authorized to enforce violations of Park District ordinances.

**7. Meetings of the Board**

The Board of Park Commissioners shall meet the third Thursday of every month at 5:15 p.m. in the City/County Building at 221 North 5<sup>th</sup> Street, Bismarck, unless some other time or place shall be specifically fixed by the board.

**8. Operation of vehicles**

(1) In addition to the provisions of this ordinance, Title 12, Traffic Ordinances, of the City of Bismarck Code of Ordinances, as amended, shall apply to all Park District property.

(2) No person shall operate any motorized vehicle on any area within the parks other than the roads, driveways or parking lots provided for such purposes. The prohibitions of this subsection do not apply to medical mobility devices, or vehicles used by peace officers, emergency personnel, maintenance personnel or special event personnel in the performance of their official duties.

**9. Prohibited Acts**



- (1) All offenses and provisions as set forth in Title 3, Animal Control and Protection, and Title 6, Criminal Offenses, of the City of Bismarck Code of Ordinances, as amended, shall apply to all Park District property.
- (2) It shall be unlawful for any person using parks under the operation and control of the Park District to perform any of the following acts:
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  - b. Consume or possess alcoholic beverages without first obtaining a beverage permit from the Park District.
  - c. Ride or lead horses except in the Horse Arena.
  - d. Build any fire for any purposes, except in such places as may be designated by the Park District.
  - e. Posting of posters and advertisements.
  - f. Maintain any refreshment stand, offer any article of any character for sale, or conduct any business for profit on Park District property without obtaining a permit from the Park District.
  - g. Knowingly carry or discharge any dangerous or concealed weapon, or any firearms, gun, air rifle, slingshot or other similar weapon at an athletic or sporting event or a publicly owned or operated building except for (1) the use of bow and arrow within a designated archery range or with a Special Herd Reduction Deer bow license or a special turkey bow license issued by the North Dakota Game and Fish Department in Bismarck and a trespass permit issued by the Bismarck Chief of Police or (2) the use of approved equipment, such as BB guns, in Park District approved classes.
  - h. Permit any animal to run at large. Dogs must be leashed except in the leash-free area of a dog park.
  - i. Fail to promptly clean up and dispose of the excrement of an animal for which you are responsible that is deposited upon park property.
  - j. Hunting, trapping or killing of animals or birds, except for the use of bow and arrow within a designated area with a Special Herd Reduction Deer Bow license or a special turkey bow license issued by the North Dakota Game and Fish Department in Bismarck and a trespass permit issued by the Bismarck Chief of Police.
  - k. Camp overnight in any parks except General Sibley Park and Eagles Park with a permit from the Park District for overnight camping.
  - l. Enter upon any portion of a park which is temporarily or permanently closed to the public.
  - m. Bring in or dump, deposit or leave waste, garbage, refuse or other trash, except in proper receptacles where provided.
  - n. Deposit snow in any city park.
  - o. Violate posted or printed rules of the Park District.

**10. Park Trees**

The ordinances in Title 13, Trees and Vegetation, of the City of Bismarck Code of Ordinances, as amended, shall apply to all Park District property.

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Published in The Bismarck Tribune: June 23, 2015

Effective: June 26, 2015

# Memo

To: Park Board Commissioners and Kevin Klipfel, Executive Director  
From: Kathy Feist, Finance Director *KF*  
Date: December 2, 2021  
Re: Year End Transfers

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The following year end transfers are being presented for Board approval:

- Funding for the VFW Sports Center Expansion and Improvements
  - Transfer \$1,000,000 General Fund reserves to the Park Improvement Fund
    - This is a portion of the General Fund Reserve balance included in the proposed funding plan that was presented to the Park Board at the special meeting in November.
- Funding for the General Sibley Park Electrical Upgrades
  - Transfer \$102,965 from General Fund - Sibley to the Park Improvement Fund
    - This project has been delayed due to supplier issues. Transfer to Park Improvement Fund is necessary to ensure approved 2021 funding is available for project completion in 2022.
- Funding for the acquisition of Lions Park land formerly leased from St. Mary's Church
  - Transfer \$339,272 from General Fund reserves to the Park Improvement Fund
- Funding for the Sertoma Park Fitness and Parking Lot Improvement project
  - Transfer \$335,000 General Fund Capital Improvement funds to the Construction, Acquisition, and Renovation Improvement Fund
    - This project has been delayed. Transfer to Construction Fund is necessary to ensure approved 2021 funding is available when project is completed in 2022.
- Funding for the equipment purchases
  - Transfer \$116,000 General Fund Capital Improvement funds to the Park Improvement Fund
    - A mower and pick up were approved to be purchased from the General Fund in 2021. This equipment has been ordered but may not be received prior to December 31, 2021. Transfer to Construction Fund is necessary to ensure approved 2021 funding is available to purchase equipment if not delivered prior to year-end.

