


Let's Play!

November 9, 2022

TO: Commissioners Jeske, Jordan, Munson, Zimmerman, and President Gilbertson  
FROM: Kevin Klipfel, Executive Director   
SUBJECT: November 17, 2022 Park Board Meeting Agenda

Commissioners:

Enclosed you will find the packet of information and overview for the Park Board meeting on November 17, 2022 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 – Dakota West Arts Council  
Will Hutchings and Molly McLain from Dakota West Arts Council will appear before the Board.

**Item 4.** Disposition of Bids

- BSC Aquatic and Wellness Center Lighting Project – John Klein from Apex Engineering will review the bid summary and recommendations found in your Board packet.
- Municipal Country Club Project – Jeff Feist with EAPC will review the bid summary and recommendations found in your Board packet.

**Item 5.** VFW Sports Center Expansion Project Financial Options  
Finance Director Kathy Feist will review the information in your Board packet.

**Item 6.** Board Authorization to Call for Proposals for Membership, Registration and Facility Reservation Software  
Please see the memo provided by Community Relations Manager Dana Schaar Jahner.

**Item 7.** Appointment of Legal Counsel  
Enclosed in your packet you will find a letter from John Ward regarding legal representation for the Park District.

*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  
Collaboration  
Community  
Diversity  
Integrity  
Professionalism

**Item 8.**

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:

- Review and Approval of October 20, 2022 Board Meeting Minutes – The minutes are included for your consideration.
- Consideration of 2023 Matching Grant Application – Attached you will find the proposed 2023 Matching Grant application for your consideration.
- Request Board Authorization to Call for Bids
  - Maintenance Equipment and Golf Carts – Staff requests Board authorization to call for these bids.
  - Park Shop Chemical and Paint Storage – Please see the memo provided by Operations Director David Mayer.
- Consideration of Professional Consultant Agreements for the Following Projects – Please see the memo and associated agreements provided by Finance Director Kathy Feist.
  - Joann Hetzel Memorial 4-H Building Roof Replacement – Ubl Design Group
  - Cottonwood Park Umpires’ Building Project - EAPC
  - Hay Creek Park - KLJ
  - Sam McQuade Sr. Playground Replacement - AGL
  - Sertoma Park Water Line – Apex Engineering

**Item 9.**

Commissioner Munson Resignation

**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: December 15, 2022 at 5:15 pm in the Tom Baker Meeting Room

November 9, 2022

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

**Re: BSC Aquatic and Wellness Center  
Lighting Upgrade  
Bismarck Parks and Recreation District  
Bismarck, North Dakota  
Apex Project No. 22.184.0168**

Dear Mr. Klipfel:

The bids have been reviewed for the Lighting Upgrade project at the BSC Aquatic and Wellness Center and are summarized on the attached Bid Tabulation. The low construction bid received for the required scope of work was from Rafter Electric, LLC in the amount of:

Base Bid	\$60,500.00
Alt Bid E1	\$19,200.00
<u>Alt Bid E2</u>	<u>\$7,000.00</u>
Total Bid:	\$86,700.00

Apex has reviewed the bids received. We recommend that the Bismarck Parks and Recreation District award this project to Rafter Electric, LLC for the Base Bid only and in the amount of \$60,500.00. The base bid is close to the preliminary engineering estimate of \$60,000.00.

If you have any questions regarding this matter, please feel free to call me at 701-323-3961.

Sincerely,



John M. Klein, PE  
Apex Engineering Group, Inc.

Cc: File



Water | Transportation | Municipal | Facilities

# Bid Tabulation

## Lighting Upgrade

BSC Aquatic and Wellness Center – Bismarck Parks and Recreation District

November 9, 2022 | 10:00 a.m. | Bismarck Parks and Recreation Office, Bismarck, ND

Apex Project No. 22.184.0168

Bidder's Name	Bid Bond	Contractor's License Number:	Acknowledged Addendum No. 1 & 2	Base Bid	Alt E1	Alt E2	Total Bid Amount
Bergstrom Electric, Inc.	5%	1696	Yes	\$62,310	\$19,295	\$6,650	\$88,255
Denny's Electric	No responsive (did not recognize all addenda on outside of envelope)						
Edling Electric, Inc.	5%	28638	Yes	\$66,800	\$20,000	\$6,400	\$93,200
Electric Systems, Inc	5%	25483	Yes	\$68,010	\$16,450	\$4,940	\$89,400
L&H Electric, Inc.	5%	43699	Yes	\$71,925	\$24,190	\$7,220	\$103,335
<b>Rafter Electric, LLC (1)</b>	<b>5%</b>	<b>59096</b>	<b>Yes</b>	<b>\$60,500</b>	<b>\$19,200</b>	<b>\$7,000</b>	<b>\$86,700</b>
R K Electric	5%	46199	Yes	\$80,995	\$16,675	\$7,250	\$104,920
Skeels Electric Company	5%	545	Yes	\$68,940	\$28,785	\$6,945	\$104,670
Voyager Electrical Services	No responsive (expired contractor's license)						
Western Edge Electric, Inc	5%	45799	Yes	\$78,950	\$22,900	\$9,300	\$111,150

(1) Assumed Low Bidder

**Certification**

I certify that these bids were received on 11/9/2022, 10:00 AM, at Bismarck Parks and Recreation District, Bismarck, ND.

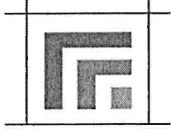
A handwritten signature in blue ink, appearing to be 'John M. Klein', written over a horizontal line.

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**John M. Klein, PE**



eapc.net



EAPC

Architecture | Engineering | Interior Design | Industrial Services

116 W Main Avenue, Suite A, Bismarck, ND 58501 | TELE 701.258.3116

November 9, 2022

Kevin Klipfel, Executive Director  
Bismarck Parks and Recreation District  
400 East Front Avenue  
Bismarck, ND 58504

RE: BPRD Municipal Country Cub Interior Remodel #20223440

Bids for the Municipal Country Cub Interior Remodel Project were received on November 8 at 2:30pm. Bids were received for a single prime bid.

Bids were received from five Prime Contractors for the project. The bids received, included alternate bid items to allow for flexibility to fit within the project budget.

The low bidder when selecting only the base bid and none of the alternates to fit within the project budget was:

Nothwest Contracting – Single Prime Bid Base Bid: \$135,800.00

In review of the bids, I recommend that you accept the single prime - Base Bid in the amount of \$135,800.00 from Nothwest Contracting.

Thanks,

Jeffery L. Feist, AIA  
EAPC Architects Engineers

Attachment: Bid Tabulation



116 W Main Ave, Suite A  
 Bismarck, ND 585001  
 (701) 258-3116

## BID TABULATION FORM

PROJECT: BPRD Municipal Country Club Interior Remodel  
 LOCATION: Bismarck, ND  
 PROJ. NO: 20223440  
 BID DATE: Tuesday, November 8, 2022  
 BID TIME: 2:30 p.m. local time

	LICENSE NO.	BID SECURITY	ADDENDUMS #1,2 &3	BASE BID	ALTERNATE 1 Bar #103	ALTERNATE 2 Banquet Room 2 #102
<b>Prime Contractor</b>						
Capital City Construction	42385	✓	✓	\$ 148,700.00	\$ 42,500.00	\$ 59,300.00
Dakota West Contracting	22988	✓	✓	\$ 152,100.00	\$ 35,500.00	\$ 47,750.00
Gietzen Construction	57969	✓	✓	\$ 155,900.00	\$ 42,850.00	\$ 57,250.00
Northwest Contracting	21302	✓	✓	\$ 135,800.00	\$ 40,300.00	\$ 53,800.00
Roers Construction	4210	✓	✓	\$ 150,380.00	\$ 24,500.00	\$ 39,000.00

The undersigned certifies this Bid Tabulation.

Signed:   
 Jeffery Feist, AIA

# Memo

To: Park Board Commissioners and Kevin Klipfel, Executive Director  
From: Kathy Feist, Finance Director *KF*  
Date: November 9, 2022  
Re: Initial Resolution for General Obligation Park Facilities Bonds

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The VFW Sports Center Expansion and Improvement Project will be partially funded by the sale of General Obligation Bonds in 2023. Enclosed is the Initial Resolution for General Obligation Park Facilities Bonds for your consideration and approval.

Approving the Initial Resolution for General Obligation Park Facilities Bonds is the first step in issuing General Obligation Bonds. This resolution sets a maximum issue amount. If approved, this resolution would be published and a 60-day protest period would begin that allows any owner of taxable property within the Park District to file a protest. If insufficient protests are filed, the Park Board can proceed with issuing General Obligation Bonds. Additional resolutions authorizing the sale and issuing bonds would be brought to the Board for consideration at future meetings.

Requested Board action is to approve the attached Initial Resolution for General Obligation Park Facilities Bonds.

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**INITIAL RESOLUTION FOR  
GENERAL OBLIGATION PARK FACILITIES BONDS**

**BE IT RESOLVED** by the Board of Park Commissioners of the Park District of the City of Bismarck, North Dakota, that it is necessary and expedient for the Park District of the City of Bismarck, North Dakota (the "Park District") to issue its general obligation park facilities bonds as hereafter described:

1. The maximum amount of the Bonds proposed to be issued is \$11,000,000.
2. The purpose for which the Bonds are proposed to be issued is to construct park improvements including, but not limited to, expansion of the VFW sports center, and related work and improvements.
3. The assessed valuation of all taxable property in the Park District, as defined in N.D.C.C. Section 21-03-01, is \$4,918,083,377, as last finally equalized for the year 2022.
4. The total amount of bonded indebtedness of the Park District, all issued for park facilities purposes, is \$1,700,000.

**BE IT FURTHER RESOLVED** that the General Obligation Park Facilities Bonds shall be issued in accordance with and pursuant to the authority granted to the Park District by Section 21-03-07(11), N.D.C.C., and the Park District hereby dedicates such an amount as is necessary to provide for the payment of the principal at maturity and the interest when due on the Bonds from the tax levy authorized by Section 21-03-15, N.D.C.C., which dedication shall continue in affect and may not be discontinued by the Park District until the principal and any accrued interest on the Bonds have been paid in full or defeased in accordance with the provisions of the resolution authorizing the issuance of the Bonds.

