



Bismarck Parks and Recreation District Facilities & Programs Division

DATE: July 1, 2026

TO: Commissioners Gilbertson, Hanson, Herzog, Jeske, and Redmann; Executive Director Dave Leker

FROM: Mike Wald, Facilities and Programs Director

SUBJECT: Consideration of Capital Ice Complex Concessions Bid Award

BPRD requested bids for a vendor to operate the Capital Ice Complex concessions stand with a minimum bid requirement of 15% of food and beverage sales after state and local taxes. Staff received one bid from the Bismarck Hockey Boosters who have been operating this concession stand since 2017. They are able to meet all details outlined in the bid documents and provided a bid of 18% of food and beverage sales. Their previous agreement was for 15%. A copy of the proposed operating agreement is also provided.

Proposed motion: I move to accept the bid from the Bismarck Hockey Boosters in the amount of 18% to operate the Capital Ice Complex concession stand along with the operating agreement presented.

DRAFT

Capital Ice Complex Concession Stand Operating Agreement

1. **Parties:** The parties to the agreement are the Park District of the city of Bismarck, North Dakota, 400 East Front Avenue, Bismarck, ND 58504 (herein after the Park District), Bismarck, North Dakota, and the Bismarck Hockey Boosters (herein after Concessionaire).
2. **Purpose of this Agreement:** This agreement will establish basic guidelines for the food and beverage service and concession operations in the Capital Ice Complex (CIC), 1504 Wichita Drive, Bismarck, ND. Concessionaire will manage and provide the concession stands in said arena in cooperation with any exclusive soft drink and beverage supply agreement held by the Park District.
3. **Terms of Agreement:** The concession agreement begins September 1, 2026, and concludes August 31, 2030, with an option to extend the agreement for two additional four-year periods (September 1, 2030-August 31, 2034, and September 1, 2034-August 31, 2038).
 - a.) The request to extend the agreement must be made in writing to the Park District's Facilities and Programs Director no later than October 1, 2029, and October 1, 2033, for Board action to follow at a later date.
 - b.) The percentage of food and beverage sales after sales tax will be re-negotiated after receiving the extension requests in 2029 and 2033.
4. **General Hours and Days of Operation:** The hours will be set by arena management for all games, in-house games and special events. The concession schedule may change due to the arena schedule. The CIC concession stand must be open and ready to operate a minimum of 45 minutes before starting time of tournaments, High School Games, Junior Varsity Games, Youth Hockey Games, public skating sessions, or other major special events such as Figure Skating Club Testing. The Facilities Manager will provide monthly arena schedules as well as weekly updates to the Concessionaire manager.
5. **Vending Machines:** All vending machines will remain under the control of the Park District in the CIC.
6. **Exclusive Provider:** The Park District has an agreement 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 and purchase beverages through the exclusive vendor.

7. **Concession Fee:** Concessionaire shall pay the Park District 18% of sales on food and beverages in CIC after state and local taxes.
8. **Payment Schedule:** The concession payment is payable to the Park District on the 10th of each month along with a detailed statement of receipts listing separately the sales of (1) food, (2) soft drinks, and (3) catered events.
9. **Right to Enter:** The Park District and/or its authorized representatives shall have the right to enter the premises at all reasonable times for any purposes with notification to Concessionaire or accompanied by a Concessionaire representative.
10. **Concession Stand:** Concessionaire will have use of the permanent concession stand in the mezzanine area of the CIC.
11. **Concession Operation:** Concessionaire is responsible for the total operation of the concession stand including but not limited to staffing, stocking and selling of concession supplies, and cleaning of concession stands. Concessionaire is responsible for opening concession for vendors for product delivery.
12. **Other Concession Operations:** User groups must receive written approval of the Park District to sell novelty items and specialty non-food items during special events and tournaments. Concessionaire will be notified of such activities when they occur.
13. **Facility Maintenance:** The Park District will be responsible for maintenance of said arenas, including repairs and improvements unless cost sharing of improvements is agreed to. Concessionaire will remove garbage in the concession stands, assist with general cleanup of the mezzanine, including tables and chairs and break down product boxes and take them out to the dumpster.
14. **Keys:** Concessionaire will be given two keys to the concession stands. Concessionaire is responsible for keeping concession stands locked when not in use and for all deliveries to the stand(s).
15. **Permits/Licenses:** Concessionaire shall secure the proper permits and licenses from local and state government to operate concession stands that sells food and soft drinks and provide copies to the Park District at contract signing and annually thereafter.
16. **Real Estate Taxes:** Concessionaire will be responsible to the City of Bismarck for real estate taxes on the concession stand property during the term of the agreement. The City Assessing Department will determine the tax.
17. **Comprehensive General Liability Insurance:** Concessionaire, at its own expense, shall secure and keep in force a comprehensive general liability insurance policy in the

amount of \$1,000,000 per person and \$2,000,000 per occurrence and 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 annually provide the Park District with a certificate of insurance. All insurance policies carried by either party covering the property shall expressly waive any right, including subrogation, on the part of the insurer against the other party.