Requested Board action is to approve the transfers outlined above. Upon approval of this request, the transfer would occur before year end and be reflected in the December 31, 2021 financial statements. Projected General Fund balance at year end with these transfers is expected to stay within the target range of the Park District's Reserve Fund Policy.

*A nationally accredited park and recreation agency.*



**BISMARCK PARKS AND  
RECREATION DISTRICT**  
Est. 1927

Date: December 1, 2021

To: Commissioners Munson, Gilbertson, Jordan, Zimmerman and President Jeske  
Kevin Klipfel, Executive Director

From: Mike Wald, Facilities and Programs Director *MW*  
RaNae Jochim, Recreation Manager *RJ*

RE: Service Animal Policy Update

As discussed during the management meetings in November, we are requesting an update to BPRD's Service Animal policy. These changes are recommended by the ADA and are highlighted on the attached service animal policy.

Please let us know if you have any questions. Thank you for your consideration.

# Bismarck Parks and Recreation District

## Service Animal Policy

The Department of Justice issued revised ADA regulations which cover Title II (state and local government programs) and Title III (places of public accommodation, such as restaurants or retail merchants), which took effect March 15, 2011. These regulations revise the definition of service animals and add additional provisions.

Bismarck Parks and Recreation District (BPRD) is committed to making reasonable modifications to its policies, and procedures to permit the use of service animals in its facilities by individuals with disabilities. Service animals play an important role in ensuring the independence of people with disabilities.

- Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. (Exception: miniature horses)
- BPRD's policy is to welcome into our facilities any dog that is individually trained to assist a person with a disability.
  - A service animal shall be under the control of its handler. A service animal shall have a harness, leash or other tether, unless either the handler is unable because of disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals or other effective means).
- Individuals with disabilities shall be permitted to be accompanied by their service animal in all areas where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.
- BPRD will not be responsible for the care or supervision of a service animal.
- BPRD shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. **An individual with a disability may be charged for damage caused by his or her service animal.**
- In the event that a service animal's behavior poses a direct threat to the health or safety of others, BPRD has the right to exclude the animal from its facility at that time but may not refuse service to that individual with a disability when he or she is not accompanied by a service animal.
- BPRD will not exclude a particular animal on a separate occasion based on past experience of that animal's behavior. Each situation will be considered individually.

### Miniature Horses



- Reasonable modifications: A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of an individual with a disability.
- Assessment factors: In determining whether reasonable modifications can be made to allow a miniature horse into a specific facility, a public entity shall consider:
  - The type, size and weight of the miniature horse and whether the facility can accommodate these features;
  - Whether the handler has sufficient control of the miniature horse;
  - Whether the miniature horse is housebroken; and
  - Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

### Employee Requirements

- Most of the time, people with disabilities who use service animals may be easily identified without any need for questioning. If you can tell by looking or know from past contacts, you should not make a person feel unwelcome by asking questions. If you are unsure whether an animal meets the definition of a service animal, contact your supervisor.
- The employee is only allowed to ask the individual accompanied by a dog two questions:
  - “Is the dog a service animal required because of a disability?”
  - “What work or task has the dog been trained to perform?”
- Once a customer with a service animal has answered the questions posed by the employee, no further questions are allowed.
- **CAUTION:** Do NOT ask a customer:
  - Questions about his or her disability.
  - To show certification or a special ID card as proof of their animal's training.
  - With a service animal to meet any other requirements.
- You must permit service animals to accompany customers with disabilities to all areas of the facility normally used by customers.

Approved by the Board of Park Commissioners December 16, 2021



## MEMO

**TO:** Commissioners Gilbertson, Jordan, Munson, Zimmerman and President Jeske  
Executive Director Kevin Klipfel

**FROM:** Kathy Feist, Finance Director *KF*  
Dana Schaar Jahner, Community Relations Manager *dj*

**DATE:** December 1, 2021

**RE:** Accounting Policy and Procedure Handbook Changes

Attached please find proposed changes to the Accounting Policy and Procedure Handbook as reviewed by the management teams in November. The proposed changes, summarized below, are presented for Board approval:

### Page 36 – Refund Policy

- Clarified refund language for youth and adult programs and added refund language for General Sibley Campground, outdoor picnic shelters, and indoor community rooms.
- Added rain check policy for outdoor swimming pools and golf courses per current practice.
- Added an option, per customer's choice, for providing credit for a future program registration in lieu of a check refund.
- Clarified only directors or their designees have authority to grant exceptions to the refund policy.