**BE IT FURTHER RESOLVED** that any owner of taxable property within the Park District may, within sixty (60) days after publication of this Resolution, file with the Clerk of the Park District a protest against the adoption of this Resolution. Protests must be in writing and must describe the property that is the subject of the protest. If the Park Board finds the protests have been signed by the owners of taxable property having an assessed valuation equal to five percent (5%) or more of the assessed valuation of all taxable property within the Park District, as last finally equalized, all further proceedings under this Resolution are barred.

**BE IT FURTHER RESOLVED** that the Clerk is hereby authorized and directed to cause this Resolution to be published in the official newspaper of the Park District.

Dated: November 17, 2022.

**PARK DISTRICT OF THE  
CITY OF BISMARCK, NORTH DAKOTA**

Attest:

\_\_\_\_\_  
President, Board of Park Commissioners

\_\_\_\_\_  
Clerk

The governing body of the Park District acted on the foregoing resolution at a properly noticed meeting held in Bismarck, North Dakota, on November 17, 2022, with the motion for adoption made by \_\_\_\_\_ and seconded by \_\_\_\_\_, and the roll call vote on the motion was as follows:

"Aye" \_\_\_\_\_

"Nay" \_\_\_\_\_

Absent \_\_\_\_\_

## MEMO

DATE: November 7, 2022

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

FROM: Dana Schaar Jahner, Community Relations Manager *DJ*

RE: Authorization for RFP for Recreation Management Software

Bismarck Parks and Recreation District (BPRD) has been utilizing ActiveNet for program registration and fitness facility membership since 2009.

The market for recreation management software has changed significantly since that time, and staff believes now is the time to assess whether ActiveNet remains the best software for BPRD in terms of functionality, usability and price.

Therefore, we request authorization to proceed with a Request for Proposals for Recreation Management Software. Please let me know if you have any questions. Thank you for your consideration of this request.

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Paul R. Sanderson\*  
William J. Behrmann  
Nils J.D. Eberhardt  
John E. Ward  
Ryan J. Joyce



EVENSON SANDERSON<sup>PC</sup>

1100 College Drive, Suite 5  
Bismarck, ND 58501

Tel: 701.751.1243  
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Writer's Direct Email:  
[jward@esattorneys.com](mailto:jward@esattorneys.com)

Jerry W. Evenson\*  
*Of Counsel*

\*Certified Civil Trial Specialist,  
National Board of Trial Advocacy

ATTN: Kevin Klipfel, Executive Director  
Bismarck Parks & Recreation District  
400 East Front Avenue  
Bismarck, North Dakota 58504

RE: Expression of interest in continued representation of Park District

Dear Kevin and Commissioners:

I previously sent correspondence informing you that Zuger Kirmis & Smith, PLLP has dissolved effective October 31, 2022 and is currently winding up its operations. This happened much faster than anticipated. As you are aware, I have worked with Connie Hofland over the last seven years on Park District matters. As Connie has started to move toward complete retirement, I have become more directly involved in representation of the Park District. I have joined the firm Evenson Sanderson, PC effective as of November 1, 2022.

I am interested in continuing the representation of the Park District. My qualifications for the position include experience in the areas of administrative law, employment law, and government relations. I am familiar with the open records and open meetings laws of North Dakota that apply to the Park District.

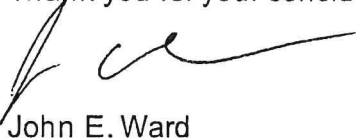
I also have extensive litigation experience ranging from administrative hearings, civil hearings (including jury and bench trials), as well as appellate work before the North Dakota Supreme Court, the Eighth Circuit Court of Appeals, and the United States Supreme Court. I have been fortunate to achieve favorable results for my clients in all stages of litigation.

I also work closely with State Government in representing several private clients before the North Dakota State Legislature. In this respect, I have been involved in both the passage and defeat of legislation.

I enjoy acting as legal counsel for the Park District very much and appreciate your consideration to continue providing legal services for the Park District. From a personal perspective, I am an avid user and advocate of our parks. I enjoy walking with my family down at Sibley Park in the summers and skiing in the winter. I have greatly enjoyed working with the talented Park District staff and Executive Director Klipfel.

I would honor the previous rates negotiated through my prior firm.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read 'John E. Ward', with a long horizontal flourish extending to the right.

John E. Ward  
Attorney at Law

MINUTES OF THE BOARD OF PARK COMMISSIONERS  
October 20, 2022

The Board of Park Commissioners held their regular meeting on October 20, 2022 in the Tom Baker meeting room of the City/County Building. President Gilbertson called the meeting to order at 5:15 pm. Commissioners Jeske and Munson were present. Commissioners Jordan and Zimmerman were absent.

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

Kurt Weinberg and Miranda Kaelberer from the Bismarck Mandan Lacrosse Association appeared before the Board as the featured partner and program.

Mike Wolf, co-chair of the Step Into the Batter's Box Campaign, appeared before the Board regarding the fundraising efforts to build an umpire building in Cottonwood Park in honor of Walt Stack. The committee has raised \$203,000. Commissioner Munson moved approval to proceed with the project, utilize the consultant selection project and proceed with bids. Commissioner Jeske seconded the motion, and the voting went as follows: Ayes: Commissioners Jeske, Munson, and President Gilbertson. The nays being none, the motion carried.

President Gilbertson reviewed the proposed memorandum of understanding with the Bismarck Hockey Boosters regarding their \$1,000,000 contribution to the VFW Sports Center ice expansion project. Commissioner Jeske moved to approve the memorandum of understanding as presented. Commissioner Munson seconded the motion, and the voting went as follows: Ayes: Commissioners Jeske, Munson, and President Gilbertson. The nays being none, the motion carried.

Jeff Feist with EAPC reviewed the bids received for the Municipal Ballpark video board/scoreboard replacement project. Commissioner Jeske moved to accept the bid of \$683,944.26 from Daktronics, Inc. Commissioner Munson seconded the motion, and the voting went as follows: Ayes: Commissioner Jeske and President Gilbertson. Commissioner Munson abstained from voting. The nays being none, the motion carried.

Commissioner Munson moved authorization for the Park District to request qualifications for engineering, architect, and planning services for 2023 and 2024. Commissioner Jeske seconded the motion, and the voting went as follows: Ayes: Commissioners Jeske, Munson, and President Gilbertson. The nays being none, the motion carried.

President Gilbertson reviewed the following items on the consent agenda:

- Review and approval of September 15, 2022 Board meeting minutes
- Request Board authorization to call for 2023 fertilizer bids
- Consideration of Companion Agreement for Ash Coulee and Tyler Parkway Shared Use Path

- Request Board authorization for consultant selection process and to call for bids for the following projects:
  - Hay Creek Park
  - McQuade Playground Replacement
  - Joann Hetzel Memorial 4-H Building Roof Repair
  - Sertoma Park Water Line

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

Commissioner Munson moved to approve the bills for payment with checks 407584 to 407603 and 210131 to 210502 along with bank drafts DFT001158 to DFT001171, EFTs 2057 to 2101 and direct deposits 54277 to 55591. Commissioner Jeske seconded the motion, and the voting went as follows: Ayes: Commissioners Jeske, Munson, and President Gilbertson. The nays being none, the motion carried.

The next regular Board meeting will be held November 17, 2022 at 5:15 pm in the Tom Baker Meeting Room. The meeting was adjourned at 5:44 pm.



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

[www.bisparks.org](http://www.bisparks.org)

# Matching Grant Application 2023

FACILITIES • GROUNDS • EQUIPMENT





## **PURPOSE**

The purpose of the **Matching Grant Program** is to encourage associations, organizations, clubs, or individuals to sponsor a project in a Bismarck Parks and Recreation District (BPRD) facility or park for the advancement of recreation opportunities in Bismarck.

<b>INITIAL PROJECT REVIEW:</b>	<b>Prior to submission and deadline, Mike Wald, Facilities and Programs Director, must be contacted at 222-6455 to conduct an initial project review to make sure project meets minimum specifications.</b>
<b>RECOGNITION OF MATCHING GRANT:</b>	The approved projects shall have a recognition plaque, dedication, or some other recognition signifying the project is part of the BPRD Matching Grant Program.
<b>ADMINISTRATION AND ACCOUNTING:</b>	Administration and accounting procedures will be determined by agreement with approved parties. All approved projects on Park District property must follow Park District purchasing guidelines, local ordinances, and state laws. Upon completion of the projects on Park District property, BPRD will assume ownership of the improvement or equipment, unless other arrangements are agreed upon.
<b>WHO CAN APPLY:</b>	Associations, organizations, clubs, or individuals in the Bismarck Parks and Recreation District who are interested in applying for a grant to sponsor a project may apply. Projects must be facility improvements and may include the purchase of recreation equipment.  <b>SCHOOL DISTRICT PROPERTY:</b> Projects on School District property must have a letter of support from the School District's buildings and grounds supervisor and school principal.
<b>APPLICATION OBTAINED AT:</b>	BPRD Office, 400 East Front Avenue Bismarck, ND 58504. Applications will be available after January 1 of each year.
<b>APPLICATION DEADLINES:</b>	Application deadlines for 2023 are 5:00 pm on <u>February 1 (Round 1)</u> and <u>June 1 (Round 2)</u> .
<b>FUNDS AVAILABLE:</b>	The Board of Park Commissioners shall determine how much, if any, will be available each budget year for matching funds and may change or make exceptions to the amount at any time. \$125,000 has been budgeted for 2023.
<b>APPLICATION REVIEW/INTERVIEW:</b>	After the deadline, a committee of staff and Commissioners will review all applications, conduct a short interview with applicants, and make recommendations to the Board of Park Commissioners at the February 16th and June 15th Park Board meetings.
<b>APPLICATION APPROVAL/DENIAL:</b>	Letters will be sent to all applicants, indicating the approval or denial of grant money. For those approved, an agreement will be sent to the successful project sponsors, which states the provisions of the grant funds.