18. **Building Insurance:** The Park District will insure the buildings and contents owned by the Park District.
19. **Workforce Safety and Insurance:** The amount required by state law.
20. **Property Insurance:** Concessionaire may purchase renter's insurance for its property. Concessionaire understands that its property is not insured under any of the Park District's insurance policies.
21. **Supervision:** Concessionaire shall provide adequate supervision of the concession operation including employees and volunteers. Concession staff must be dressed in an identifiable uniform or shirt during business hours, representing Concessionaire, not a single supplier or vendor.
22. **Concession Menu:** The concession menu and pricing for all products at the CIC must be presented to the Park District's Executive Director in writing prior to the opening of the concession stands or when pricing and menu changes are proposed. The Facilities and Programs Director must approve any changes to the menu or pricing in writing.
23. **Signage:** Concessionaire must provide signage at concession stand locations (permanent and portable) and on carts identifying Concessionaire as operators of the stands. Suggested language is as follows: **"The concession and food service is operated under agreement by the Bismarck Hockey Boosters."**
24. **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.
25. **Non-Discrimination Policy:** Concessionaire shall not discriminate against any applicant for employment, employee, or patron of the premises on the basis of race, color, national origin, age, religion, sex, physical or mental disability, or status with respect to marriage or public assistance.

26. **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 to the Park District and will hold the Park District harmless from any and all such claims.
27. **Ordinances and Rules:** The Concessionaire shall comply will all [ordinances and rules enacted by the Park District](https://www.bisparks.org/policies-rules/ordinances-of-the-park-district-of-the-city-of-bismarck/) (<https://www.bisparks.org/policies-rules/ordinances-of-the-park-district-of-the-city-of-bismarck/>), the city of Bismarck, and state of North Dakota concerning the concessions operation.
28. **Improvements:** Concessionaire agrees to provide, at its own cost, all improvements to the premises necessary for the operation of the concession stands. All improvements and attractions shall be in compliance with plans and specifications provided by Concessionaire and must receive prior written approval of the Park District. Title to all non-removable improvements or fixtures shall vest in the Park District upon completion of the improvements; however, Concessionaire shall maintain, repair, and provide insurance on all improvements throughout the term of this agreement.
29. **Assignment/Transferability:** Concessionaire shall not assign, encumber, or transfer any interest held by the Park District in the premises, or sublease all or any part of the premises, or allow any other person or entity to occupy or use all or any part of the premises or this agreement, without first obtaining Board of Park Commissioners' consent. Any assignment, sale, encumbrance, transfer, or sublease without Park District consent shall be void and shall constitute default of this agreement. No consent to any assignment, sale, encumbrance, transfer, or sublease shall constitute a further waiver of the provisions of the paragraph. The Park District's approval shall not be unreasonably withheld.
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 fee 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 party 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.
33. **Property Damage:** Concessionaire agrees to pay, in addition to concessions fees, any costs for damages sustained to the facility by staff or volunteers that is out of the ordinary normal activity of Concessionaire and related activities.
34. **Waiver of Covenants:** No delay or omission in the exercise of any right or remedy of the Park District on any default by Concessionaire shall impair such a right or remedy or be construed as a waiver. Only a written notice from the Park District to Concessionaire shall constitute acceptance of the surrender of the premises and accomplish a termination of the agreement.
- a.) The Park District's consent to or approval of any act by Concessionaire requiring the Park District's consent or approval shall not be deemed to waive or render unnecessary the Park District's consent to or approval or any subsequent act by Concessionaire.
 - b.) Any waiver by the Park District of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provisions of the agreement.
35. **Relationship of the Park District and Concessionaire:** Nothing in this agreement shall render the Park District in any way a partner, in joint ventureship or associate in any way with Concessionaire in the operation of the concessions stands or business of Concessionaire or subject the Park District to any obligation, loss, charge, or expense in connection with or arising from the operation of the premises.
36. **Sale of Business:** In the event that Concessionaire should sell its business operation, all rights, duties, obligations, and privileges in connection with this agreement shall be assumed by the transfer to said purchaser as is or modified for only the remaining term of this agreement as approved by the Board of Park Commissioners.
37. **Surrender of Premises:** Upon the expiration or the termination of the agreement, Concessionaire shall, within ten (10) days, at its expense:
- a.) Remove Concessionaire's goods and effects

- b.) Surrender the premises to the Park District. Any property left on the premises after the expiration or termination of the term of this agreement shall be deemed to have been abandoned and the property of the Park District.

38. **Hold Over:** All obligations and duties imposed by this agreement upon the Park District and Concessionaire shall remain the same during any period of occupancy by Concessionaire after termination of the agreement.

Date: _____

President
Board of Park Commissioners
400 East Front Avenue
Bismarck, ND 58504

Date: _____

Mikayla Jablonski Jahner, Executive Director
Bismarck Hockey Boosters
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