The requested Board action is to approve the proposed changes to the Accounting Policy and Procedure Handbook as reviewed and supported by the management teams.

*A nationally accredited park and recreation agency.*

### Our Vision

Be the leader and premier provider of public parks, programs, facilities and leisure services.

### Our Mission

Work with the community to provide residents and visitors the highest quality park, program, facility and event experience.

### Core Purpose

Provide affordable, accessible, and sustainable public park and recreation services.

### Our Values

Accountability	Diversity
Collaboration	Integrity
Community	Professionalism

**Accounting Policy and Procedure Handbook  
Proposed Changes November 2021**

**Refund Policy**

1. Refunds are provided as follows:

- a. Participants will receive a full refund when the youth or adult program is cancelled due to lack of participants, facilities or qualified instruction or the program has not officially begun. No refunds will be given once the program has started, unless approved by the manager.
- b. General Sibley Park and Campground cancellation requests must be made a minimum of 2 days prior to the camper's arrival date and time (2pm Central time) in order to be considered for a refund of campsite fee(s) minus cancellations fee(s). Park staff may accommodate an early departure by processing a refund for any remaining nights (minus cancellation fee), including the night of the request, if the departure is made prior to check-out time (2pm Central time).
- c. Outdoor park shelter reservation cancellation requests must be made a minimum of 3 business days prior to the reservation date to be considered for a refund.
- d. Indoor community room reservation cancellation requests must be made a minimum of 10 business days prior to the reservation date to be considered for a refund.

2. Rain checks may be issued due to inclement weather at golf courses and outdoor swimming pools. Rain checks must be used within the current season.

4.3. All refunds will be issued in the form of a check or credit, if applicable, for programs. The issuance of a refund check will take 10-12 working days and will be mailed to the participant.

4. Requests for exceptions to this refund policy must be submitted in writing to the appropriate director or manager or designee their designee for consideration.

MINUTES OF THE BOARD OF PARK COMMISSIONERS  
November 18, 2021

The Board of Park Commissioners held their regular meeting on November 18, 2021 in the Tom Baker meeting room of the City/County Building. President Jeske called the meeting to order at 5:15 pm. Commissioners Gilbertson, Jordan, Zimmerman, Munson and President Jeske were present.

Commissioner Gilbertson moved approval of the agenda as presented. Commissioner Jordan seconded the motion, and the voting went as follows: Ayes: Commissioners Gilbertson, Jordan, Zimmerman, Munson and President Jeske. The nays being none, the motion carried.

Molly McLain, Executive Director of Dakota West Arts Council, appeared before the Board as the Featured Partner and Program.

Jeff Ubl with Ubl Design Group appeared before the Board and provided an update on the potential renovation/expansion opportunity at VFW Sports Center along with a preliminary cost estimate. He has also presented the same information to the Bismarck School Board. The School Board will be meeting on Monday, November 22<sup>nd</sup> and may make a financial commitment to the project. It was determined that the Park Board would hold a special meeting on November 23<sup>rd</sup> at 7:15 am to discuss this topic further.

An update was provided on the Boulder Ridge neighborhood park meeting that was held November 3, 2021. According to the survey results, the majority of respondents prefer the park be built in Boulder Ridge as has been approved.

Facilities and Programs Director Mike Wald reviewed the Matching Grant program and asked for Board approval of the 2022 application. Commissioner Jordan moved to approve the application as presented. Commissioner Munson seconded the motion, and the voting went as follows: Ayes: Commissioners Gilbertson, Jordan, Zimmerman, Munson and President Jeske. The nays being none, the motion carried.

President Jeske reviewed the items on the consent agenda:

- Consideration of October 21, 2021 Board meeting minutes.
- Board approval to purchase two pickups utilizing the State of ND Procurement Office state bid procedure.
- Request Board authorization to call for request for proposals for soft drink vending and supply.
- Request Board authorization to call for the following bids:
  - 2022 Activity Guide
  - Two double vault toilets in General Sibley Park and Campground
  - Ice resurfacer
- Request Board authorization to select consultant for Joann Hetzel Memorial 4-H Building air conditioning project

Commissioner Munson moved approval of the consent agenda as presented. Commissioner Gilbertson seconded the motion, and the voting went as follows: Ayes: Commissioners

Gilbertson, Jordan, Zimmerman, Munson and President Jeske. The nays being none, the motion carried.