- FUNDING:** Projects will be funded at no more than 50 percent of the total estimated cost, or up to a maximum of **\$25,000**, whichever is less. The Matching Grant Program provides a dollar-for-dollar match. The program does not consider matching funds for projects with in-kind expenses. The Board of Park Commissioners, at its discretion, may approve matching funds of over **\$25,000**.
- PROJECT SPONSOR CERTIFICATION:** The project sponsor must certify that they have the necessary funds for their share of the total estimated project's cost.
- GREATEST CONSIDERATION:** Projects that will receive the greatest consideration are as follows:
- Projects that fit into the Bismarck Parks and Recreation District's strategic plan, mission and vision.
  - Projects that serve a wide variety of people or large number of people, rather than to projects serving a limited group.
  - Projects that can be used throughout the year – more than one season.
  - Projects that have a developmental plan approved or reviewed by Bismarck Parks and Recreation District.
  - Projects that are on Park District property.
  - Playground projects must comply with current playground standards and guidelines. Playgrounds that include a ramp with an accessible route will receive the highest consideration.
- NO CONSIDERATION:** Projects that will **NOT** receive consideration for funding:
- Projects on private property as fixed improvements that aren't open to the public.
  - Personnel, operations, consultants.
  - Projects that have begun before grant approval.
  - Projects that use in-kind expenses as a match for grant application.
  - No clothing or uniforms.
- PROJECT COMPLETION:** The approved projects must be completed in the year they are awarded, otherwise Park District funding will be lost.

# 2023 MATCHING GRANT APPLICATION

**APPLICATION DEADLINE: 5:00 PM ON FEBRUARY 1 AND JUNE 1**

**COMPLETE AND RETURN TO:**

Bismarck Parks and Recreation District • Attn: Mike Wald  
400 East Front Avenue • Bismarck, ND 58504 • (701) 222-6455  
mwald@bisparks.org

1. DATE OF APPLICATION: \_\_\_\_\_

2. APPLICANT: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ IF SCHOOL, PRINCIPAL'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_

STATE/ZIP: \_\_\_\_\_ TELEPHONE NUMBER: (H) \_\_\_\_\_ (C) \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

3. PROJECT TITLE: \_\_\_\_\_

4. ESTIMATED PROJECT START DATE: \_\_\_\_\_ COMPLETION DATE: \_\_\_\_\_

5. DESCRIPTION OF PROPOSED PROJECT (INCLUDE LOCATION AND SITE MAPS WHERE APPLICABLE):

\_\_\_\_\_

6. JUSTIFICATION FOR PROJECT:

\_\_\_\_\_

7. ESTIMATED NUMBER OF PEOPLE BENEFITED: \_\_\_\_\_

8. ESTIMATED AGE CATEGORIES BENEFITED: \_\_\_\_\_

9. TOTAL ESTIMATED PROJECT COST (INCLUDE ANY PRICE QUOTES OR COST ESTIMATES RECEIVED):

\_\_\_\_\_

10. AMOUNT OF ASSISTANCE REQUESTED: \_\_\_\_\_

11. AMOUNT OF APPLICANT'S CONTRIBUTION: \_\_\_\_\_

12. OTHER SOURCES OF ASSISTANCE (NAME, TYPE, AMOUNT):  
\_\_\_\_\_

13. BY SIGNING OR TYPING MY NAME BELOW, I HEREBY CERTIFY THAT FUNDS IN THE AMOUNT OF \$ \_\_\_\_\_  
(AT LEAST 50 PERCENT OF TOTAL ESTIMATED COSTS) ARE AVAILABLE FOR THE ABOVE STATED PROJECT.

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

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

**PROJECT COST ESTIMATES**

Attach any written cost estimates received from vendors or contractors, etc.

<b>PROJECT ITEM</b>	<b>UNITS</b>	<b>ESTIMATED COST</b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
	<b>TOTAL:</b>	_____

**APPLICATION CHECKLIST**

- Initial project review with Facilities and Programs Director?
- Application completed?
- Project sponsor certification of funds available?

- SCHOOL PROJECTS:**
- Letter of approval from BPS Buildings and Grounds?
  - Letter of approval from school principal?

Let's Play!

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

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

*Date:* November 9, 2022

*Re:* Request Board Authorization to Call for Bids

Commissioners and Executive Director Klipfel:

Staff requests Board authorization to call for bids to construct chemical and paint storage rooms in the warm storage building (former park shop). This is a budgeted project for 2022. Thank you for your consideration of this request.

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Diversity  
Integrity  
Professionalism

# Memo

To: Park Board Commissioners and Kevin Klipfel, Executive Director  
From: Kathy Feist, Finance Director *ky*  
Date: November 8, 2022  
Re: Consultants

---

The consultant selection committees reviewed the list of consultants approved by the board. The committees selected the following consultants:

Ubl Design Group – Joann Hetzel Memorial 4-H Building roof replacement  
EAPC – Cottonwood Park Umpire Shack  
KLJ – Hay Creek Park  
AGL – McQuade Playground replacement  
Apex Engineering – Sertoma Park Water Line replacement

The professional services agreements for these projects are included in your agenda packet for review and approval.

Requested Board action is to approve the selected professional consultants as recommended by the selection committees, approve the enclosed professional services agreements, and call for bids for these projects.

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# AIA<sup>®</sup> Document B105™ – 2017

## Standard Short Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the Seventeenth day of November in the year Two Thousand Twenty-Two  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name, legal status, address and other information)*

Bismarck Parks & Recreation District  
400 East Front Avenue Bismarck, ND 58504  
Telephone Number: 701-222-6455

and the Architect:  
*(Name, legal status, address and other information)*

Ubl Design Group, P.C.  
210 South 12th Street Bismarck, ND 58504  
Telephone Number: 701-751-4555

for the following Project:  
*(Name, location and detailed description)*

Joann Hetzel Memorial 4-H Building Re-Roof  
Bismarck  
The project involves re-roofing of an existing pre-engineered metal building.

The Owner and Architect agree as follows.

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

## ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural services for the Project as described in this Agreement. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect's services include the following consulting services, if any:

No additional consultants will be required.

During the Design Phase, the Architect shall review the Owner's scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design, which shall be set forth in drawings and other documents appropriate for the Project. Upon the Owner's approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining bids or proposals, and in awarding contracts for construction.

During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect's authority and responsibility during construction is described in AIA Document A105™-2017, Standard Short Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A105-2017, those modifications shall not affect the Architect's services under this Agreement, unless the Owner and Architect amend this Agreement.

## ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. The Owner shall employ a Contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.

## ARTICLE 3 USE OF DOCUMENTS

Drawings, specifications and other documents prepared by the Architect are the Architect's Instruments of Service, and are for the Owner's use solely with respect to constructing the Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the construction of the Project, provided that the Owner substantially performs its obligations under this Agreement, the Architect grants to the Owner a license to use the Architect's Instruments of Service as a reference for maintaining, altering and adding to the Project. The Owner agrees to indemnify the Architect from all costs and expenses related to claims arising from the Owner's use of the Instruments of Service without retaining the Architect. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.

## ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement. Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.



**ARTICLE 5 MISCELLANEOUS PROVISIONS**

This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105-2017, Standard Short Form of Agreement Between Owner and Contractor. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

**ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT**

The Architect’s Compensation shall be:

Hourly not to exceed \$15,000.00 based on the 2022 rate schedule.

The Owner shall pay the Architect an initial payment of Zero Dollars and Zero Cents (\$ 0.00 ) as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus Ten percent ( 10.00 %).

Payments are due and payable upon receipt of the Architect’s monthly invoice. Amounts unpaid Thirty ( 30 ) days after the invoice date shall bear interest from the date payment is due at the rate of Five percent ( 5.00 % ) per annum , or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

At the request of the Owner, the Architect shall provide additional services not included in Article 1 for additional compensation. Such additional services may include, but not be limited to, providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the Project scope, quality or budget, or due to Owner-requested changes in the approved design; evaluating changes in the Work and Contractors’ requests for substitutions of materials or systems; providing services necessitated by the Contractor’s failure to perform; and the extension of the Architect’s Article 1 services beyond Twelve ( 12 ) months of the date of this Agreement through no fault of the Architect.

**ARTICLE 7 OTHER PROVISIONS**

*(Insert descriptions of other services and modifications to the terms of this Agreement.)*

None

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
Michael Gilbertson, President of the Board  
*(Printed name and title)*

\_\_\_\_\_  
ARCHITECT (Signature)

\_\_\_\_\_  
Jeffrey J. Ubl, President  
*(Printed name, title, and license number, if required)*

# **Additions and Deletions Report for** **AIA® Document B105™ – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:30:27 CT on 11/09/2022.

## **PAGE 1**

**AGREEMENT** made as of the Seventeenth day of November in the year Two Thousand Twenty-Two

...

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400 East Front Avenue Bismarck, ND 58504  
Telephone Number: 701-222-6455

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Ubl Design Group, P.C.  
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Bismarck  
The project involves re-roofing of an existing pre-engineered metal building.

## **PAGE 2**

No additional consultants will be required.

## **PAGE 3**

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...

None

...

Michael Gilbertson, President of the Board

Jeffrey J. Ubl, President

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Jeffery J. Ubl, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:30:27 CT on 11/09/2022 under Order No. 2114276977 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B105™ - 2017, Standard Short Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*



November 9, 2022

Bismarck Parks and Recreation District  
 Attn: Kevin Klipfel, Executive Director  
 400 East Front Avenue  
 Bismarck, ND 58504

Subject: Professional Services Proposal  
 Re: BPRD Cottonwood South Softball  
 Umpire Building  
 Bismarck, ND

Dear Kevin Klipfel:

Thank you for utilizing the services of our firm in regard to the above referenced project. We appreciate being asked to be of service. We look forward to providing the assistance that best fits your needs. This letter will serve as an agreement for Professional Fee purposes for this work.

### **PROJECT DESCRIPTION**

EAPC will provide design services to facilitate the construction of an Umpire Building at Cottonwood South Softball Complex.

The Umpire Building (approx. 22'x28') shall be similar to the preliminary design concepts previously developed at Cottonwood South Softball Complex, including related Mechanical and Electrical consultants from Prairie Engineering

### **SCOPE OF SERVICES**

Services to be performed for the negotiated fee (basic services)

- Review existing conditions.
- Preparation of documents, indicating the general, mechanical and electrical work required.
- Preparation of project estimate
- Coordination of bids/cost proposals.
- Construction Administration of the project.

### **FEES AND REIMBURSABLE EXPENSES**

Consultant shall be paid for these services at a fixed fee of \$18,000.00 for Design and Construction Administration Services; plus the cost of all customary reimbursable expenses incurred in the performance of the Services. Supplemental or Additional Services may be provided if requested by Client or Consultant and approved by Client in advance of proceeding with such services. Progress-based payments for all Services shall be made based on monthly invoices from Consultant, and Client shall make payment in full thereon within thirty (30) days after presentation of invoices.

While performing the required services, Consultant and its subconsultants will incur reimbursable expenses that are not included in the fee compensation, which may include the following:

- Reproduction, plots, special handling and delivery of all documents.
- Fees paid for securing approval of authorities having jurisdiction over the Project.
- Other reimbursable expenses as mutually agreed to.

EAPC is available to commence work immediately upon notification, and we will complete the outlined Scope of Services within a mutually agreed upon schedule unless modified in writing by Owner and Architect.

The signing of this proposal by Client and EAPC will serve as written authorization for EAPC to proceed with the services described above and the requirements contained in the Terms and Conditions found on the last page of this proposal. Charges to the project by EAPC will not precede the date of the signing of the Agreement.

Thank you for giving EAPC the opportunity to submit a proposal for this project. We are eager to be a part of your team on this project. Please do not hesitate to contact us if you have any questions or require further information.

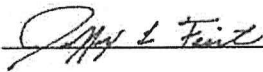
Respectfully submitted by:

Jeffery L. Feist  
Senior Architect  
EAPC Architects Engineers

Approved and accepted in accordance with the General Terms and Conditions on the following pages by:

**EAPC ARCHITECTS ENGINEERS**

**CLIENT:**

Signature:   
 Name: JEFFERY L. FEIST  
 Title: SENIOR ARCHITECT  
 Date: 11/9/2022

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

## Consultant Responsibilities

### STANDARD OF CARE

Consultant shall perform its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances ("Standard of Care"). The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Consultant makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with Consultant's services. Notwithstanding any other representations made elsewhere in this Agreement or in the execution of the Project, this Standard of Care shall not be modified.

### CODE COMPLIANCE

Consultant shall review applicable laws, codes, and regulations and, in the provision of its Services, shall respond to such requirements imposed by the governmental authorities having jurisdiction over the Project and reasonably known to Consultant at the time services are provided. Client acknowledges that the requirements of federal, state, and local laws, rules, codes, ordinances, and regulations, including the Americans with Disabilities Act, are subject to various and possible contradictory interpretations. Consultant will use reasonable professional efforts and judgment to correctly interpret and apply such requirements. Consultant, however, cannot and does not warrant or guarantee that its services and documents will comply with all such interpretations and requirements.

### COST EVALUATION

Evaluations of Client's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work, and updated estimates of the Cost of the Work prepared by Consultant, represent Consultant's judgment as a design professional. It is recognized, however, that neither Consultant nor Client has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from Client's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by Consultant.

### DELIVERABLES (PER SCOPE OF SERVICES)

Consultant shall provide deliverables, including drawings, specifications, reports, and studies, as defined in the Scope of Services section.

## Client Responsibilities

### PROJECT SCOPE AND BUDGET

Client shall define the scope and budget of the Project and, when applicable, periodically update the Project budget, including that portion allocated for the Cost of the Work. The Project budget shall include contingencies for design development and, when required by the scope of the Project, construction of the project. Client shall not significantly increase or decrease the overall Project scope, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of Consultant to a corresponding change in the Project scope, quality, schedule, and compensation of Consultant.

### DESIGNATED CLIENT REPRESENTATIVE

Client shall identify an individual ("Designated Representative") authorized to act on its behalf with respect to the Project. Client or its Designated Representative shall render decisions and approve Consultant's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Consultant's services and Project schedule.

### TESTS, INSPECTIONS, AND REPORTS

When required by the scope of the Project, Client shall furnish tests, inspections, and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

### CLIENT PROVIDED SERVICES AND INFORMATION

Client has the right to retain its own consultants and contractors ("Client's Consultants") to perform services on the Project. In addition, Client shall furnish the services of design professionals other than those designated as the responsibility of Consultant in this Agreement, or authorize Consultant to furnish them as an Additional Service, when Consultant requests such services and demonstrates that they are reasonably required by the scope of the Project.

Consultant shall be entitled to rely on the accuracy, completeness, and timeliness of services and information furnished by Client, its Designated Representative, and Client's Consultants. Consultant shall have no responsibility for the technical content of Client's, its Designated Representative's, and Client's Consultants' services and information but shall provide prompt written notice to Client if Consultant becomes aware of any error, omission, or inconsistency in such services or information.

#### CONSTRUCTION CONTRACTS & RESPONSIBILITIES

When applicable to the scope of the Project, Client shall retain a qualified contractor, licensed in the jurisdiction of the Project ("Contractor"), to implement the construction of the Project ("Work") utilizing a construction contract based on AIA A201™-2017 General Conditions of the Contract for Construction. In the construction contract, Client shall require Contractor to: (1) obtain Commercial General Liability Insurance and name Client, Consultant, and Consultant's employees and subconsultants as additional insureds of that policy; and

(2) indemnify and hold harmless Client, Consultant, and Consultant's employees and subconsultants from and against any and all claims, damages, losses, and expenses ("Claims"), including but not limited to reasonable attorneys' fees and economic or consequential damages, arising in whole or in part out of any negligent act or omission of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them.

Client understands and acknowledges that: (1) Consultant has no control over, charge of, or responsibility for construction activities or jobsite safety on the Project; (2) Contractor shall coordinate, supervise, and direct all portions of the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, jobsite safety, and security; and (3) Consultant shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.

#### CLIENT'S REDUCTION OF SCOPE OF SERVICES

If Client elects to terminate, modify, or reduce any portion of Consultant's Services under this Agreement, Client shall indemnify and hold Consultant and its subconsultants harmless from and against damages, losses, and judgments arising from claims by Client or any third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, related to the services or activities Consultant did not provide or in which Consultant did not participate.

#### General Provisions

##### LIMITATION OF LIABILITY

The Services covered by this Agreement are of a preliminary or limited nature; therefore, neither Consultant, Consultant's subconsultants (if any), nor their agents or employees shall be jointly, severally, or individually liable to Client in excess of the compensation to be paid pursuant to this Agreement, by reason of any act or omission, in tort or contract, including breach of contract, breach of warranty, or negligence.

##### OWNERSHIP OF DOCUMENTS

All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain ownership and property interest therein, including all copyrights. Upon payment in full for services rendered, Consultant grants Client a license to use instruments of Consultant's professional service for the purpose of constructing, occupying, or maintaining the Project. Reuse or modification of any such documents by Client, without Consultant's written permission, or use of documents after termination, shall be at Client's sole risk, and Client agrees to indemnify, defend, and hold Consultant harmless from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.

##### USE OF CONSULTANT-PROVIDED INFORMATION

The information provided by Consultant is intended for the exclusive use of Client for the Scope of Services defined herein, and is not to be transmitted for the use of any other party nor used for any other project. Client agrees to defend, indemnify, and hold Consultant harmless from any claims, costs, and expenses, including attorneys' fees and costs of litigation, which result from any unauthorized or unintended use of Consultant-provided information, or transmission by Client to others of the information resulting from Consultant's Scope of Services.

##### MUTUAL INDEMNIFICATION

Consultant and Client each agree to indemnify the other against liability, damages, costs, and expenses including reasonable attorneys' fees and expenses recoverable under applicable law (collectively "Damages") that are caused to the other due to the negligence of the indemnifying party, but only to the extent of the indemnifying party's negligence. Neither Consultant nor Client shall be required to indemnify the other to the extent Damages arise from or are caused by the indemnified party's own negligence (whether sole, concurrent, or contributory). Neither Consultant nor Client shall have a duty to provide the other an up-front defense of any claim.

##### MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

Consultant and Client waive consequential damages (such as lost profits, lost revenues, loss of use, loss of financing, and loss of reputation) for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages whether arising in contract, warranty, tort (including negligence), strict liability, or equity, or that might arise out of the parties' indemnification obligations.



#### DISPUTE RESOLUTION

Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to a meet-and-confer session as a condition precedent to mediation.

Client and Consultant shall endeavor to resolve claims, disputes, and other matters in question during the meet-and-confer session. The meet-and-confer session shall be attended by Client and Consultant or their authorized representatives who shall have the authority to bind the parties. The meet-and-confer session shall take place within thirty (30) days after a request by either party, unless the parties mutually agree otherwise. Prior to the meet-and-confer session, the parties shall exchange relevant information that will assist in resolving the claim, dispute, or controversy.

If the parties reach a mutually acceptable resolution, they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation as a condition precedent to binding dispute resolution. If the parties do not resolve a dispute through mediation, the parties shall mutually agree on a method of binding dispute resolution, either litigation in a court of competent jurisdiction or arbitration.

#### HAZARDOUS MATERIALS

Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials or toxic substances in any form at the Project site. If hazardous materials are present, Client shall be responsible to remove them from the Project site in a manner that will not adversely affect the health of any person and will comply with any applicable governmental laws and regulations. Client shall indemnify and hold Consultant harmless from any liability, loss, damage, or expense arising out of or with respect to the presence of hazardous materials on the Project site. The presence or discovery of any hazardous or toxic substance on the site shall be cause for extension of the schedule of Consultant's services and equitable adjustment of fees for Consultant as mutually agreed by the parties.