Commissioner Gilbertson moved approval of bills for payment with checks 407311 to 407367 and 207008 to 207258 along with bank drafts DFT001029 to DFT001042, EFTs 1573 to 1614 and direct deposits 44064 to 44866. Commissioner Munson seconded the motion, and the voting went as follows: Ayes: Commissioners Gilbertson, Jordan, Zimmerman, Munson and President Jeske. The nays being none, the motion carried.

A special Park Board meeting will be held November 23, 2021 at 7:15 am at the Park District Administrative Office. The next regular Board meeting will be held December 16, 2021 at 5:15 pm in the Tom Baker Meeting Room. The meeting was adjourned at 5:53 pm.

DRAFT

MINUTES OF THE BOARD OF PARK COMMISSIONERS  
November 23, 2021

The Board of Park Commissioners held a special meeting on November 23, 2021 in the Park District's Administrative Building. President Jeske called the meeting to order at 7:22 am. Commissioners Gilbertson, Zimmerman, Munson and President Jeske were present. Commissioner Jordan was present via phone call.

Commissioner Gilbertson moved approval of the agenda as presented. Commissioner Zimmerman seconded the motion, and the voting went as follows: Ayes: Commissioners Gilbertson, Jordan, Zimmerman, Munson and President Jeske. The nays being none, the motion carried.

President Jeske noted that the School Board committed \$3.5 million to the VFW Sports Center renovation and expansion project at their meeting last night. Executive Director Klipfel reviewed a draft funding formula that could be used, should the Board decide to move ahead with the project. Discussion followed.

Commissioner Gilbertson moved to move forward with the VFW Sports Center renovation and expansion project. Commissioner Jordan seconded the motion, and the voting went as follows: Ayes: Commissioners Gilbertson, Jordan, Munson and President Jeske. Nays: Commissioner Zimmerman. The motion carried.

The next regular Board meeting will be held December 16, 2021 at 5:15 pm in the Tom Baker Meeting Room. The meeting was adjourned at 7:59 am.



Let's Play!

*To:* Commissioners Munson, Zimmerman, Gilbertson, Jordan and President Jeske  
Kevin Klipfel, Executive Director

*From:* David Mayer, Operations Director *DM*

*Date:* December 8, 2021

*Subject:* Request to Select Consultants

Commissioners and Executive Director Klipfel:

Please consider this request to select consultants for the following projects.

**Sertoma Park – North Restroom Sanitary Sewer Connection:** The current building is believed to be on a drain field. Since the high river elevation that occurred in 2018, the building has had septic storage issues. This project would be to connect the building to the sanitary system in town.

**Hay Creek Trail Improvements:** The proposed project will replace the existing asphalt and concrete pavement that is cracking and creating uneven walking surface.

**Clairmont Family Conservation Park/Sheila Schafer Junior Links:** This project would provide comprehensive planning for this park, including the junior links.

These projects are included in the 2022 budget. Thank you for your consideration.

*A nationally accredited park and recreation agency.*

### **Our Vision**

Be the leader and premier provider of public parks, programs, facilities and leisure services.

### **Our Mission**

Work with the community to provide residents and visitors the highest quality park, program, facility and event experience.

### **Core Purpose**

Provide affordable, accessible, and sustainable public park and recreation services.

### **Our Values**

Accountability	Diversity
Collaboration	Integrity
Community	Professionalism

# Memo

To: Park Board Commissioners and Kevin Klipfel, Executive Director  
From: Kathy Feist, Finance Director *KF*  
Date: December 2, 2021  
Re: Consultants – Air Conditioning Improvement at Joann Hetzel Memorial 4-H Building

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The consultant selection committee reviewed the list of consultants approved by the board. The committee selected Prairie Engineering for the air conditioning improvements at the Joann Hetzel Memorial 4-H Building. The professional services agreement is included in your agenda packet for review and approval.

Requested Board action is to approve the selected professional consultant as recommended by the selection committee and approve the enclosed professional services agreements with Prairie Engineering and call for bids for this project.

**SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of December 8, 2021 ("Effective Date") between Bismarck Parks and Recreation District ("Owner") and Prairie Engineering, P.C. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Joann Hetzel Memorial 4-H Building Arena Air Conditioning ("Project").

Engineer's services under this Agreement are generally identified as follows:

Provide usual and customary mechanical and electrical services as outlined below that are required to prepare construction documents, bidding, and construction phases.

Preparation of construction documents includes providing engineering and drafting services to prepare 2D drawings of the mechanical and electrical work associated with the project, 2 field verification trips to the site, and attendance at up to 4 design meetings.

Bidding phase services include preparation of up to 4 addenda and answering contractor and owner questions.