#### EXISTING CONDITIONS

Documents prepared by Consultant will be prepared based upon reasonable assumptions derived from existing information provided by Client and from observations of the existing conditions by Consultant without the benefit of field measurements and invasive investigation made undesirable by expense and inconvenience to Client. It is understood and agreed that unforeseen conditions uncovered during the progress of the Work may require changes in the Work resulting in additional cost and delay for which Client shall maintain sufficient contingency. Services required by such changes shall be provided as additional services per this Agreement.

#### DISCLAIMER OF THIRD PARTY RELIANCE

Nothing contained in this Agreement shall create a contractual relationship or a cause of action in favor of a third party against either the Client or Consultant.

#### GOVERNING LAW

This Agreement shall be governed by, and Professional Services shall be performed in compliance with, the laws of the state wherein the Project is located.

#### ASSIGNMENT

Client and Consultant, respectively, bind themselves, their partners, successors, assigns, and legal representatives to this Agreement. Neither Client nor Consultant shall assign this Agreement without the written consent of the other, except that Client may assign this Agreement to a lender providing financing for the Project, provided that all monies owed Consultant are paid prior to the date of assignment and that lender agrees to assume all of Client's duties and obligations under this Agreement. Any expense incurred by Consultant as a result of the assignment shall be considered as an Additional Service and compensated in accordance with this Agreement.

#### PROJECT SCHEDULE

In the event Consultant is hindered, delayed, or prevented from performing its obligations under this Agreement as a result of any cause beyond its reasonable control, including but not limited to delays due to power or data system outages, acts of nature, public health emergencies including but not limited to infectious disease outbreaks and pandemics, governmental orders or directives, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or review Consultant's services or design documents, or delays caused by faulty performance by Client's contractors or consultants, the time for completion of Consultant's services shall be extended by the period of resulting delay and compensation equitably adjusted. Client agrees that Consultant shall not be responsible for damages, nor shall the Consultant be deemed in default of this Agreement due to such delays.

#### Payments Due

Consultant shall present monthly invoices for Professional Services earned and reimbursable expenses incurred, and Client shall pay the full amount thereof within thirty (30) days after presentation. Any charges held to be in dispute by Client shall be identified in writing to Consultant within ten (10) days of presentation of Consultant's invoice or shall be paid in full per the terms of this Agreement. If payment in full is not received per the terms of this Agreement, Consultant shall have the right to suspend

Services and withhold all documents until payment is received and apply a 1.5% delinquency charge on the unpaid balance from the date of the invoice. Payment of such charge shall not excuse the default in payment or terminate the unperformed portion of this Agreement.

#### Suspension and Termination

In the event of suspension of Services, as outlined above or for any other reason beyond Consultant's control, Consultant shall have no liability to Client for delay or damage resulting from such suspension. Prior to resuming Services, Consultant shall be paid all fees earned prior to suspension together with all reimbursable expenses then due, along with any costs and expenses, including attorneys' fees, incurred collecting delinquent payments. In addition, Consultant's fees for remaining Services and associated time schedules will also be equitably adjusted.

This Agreement may be terminated for cause after a seven (7) days cure period by either party or for convenience upon notice period; seven (7) days written notice by Client. Upon termination, all invoices presented by Consultant for Services provided, including reimbursable expenses then due and any costs incurred in pursuit of delinquent payments, shall become immediately due and payable. In the event of termination for convenience, Client shall pay to Consultant a termination fee of 10% of fees not yet earned.

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

THIS IS AN AGREEMENT effective as of November 17, 2022 ("Effective Date") between Bismarck Parks and Recreation District ("Owner") and KJ Engineering LLC ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Hay Creek Park("Project").

KJ Project Number: 2204-01773

Engineer's services under this Agreement are generally identified as follows: Topographic Survey, Final Design, Bidding or Negotiating Services, and Construction Observation ("Services").

**See Exhibit A – Engineer's Services for a complete scope of work.**

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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: ***Approximately 11/18/2022 to 10/31/2023.*** The compensation amounts stipulated in Paragraph 2.02 is conditioned on a period of service not exceeding 10/31/2023.
- 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.

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- 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—Lump Sum*

- A. Owner shall pay Engineer for Services as follows:

1. A Lump Sum amount of \$109,000.00.

a. Topographic Survey:	\$ 9,500.00
b. Preliminary Design Phase:	\$ 11,500.00
c. Final Design Phase:	\$ 52,000.00
d. Bidding and Negotiating Phase	\$ 9,500.00
e. Construction Observation & Administration	\$ 26,500.00

2. In addition to the Lump Sum amount, reimbursement for the following expenses: [None]

3. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

- B. The portion of the compensation amount billed monthly for Engineer's Services will be based upon Engineer's estimate of the percentage of the total Services actually completed during the billing period.

- 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.

## 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 5.01.1.
  - 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. Neither Party shall be considered to be in default of this Agreement if delays in or failure of performance are due to forces beyond the reasonable control of the nonperforming Party, the effect of which the nonperforming Party could not avoid by the exercise of reasonable diligence. Such forces include, but are not limited to: fire, acts of God, flood, earthquake, storm, lightning, tornados, epidemic, war, riot, civil disturbance, sabotage, strike, work slowdown, or other labor disturbances, judicial restraint, action or inaction of any Government entity in either its sovereign or contractual capacity, quarantine restrictions, freight embargoes, delays in long lead time items and severe weather. Any changes to the terms of this agreement impacted by a Force Majeure event shall be documented in an Amendment to the Agreement.
  - J. 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.
  - K. 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.
  - L. This Agreement is to be governed by the law of the state in which the Project is located.
  - M. 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.

- N. Engineer shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

#### 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.

#### 7.01 *Definitions*

- A. *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.
- B. *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.

#### 8.01 *Attachments: Exhibit A - Engineer's Services*



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: KLJ Engineering LLC

By: \_\_\_\_\_  
Print name: Kevin Klipfel  
Title: Executive Director  
Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

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

061-C

State of: ND \_\_\_\_\_

Address for Owner's receipt of notices:

Bismarck Parks and Recreation District

400 E Front Ave

Bismarck, ND 58504

Address for Engineer's receipt of notices:

KLJ Engineering LLC

4585 Coleman Street

Bismarck ND 58503

Legal Notices to: legal@kljeng.com

This is **EXHIBIT A**, consisting of 18 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated November 17, 2022.

**Engineer's Services**  
**Hay Creek Park – Bismarck, ND**

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The Agreement is supplemented to include the following agreement of the parties.

**PART 1 – BASIC SERVICES**

***Project Location:***

The property (Property or Site) for which Engineer's services are being provided includes the approximately 0.28-acre Lot 9 and the 26.33 acre Lot 10, Block 1, Hay Creek Park Addition which is located at 2701 E Capitol Ave, Bismarck, ND. The building, shelter, natural play area, and paved improvements to the project will occur on approximately 1 acre that includes Lot 9 and the area north of Lot 9 and south of the paved Capitol Outfall shared use path.

***Project Understanding (Project):***

Bismarck Parks and Recreation District (Parks) intends to construct new neighborhood park upon the existing Parks owned Property located south of I-94 at the east terminus of E Capitol Ave and North 26<sup>th</sup> Street.

The new amenities will include a restroom building, a picnic shelter, a natural play area with embankment slides, a new paved parking lot, paved trail connections from the parking lot to the picnic shelter and to the existing Capitol Outfall shared use path, and approximately 6,000 linear feet of single track, earthen surface, hiking/mountain biking trails.

It is assumed that the parking lot will be concrete paved and provide approximately 10-parking stalls and will not have parking lot lighting. It is assumed that the parking lot will require parking lot perimeter landscape screening and street trees in accordance with City of Bismarck Requirements.

The picnic shelter and natural play area will be located north and east of the new parking lot. It is assumed that the picnic shelter will be a pre-engineered steel structure and will require electrical power and interior lighting. A paved trail or sidewalk connection will be made to the new restroom, shelter, natural play area, and to the existing Capitol Avenue Outfall shared use path to the north of the proposed restroom.

The proposed 20' x 20' restroom building will be located north of the new parking lot near N 26<sup>th</sup> Street. It is assumed that the building will be seasonal without heat and closed during the winter. It is assumed that water and sanitary sewer service connections will be made to the existing services installed across N 26<sup>th</sup> St to service Lot 9. It is also assumed that the water meter will be located inside the restroom building and that a water fountain with bottle filler will be located on the exterior of the building.

It is assumed that stormwater will drain to N 26<sup>th</sup> St or the Capitol Outfall and that a stormwater pond and stormwater report will not be required.

It is understood that the Owner has performed a cultural resource study for the property which indicates development upon the Site has no effect on Historic Properties.

The proposed improvements are displayed on the attached **Exhibit A.1 – Site Concept Exhibit**.

***Project Schedule:***

Topographic Survey: Three weeks from Agreement execution (approx. 11/18/22 – 12/9/22)

Preliminary Design: Four weeks from acceptance of Topographic Survey (approx. 12/12/22 – 1/6/23)

Final Design: Six weeks from acceptance of Preliminary Design (approx. 1/9/23 – 3/3/23)

City Review & Revisions: Approximately Four weeks from acceptance of Construction Documents (approx. 3/3/23 – 3/31/23)

Bidding: Three weeks from acceptance of Final Design (approx. 3/20/23 – 4/11/23)

Presentation of Bids to Park Board: 4/20/23

Construction: 22 weeks from completion of Bidding (approx. 5/1/23 - 9/29/23)

***Parties:***

Owner – Bismarck Parks and Recreation District (Parks)

Engineer (Civil Engineer) – KLJ Engineering LLC (KLJ)

Architect – EAPC (Subconsultant to KLJ)

Contractor – TBD (Synonymous with Construction Manager in this document)

Engineer shall provide Basic Services as set forth below.

**A1.01 *Study and Report Phase (Not Included)***

**A1.02 *Topographic Survey Phase***

A. Engineer shall provide:

1. Topographic Survey

- a. Provide topographic field survey to locate utilities, clearly marked property corners, and surface features such as buildings, fences, trees, roadways, sidewalks, curb and gutter, etc. in the approximately 2 acre area of the paved and building/shelter improvements including and near Lot 9.
- b. Stake alignments of earthen trails as determined by a site visit with the Owner.
- c. Identify utilities on base map based on information provided by utility owners and located by ND One Call.
- d. Owner to locate all private electrical wires, sprinklers, and other Owner utilities prior to survey.
- e. If title work is provided, the Engineer will identify and map existing recorded easements and rights-of-way on the property found within the Owner provided title work. The Owner assumes all risk of ownership discrepancies and conflicts with easements or encumbrances not included in the title work to be provided by the Owner.
- f. Prepare base map of existing conditions of proposed development site.

B. Engineer's services under the Topographic Survey Phase will be considered complete on the date when the topographic survey basemap has been delivered to Owner.

### A1.03 Preliminary Design Phase

#### A. Owner shall:

1. Provide concept drawings for the Project including the natural playground and embankment slides in AutoCAD format.
2. Furnish the services of geotechnical consultants/engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluation of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and recommendations on foundations, pavement sections, slope stability, ground water elevations, percolation rates, retaining walls, utility trenches, and other construction considerations appropriate for the site, based on geotechnical sampling for design. Coordination with the geotechnical engineer and/or preparation of exhibits or other documents for use by the Owner in obtaining the services of a geotechnical consultant may be performed by the Engineer as an Additional Service. The Engineer assumes no responsibility for assumptions made with regard to the services of the geotechnical consultant/engineer or change orders/amendments required due to the lack of geotechnical recommendations.
  - a. These services can be added by Amendment to the Agreement.
3. Provide a copy of the budget for the cost of the Work for the Engineer's use in the design and coordination of the project.

#### B. Engineer shall provide:

#### C. Concept Development

1. Prepare up to one (1) conceptual drawing(s) of the proposed park depicting locations of parking, building, shelter, natural play area, and trails.
2. Furnish to the Owner one (1) conceptual plan(s) for review.
3. The Owner shall inform Engineer of any desired additions, deletions, or areas to be further refined.
4. Attend one (1) meeting with Owner or other external parties to discussion or review the concept plan.
5. Prepare one (1) preliminary Engineer's Opinion of Probable Construction Cost

#### D. Graphical Rendering (*Not Included*)

- E. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised conceptual site plan has been delivered to Owner.

**A1.04 Entitlements Phase (Not Included)**

**A1.05 Final Design Phase**

A. After acceptance by Owner of the Preliminary Design Phase documents and any other deliverables and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon authorization from Owner, Engineer shall provide:

B. Detailed Site Design

1. Develop site existing conditions and removals plan

- a. Removal of existing curb and gutter for installation of driveway and parking lot off N 26<sup>th</sup> Street.
- b. Removal of vegetation if necessary.

2. Develop site grading design

- a. Detailed grading plans including shelter, bathroom building floor elevations, paved trails/sidewalks and spot elevations and slopes to indicate specific construction grading requirements (e.g., doorway entries, curb ramps, parking lots, and drainage flow).

3. Develop Site Layout

- a. Design paved walking trails and sidewalks from parking lot to the restroom building, shelter and natural play area, and the existing Capitol Outfall Shared Use Path to the north of the proposed restroom.
- b. Design parking layout
- c. Design curb and gutter elevations for parking lot
- d. Design alignment of gravel or earthen surfaced trails within the Property.
- e. Natural Playground and Embankment Slides Design
  - 1) Design includes layout of new playground equipment selected by Owner.
  - 2) Playground fall surface will consist of engineered wood fiber, if necessary.

C. Utility Design

1. Design sanitary sewer collection system

- a. Design includes one (1) service line from the existing City sanitary sewer service stub to within 5' of the building.
- b. Design of sewer ejector pump or grease interceptor designs is not included.

2. Design water service to the building.

- a. Design includes one (1) domestic water service line connection from the existing City water service stub to within 5' of the building.
- b. Design includes one (1) exterior water fountain with bottle filler similar in design to North Central Park.
- c. It is assumed that the restroom building will not be sprinkled, and on-site hydrants will not be necessary.
- d. Engineer assumes existing water source has adequate capacity and pressure.
  - 1) Scope of services does not include hydraulic analysis or water modeling to determine flow capacity in the existing public or private water distribution system.
  - 2) Flow and pressure testing is not included.
- e. It is assumed that water meter and backflow preventer(s) will be housed in the restroom building.

#### D. Stormwater Management Plan & Design

- 1. Prepare and submit City of Bismarck SM04 storm water scoping sheet application which will as appropriate, include the project description, the proposed impervious area creation, the proposed stormwater management system to be used, the proposed post-construction stormwater BMPs, and a preliminary stormwater exhibit for the project.
- 2. Prepare a Stormwater Management Plan waiver request. This scope assumes the waiver request will be approved and no additional stormwater documents will be required.
- 3. Design stormwater facilities for proposed site in accordance with governing requirements.
  - a. It is assumed that the parking lot will surface drain westward to the existing storm sewer system within City right of way, and that no storm sewer design or on-site stormwater detention will be necessary for the site.
- 4. Scope does not include post-construction or as-constructed stormwater analysis or certification.

#### E. Landscape Plan

- 1. Landscape design and planting schedule within site development to shall meet applicable City of Bismarck requirements.
  - a. Boulevard/Street trees
  - b. Perimeter parking lot landscaping along City streets
  - c. It is assumed that interior parking lot island landscaping is not required.
- 2. Engineer's plans will identify areas to be seeded. The Project will not be irrigated. If irrigation is added the Contractor will provide design and specifications for irrigation system.

- a. If necessary, the Contractor will provide the design for a pump, service line, and power upgrades for the pump from the restroom building as required to meet the irrigation systems requirements.
  - b. The irrigation system controls and backflow preventor are to be located in the mechanical room in the restroom building.
3. Landscape design for aesthetic enhancement of the site and areas around the buildings provided in the form of specialized pavements, pavers, and other materials or products to provide an enhanced site design and aesthetically pleasing appearance to the site is available as an Additional Service.

F. Restroom Building Design

1. Provide Architectural, Structural, Plumbing, Mechanical, and Building Electrical design for one (1) 20' x 20' restroom building.
2. Restroom Building plans will be certified by a registered architect and registered professional engineers.

G. Shelter Design

1. Specify the size, materials, and acceptable manufacturers for one (1) shelter with dimensions as selected by Owner.
2. Shelter and foundation design to be provided by the manufacturer. Shop drawings to be provided by the manufacturer for review by the Engineer and Owner.

H. Site Electrical Plan

1. Design of site electrical plan to provide power one (1) park shelter.
  - a. Electrical design for the park shelter will include one light and one exterior rated duplex outlet.
2. Design parking lot lighting (Not Included)
3. It is assumed that the electrical meter will be installed on the exterior of the restroom building and the site electrical system will be fed from a service panel installed within the restroom building. It is assumed that electrical service from the power source to the transformer, if required, will be designed and provided by the electrical utility provider.
4. Underground branch circuits shall be designed meeting national and state electrical code.
5. Design excludes any additional post mounted duplex outlets or any other electrical features other than those listed above.
6. Plans will be signed by a Professional Electrical Engineer.

I. Retaining Wall Design (*Not Included*)

J. Fencing Plan *(Not Included)*

K. Erosion Control Plan

1. Prepare erosion control plan for the site per applicable City of Bismarck requirements.

L. Permitting *(Not Included)*

1. The following permits will likely be necessary for this construction project. The Engineer's services do not include applying for or obtaining these permits. The Engineer will refer the Owner or Contractor to the appropriate section(s) of the design plans, if applicable, to aid the Owner or Contractor in the permit applications.
  - a. North Dakota Department of Environmental Quality North Dakota Pollutant Discharge Elimination System (NDPDES) Construction Erosion Control Permit.
    - 1) The Owner or Contractor shall be responsible for completing the Notice of Intent (NOI) and developing the Stormwater Pollution Prevention Plan (SWPPP) as required by the Federal, State and local government. It is the responsibility of the Owner/Contractor to ensure compliance and to modify the SWPPP for actual schedule and construction methods.
  - b. City Permits
    - 1) The Owner or Contractor/Contractor shall obtain the necessary permits which may include, but are not limited to:
      - a) Traffic, Grading, Excavation, Erosion and Sediment Control, Concrete, Right-of-Way, Approach, Street Tree, Water, Sewer, Building, Plumbing, Lawn Sprinkler, Water Meter, etc.
    - 2) City shall bill permit fees directly to the Owner or Contractor.
  - c. It is assumed that no 100-year floodplains, wetlands, endangered species, or cultural resources will be impacted by the proposed improvements and services regarding these permits are not included. If the Owner is aware of the need for such permits the Engineer can complete this work as an Additional Service.

M. Specifications

1. Technical specifications will be prepared for the project for the items included under Engineer's Services.
2. Procedural and contractual forms (front end documents) will be prepared using EJCDC format documents.

N. Traffic Study or Analysis *(Not Included)*

O. Engineer's Opinion of Probable Construction Cost

1. Provide one (1) updated Opinion of Probable Cost at the end of the Final Design Phase



2. Opinions of cost shall only be for the materials covered by the Engineer's design.
3. Revisions to the engineer's opinion of cost in excess of the amounts stated herein shall be completed as an Additional Service.

P. Review Agency (City of Bismarck) Coordination

1. The Engineer will serve as main contact between Owner and the review agency for submittal and approval of proposed civil site plan and building plans.
2. Prepare necessary documents indicated in the above scope to be submitted for the City of Bismarck's Site Plan Approval process.
3. Coordinate with City of Bismarck Public Works Department in regard to water and sanitary sewer utility connections.