Construction Administration to include shop drawing review, attendance at construction meetings, site visits for installation inspection, answering Requests for Information, writing Engineer Proposal Requests, 1 final visitation including the generation of a final visitation checklist, and review of operation & maintenance manuals and record drawings prior to turnover to the owner. Standard time for Engineer response for shop drawings, Requests for Information, and pricing submittals for Engineer Proposal Requests is 10 business days. Assistance with warranty issues.

Incidental architectural and structural engineering services, as required, are included in the basic services.

Services excluded from our scope of work, but are available with an additional fee, include Commissioning, Value Engineering, and performing a building compliance check (ComCheck.) ("Services").

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Owner and Engineer further agree as follows:

**1.01 Basic Agreement and Period of Service**

- A. Engineer shall provide or furnish the Services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above ("Additional Services").

- B. Engineer shall complete its Services within the following specific time period: No specific time period is noted. If no specific time period is indicated, Engineer shall complete its Services within a reasonable period of time.
- C. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Services is impaired, or Engineer's Services are delayed or suspended, then the time for completion of Engineer's Services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

#### 2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for Services, Additional Services, and expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and (2) in addition Engineer may, after giving seven days written notice to Owner, suspend Services under this Agreement until Engineer has been paid in full all amounts due for Services, Additional Services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- B. *Payment:* As compensation for Engineer providing or furnishing Services and Additional Services, Owner shall pay Engineer as set forth in Paragraphs 2.01, 2.02 (Services), and 2.03 (Additional Services). If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.

#### 2.02 *Basis of Payment—Hourly Rates Plus Reimbursable Expenses*

- A. Owner shall pay Engineer for Services as follows:
  - 1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class, plus reimbursement of expenses incurred in connection with providing the Services and Engineer's consultants' charges, if any.
  - 2. Engineer's Standard Hourly Rates are attached as Appendix 1.
  - 3. The total compensation for Services is estimated not to exceed \$12,000.00. Reimbursable expenses is estimated not to exceed \$500.00.

- 2.03 *Additional Services:* For Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged in providing the Additional Services by each class of Engineer's employees, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

### 3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's Services are delayed for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 5.01.I.
    - c. Engineer shall have no liability to Owner on account of a termination for cause by Engineer.
    - d. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.
- B. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all Services and Additional Services performed or furnished in accordance with this Agreement, plus reimbursement of expenses incurred through the effective date of termination in connection with providing the Services and Additional Services, and Engineer's consultants' charges, if any.

### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.



- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a Constructor to comply with laws and regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- C. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform its work.
- D. Engineer's opinions (if any) of probable construction cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by Engineer. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent cost estimate.
- E. Engineer shall not be responsible for any decision made regarding the construction contract requirements, or any application, interpretation, clarification, or modification of the construction contract documents other than those made by Engineer or its consultants.

- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all Services and Additional Services relating to preparation of the documents and subject to the following limitations:
1. Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer.
  2. any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants.
  3. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and
  4. such limited license to Owner shall not create any rights in third parties.
- G. Owner and Engineer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$100,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Services.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- K. This Agreement is to be governed by the law of the state in which the Project is located.

- L. Engineer's Services and Additional Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

#### *Definitions*

- B. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and consultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- C. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.


*Attachments:* Appendix 1, Engineer's Standard Hourly Rates

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Bismarck Parks and Recreation District

Engineer: Prairie Engineering, P.C.

By: \_\_\_\_\_

Print Name:   
Blake Wagner, P.E.

Title: \_\_\_\_\_

Title: Mechanical Engineer

Date Signed: \_\_\_\_\_

Date Signed: December 8, 2021

Engineer License or Firm's Certificate No. (if required):

PE-28001

State of: North Dakota

Address for Owner's receipt of notices:

Bismarck Parks and Recreation District  
400 East Front Avenue  
Bismarck, North Dakota 58504

Address for Engineer's receipt of notices:

Prairie Engineering, P.C.  
619 Riverwood Drive, Suite 205  
Bismarck, North Dakota 58504

## Appendix 1 - Engineer's Standard Hourly Rates



### Hourly Rates/Expense Rates Effective October 1, 2021

Principal	\$185 Per Hour
Senior Engineer	\$140 - \$145 Per Hour
Engineer	\$100 - \$125 Per Hour
Designer	\$80 - \$120 Per Hour
Secretary/Accounting	\$65 Per Hour
Reproduction: Blueprints	\$2.50/Sheet or Cost from Commercial Printer Plus 10%
Reproduction: Specifications	\$0.20/Sheet or Cost from Commercial Printer Plus 10%
Mileage	\$0.60 Per Mile
Postage, Telephone, Office Supplies	Cost Plus 10%
Outside Consultants (if required)	Invoice Plus 10%