Q. Owner Coordination

1. It is assumed that the Engineer will host or attend up to a total of two (2) one-hour meetings with the Owner or other external parties during the final design phase. The Engineer will attend those meetings deemed appropriate for their scope of services either in person or through a telephone or video conference.
2. The Engineer will be available to attend additional meetings as an Additional Service.
3. Engineer shall provide copies of drawings, reports, specifications and other necessary information to the Owner in either PDF or paper copy format.

R. Deliverables

1. Construction drawings and appropriate details for the above tasks identified in this Phase.
2. City of Bismarck SM04 and Stormwater Management Plan Waiver Request
3. Technical Specifications
4. Updated Engineer's Opinion of Probable Construction Cost

S. Other Items to be Noted

1. Owner will be responsible for securing designs of gas, telecommunication and any other utilities not described as part of Engineer's services. If the designs and associated AutoCAD files of these utilities are provided to the Engineer, they will be shown on the Engineer's plans, if requested.
2. Engineer's fee does not include submittal, review, recording, permit, system development, or other fees. These fees are to be paid by Owner.
3. Scope does not include drafting, obtaining, or recording any easements or common use agreements unless specifically stated above.

4. Engineer assumes that no major revisions will be made to the plans after the Owner acceptance of the Preliminary Design documents.
  5. Owner shall provide the Engineer any restrictions to Contractor working hours, availability of the site, or project phasing to be included in the plan notes.
  6. Plan Notes/Special Provisions and bid forms will require Contractor(s) to provide all required materials testing.
  7. The number of prime construction contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one (1).
- T. Engineer's services under the Final Design phase will be considered complete on the date when the above deliverables have been submitted to the review agency for approval.

**A1.06 Bidding or Negotiating Phase**

- A. After acceptance by Owner of the construction documents and the most recent opinion of probable construction cost as determined in the Final Design Phase, and upon authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued.
  2. Issue up to one (1) addendum as appropriate to clarify, correct, or change the bidding documents.
  3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
  4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.
  5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders.
  6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
  7. Attend one (1) Park Board meeting to present the bid results.
  8. Bidding and Negotiating services shall be provided for the project to be awarded to one (1) contractor.
  9. Any services provided by Engineer to re-bid or value engineer the Project will be considered Additional Services.

- B. The Bidding or Negotiating Phase will be considered complete upon award of contract, commencement of the Construction Phase, or upon cessation of negotiations with prospective contractors.

**A1.07 Construction Phase - Surveying (Not Included)**

- A. Construction staking shall be provided by the Contractor.

**A1.08 Construction Phase - Observation and Observation**

- A. After acceptance by Owner of the bidding or negotiating phase documents:

- B. Owner shall:

- 1. Provide a copy of the most recent bidding documents, bid tabulations, negotiated proposals and Contract Documents, including, Change Orders and Construction Change Directives for the Engineer's use in the construction coordination of the Project.

- C. Engineer shall provide:

- 1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

- 2. *Selecting Independent Testing Laboratory:* To be provided by Contractor.

- 3. *Preconstruction Meeting:* Attend up to one (1) preconstruction meeting in-person with the Owner and Contractor for each Bid Package.

- 4. *Schedules:* Receive, review, and determine the acceptability of schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.

- 5. *Establish Benchmarks:* As appropriate for each Bid Package, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

- 1) Number of Visits to Site: One (1)

- 6. *Electronic grading files:* Provide construction plan data in electronic file format for the Work which in Engineer's judgement may be necessary to enable Contractor to proceed.

- a. Prepare one (1) electronic data release agreement with the Contractor.

- 1) One Agreement with one Contractor is included. Fees for additional Agreements will be invoiced separately to Contractor.

- b. Compile and transmit electronic data files to Contractor which will include:
    - 1) Up to four (4) electronic files in .xml or .dwg format, as appropriate for the work, and requested at one time by one Contractor.
    - 2) All 4-files will be transmitted to Contractor together, at one time
  - c. Preparation of additional electronic grading files and/or execution of additional electronic data release agreements can be provided as an Additional Service performed at the Engineer's standard hourly rates.
7. *Visits to Site Observation of Construction and Construction Meetings:* In connection with observations of Contractor's Work while it is in progress:
- a. Construction Meetings: Attend up to twelve (12) one-hour long construction progress meeting(s) in-person or via teleconference.
  - b. Site Visits for observation of construction: Make up to ten (10) 1-hour visits.
  - c. Meetings and visits to the Site may be made concurrently and will be conducted at intervals appropriate to the various stages of construction, to observe as an experienced and qualified design professional the progress of Contractor's executed Work or to attend construction meetings. Such visits and observations by Engineer are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment. Based on information obtained during such visits, observations or meetings, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work. When the number of site visits or meetings listed above is exceeded the Engineer shall conduct site visits or attend meetings requested by the Owner as an Additional Service.
  - d. The purpose of Engineer's visits to the Site will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.

8. *Clarifications and Interpretations; Requests for Information; Field Orders; Work Change Directives; Change Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents. Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required. Major changes to the design requested by the Owner or Contractor and approved by the Owner will be completed as Additional Services. The assumed number of each are quantified below:
  - a. Clarifications, Interpretations, or RFI's: Six (6)
  - b. Field Orders or Work Change Directives: Zero (0)
  - c. Change Orders: One (1)
9. *Shop Drawings and Samples:* Review and take appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, up to two (2) times, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto.
10. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of this Exhibit under "Additional Services Not Requiring Owner's Authorization".
11. *Inspections and Tests:* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
12. *Disagreements between Owner and Contractor:* Render decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
13. *Defective Work:* Make recommendation to Owner to Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project

that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

14. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

c. It is assumed that the Engineer will complete up to five (5) applications for payment to be submitted to the Owner at the end of the month.

15. *Contractor's Completion Documents:* Receive and review schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under "*Shop Drawings and Samples*", and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract

Documents to obtain final payment. The extent of such review of record documents shall be to check that Contractor has submitted all pages.

16. *Final Notice of Acceptability of the Work:* Conduct one (1) visit to prepare Contractor's punch list and conduct one (1) final visit to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a "Notice of Acceptability of Work" that the Work is acceptable (subject to the provisions of "Applications for Payment") to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
- D. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof for which the Engineer provided services and will terminate upon written recommendation by Owner for final payment to Contractors. If the Project involves more prime contracts than indicated in Final Design Phase, then Construction Phase services may be rendered at different times in respect to the separate contracts. Engineer shall be entitled to an equitable increase in compensation if Construction Phase services are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- E. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

#### **A1.09 Post-Construction Phase (Not Included)**

### **PART 2 – ADDITIONAL SERVICES**

#### **A2.01 Additional Services Requiring Owner's Authorization**

- A. If authorized by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below. Engineer shall proceed with such Additional Services with the understanding that the Engineer will be paid hourly for such services at the Engineer's standard hourly rates unless an agreement has been reached between the parties for other methods of payment. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
  1. Services in addition to those defined under Basic Services including but not limited to: study and report phase services, marketing exhibits, graphical renderings, environmental studies, traffic impact analysis, permitting, permit application materials, requests for zoning change or any deviation or variance from local standards or zoning regulations, or any entitlements services such as lot modifications, platting, easements, etc.
  2. Design services in addition to those defined under Basic Services including but not limited to: fencing, parking lot lighting, storm sewer, stormwater treatment or sediment removal systems, retaining walls, pumping systems, irrigation systems, geotechnical engineering or services to aid in the completion of their recommendations, or design of offsite improvements.

3. Preparation for, and attendance at, a public presentation, meeting or hearing other than specified under Basic Services.
4. Preparation or revision of construction documents or design changes after the final design phase or during construction.
5. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
6. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
7. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, character of construction, method of financing, or Owner's schedule or coordination causing unreasonable delay in the orderly and sequential progress of the Engineer's services; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
8. Redesign or rebidding services requested to meet the Owner's construction budget after approval of the Final Design phase of the Project.
9. Services resulting from Owner's request to modify previously approved deliverables or to evaluate additional alternative solutions beyond those agreed to under Basic Services.
10. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
11. Services resulting from conflicting direction from the Owner or from multiple representatives of the Owner.
12. Services provided beyond the dates specified in the original schedule.
13. Services required to provide copies of drawings, reports, specifications and other necessary information to the Owner or Contractor and other consultants in a format other than PDF or paper copy.
14. Providing renderings, models or electronic grading files or releases for Owner's or Contractor's use, including services in support of building information modeling or civil integrated management, other than specified under Basic Services.
15. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility



studies and cash flow analyses, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed or furnished by Owner.

16. Furnishing services of Consultants for other than provided under Basic Services.
17. Providing data or services that were to be provided by the Owner.
18. Services attributable to more prime construction contractors than specified under Basic Services.
19. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
20. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner or Contractor; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
21. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner or Contractor for the Work or a portion thereof other than provided under Basic Services.
22. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services or making revisions to drawings for "or equal" items or bid negotiations.
23. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
24. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.
25. Modifying final approved design or digital files as may be required for Owner's or Contractor's use during construction.
26. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner other than provided under Basic Services.
27. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.

28. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
29. Preparation of operation, maintenance, or staffing manuals.
30. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
31. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
32. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
33. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, claim, dispute resolution, or other legal or administrative proceeding involving the Project.
34. Providing construction surveys and staking to enable Contractor to perform its work; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys (except as agreed to under Basic Services).
35. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner or Contractor.
36. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
37. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

**A2.02 Additional Services Not Requiring Owner's Authorization**

- A. Engineer shall advise Owner that the Engineer is performing or furnishing the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance authorization from Owner. Engineer shall proceed with such Additional Services with the understanding that the Engineer will be paid hourly for such services at the Engineer's standard hourly rates unless an agreement has been reached between the parties for other methods of payment. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
  1. Attending meetings requested by Owner or Contractor in addition to those specified as Basic Services.
  2. Services in connection with work change directives and change orders to reflect changes requested by Owner or Contractor.

3. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after beginning the Bidding Phase of the Construction Documents in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
4. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
5. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
6. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
7. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
8. Services during the Construction Phase rendered after the original date for completion of the Work referred to in this Agreement.
9. Reviewing a Shop Drawing more than two (2) times, as a result of repeated inadequate submissions by Contractor.
10. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

HAY CREEK PARK  
SITE CONCEPT PLAN  
11/8/22

DESIGN & SURVEY FOCUS AREA

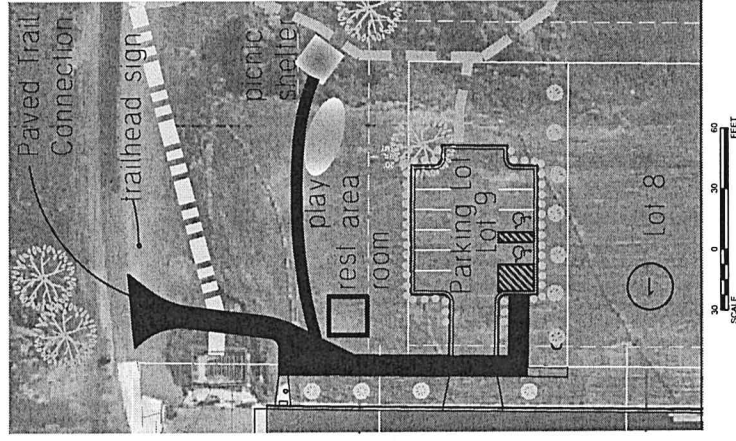


EXHIBIT A.1

PRELIMINARY - NOT FOR CONSTRUCTION

Nov 08, 2022 - 7:13pm - K:\Projects\Civil\BismarckPark\Red2024-01773-HayCreekPark\CAD\Design\Misc\Exhibits\2022117-HayCreekPark-Agreement\ExhibitA.1.dwg (Exhibit A.1)

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN**

**LANDSCAPE ARCHITECT AND CLIENT**

THIS AGREEMENT CONSISTS OF 3 PAGES.

AGL Project No. 0411122



**Preliminary Provisions**

**Effective Date of Agreement**

This Agreement is made as of **11/17/2022**, between the Client and Landscape Architect for the Landscape Architectural Services as provided herein. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located unless designated otherwise.

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**Client**

Bismarck Parks and Recreation District

400 E. Front Ave., Bismarck, ND 58504

Kevin Klipfel, Executive Director

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**Landscape Architect**

AGL Landscape Architects, P.C.

400 E. Broadway, Suite 304

Bismarck, ND 58501

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**Project**

Sam McQuade Sr. Softball Complex - Playground Equipment Replacement Project

Project Location: Bismarck, North Dakota

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**Landscape Architect's Compensation**

Client agrees to pay Landscape Architect as Compensation for the Scope of Services performed under this agreement as follows:

Estimated Fees for Services: **\$9,800**

Type: **Lump Sum + Expenses**

Design Phases to be Completed:

Type: **See Exhibit 'A' - Scope of Services**

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**Summary of Attachments to this Agreement**

- A. Exhibit 'A' – Landscape Architect's Scope of Services
- B. Exhibit 'B' – Project Area Map
- C. Exhibit 'C' – Landscape Architect's Schedule of Reimbursable Expenses and Hourly Rates

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN  
LANDSCAPE ARCHITECT AND CLIENT**

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AGL Project No. 0411122



**Article 1 – Landscape Architectural Services**

**1.1 Standard of Care**

The Landscape Architectural Services shall be performed with care and diligence in accordance with the professional standards applicable at the time and in the location of the Project and appropriate for a project of the nature and scope of this Project.

**1.2 Scope of Services**

Landscape Architectural Services to be provided under this Agreement are:

**Refer to Attached Exhibit 'A' – Landscape Architect's Scope of Services**

**1.3 Supplemental Services**

Supplemental Services are in addition to the basic Scope of Services and, when requested in writing by the Client, shall entitle the Landscape Architect to additional compensation beyond the Compensation stated above. Supplemental Services under this Agreement expressly include but are not limited to:

- a. Services resulting from significant changes in the general scope, extent, or character of the Project or its design including, but not limited to, changes in size, complexity, Owner's schedule, or character of construction or method of financing; and revising previously accepted studies, reports, design drawings, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Landscape Architect's control.
- b. Applications for permits or regulatory approvals, unless expressly noted.
- c. Preparation of Bid Alternates
- d. Furnishing Services of independent consultants, other than listed in basic services, if any.
- e. Preparing record or as-built drawings
- f. Services in connection with change orders requested by Owner.
- g. Out-of-town travel, other than visits to the site agreed upon as part of the basic scope of services.
- h. Assistance with bid protests, rebidding, or negotiating the construction contract.
- i. Services in connection with partial utilization of the work by owner prior to substantial completion
- j. Additional or extended services during construction of the Work made necessary by (a) emergencies or acts of God endangering the Work, (b) the discovery of unknown subsurface conditions, (c) work damaged by fire or other cause during construction, (d) a significant amount of Defective Work, (e) acceleration of the progress schedule involving services beyond normal working hours, and (f) default by Contractor.
- k. Evaluating an unreasonable number of claims submitted by Contractor or others in connection with the Work.
- l. Services or consultations after completion of the Construction Phase, such as excessive inspections during any correction period and reporting observed discrepancies under guarantees called for in the Construction Contract for the Work (except as agreed to under Basic Services).
- m. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other legal or administrative proceeding involving the Project to which Landscape Architect has not been made a party.
- n. Additional services in connection with the Work, including services which are to be furnished by Owner and services not otherwise provided for in this Agreement.
- o. Services during the Construction Phase rendered after the original date for completion of the Work, established in the construction documents.
- p. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
- q. Conformance to Owner's or Contractor's safety programs provided to Landscape Architect after effective date that exceed those normally required of landscape architectural personnel for similar sites.

**1.4 Changes to Approved Services**

Revisions to drawings or other documents shall constitute Supplemental Services when made necessary because of Client-requested changes to previously approved drawings or other documents, or because Client changes to previous Project budget parameters or Project requirements.

**1.5 Schedule of Performance**

Landscape Architect shall perform the services within a reasonable time.

**Article 2 – Client's Responsibilities**

**2.1 Information**

The Client shall provide data about the site and other information on which the design is to be based as well as Client's budget parameters for the Project. The Landscape Architect shall be entitled to rely on the accuracy and completeness of information provided by the Client.

**2.2 Budget**

The Landscape Architect shall reasonably strive to propose designs and prepare documents consistent with the Client's budget parameters. If provided by the Landscape Architect as a part of the Scope of Services, opinions of probable construction costs are based on the Landscape Architect's familiarity with the landscape construction industry and are provided only to assist the Client's budget planning. Such opinions shall not be construed to provide a guarantee or warranty that the actual construction costs will be within the Project budget parameters at the time construction bids are solicited or construction contracts negotiated.

**2.3 Approvals**

The Client's decisions, approvals, reviews, and responses shall be communicated to the Landscape Architect in a timely manner so as not to delay the performance of the Landscape Architectural Services.

**2.4 Project Permit and Review Fees**

The Client shall pay all fees required to secure jurisdictional or regulatory approvals for the Project.

**Article 3 – Ownership of Documents**

The Landscape Architect shall be deemed the author and owner of all documents and deliverables developed pursuant to this Agreement and provided to the Client by the Landscape Architect (collectively, the "Design Materials"). Subject to payment by the Client of all fees and Reimbursable Expenses owed to the Landscape Architect, the Landscape Architect grants to the Client an irrevocable, non-exclusive license to reproduce the Design Materials solely for the construction of the Project and for information and reference with respect to the use of the Project.

**AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN  
LANDSCAPE ARCHITECT AND CLIENT**

THIS AGREEMENT CONSISTS OF 3 PAGES.

AGL Project No. 0411122



**Article 4 – Landscape Architect Compensation**

**4.1** Compensation for the Landscape Architectural Services performed under this Agreement shall be as indicated in the Preliminary Provisions plus Reimbursable Expenses as defined below. Supplemental Services, when requested in writing by the Client, shall require additional compensation to be determined on an hourly basis or based on a negotiated fee.

**4.2** Reimbursable Expenses are expenditures made by the Landscape Architect, its employees, and consultants in the interest of the Project plus an administrative fee of 20%. Reimbursable Expenses include but are not limited to travel expenses, costs of reproduction of documents, postage, services of professional consultants which cannot be quantified at the time of contracting, and other, similar, direct Project-related expenditures.

**4.3** Monthly payments to the Landscape Architect shall be based on (1) the percentage or phases of the Scope of Services completed and shall include payments for (2) Supplemental Services performed, (3) Reimbursable Expenses incurred, and (4) any project related subconsultant expenses or fees times a factor. Payment for services does not include any agency review fees, submittal fees, filing fees, permit fees, or other such fees. Client will pay all such fees directly.

**4.4** Payments are due and payable 30 days from the date of the Landscape Architect's invoice. Invoiced amounts unpaid 30 days after the invoice date shall be deemed overdue and shall accrue 1.5% simple interest per month. At the Landscape Architect's option, overdue payments may be grounds for termination or suspension of services.

**4.5** If through no fault of the Landscape Architect, the Scope of Services to be provided under this Agreement has not been completed within six months of the initial notice to proceed, the compensation for services rendered after that time period shall be equitably adjusted.

**Article 5 – Not Used**

**Article 6 – Dispute Resolution**

**6.1** If a dispute arises out of or relates to this Agreement, the parties shall endeavor to resolve their differences first through direct discussions. If the dispute has not been settled within 14 days of the initial discussions, the parties shall submit the dispute to mediation, the cost of which shall be shared equally by the parties.

**6.2** Nothing in these provisions shall limit rights or remedies not expressly waived under applicable lien laws.

**Article 7 – Termination**

**7.1** This Agreement may be terminated by either party on seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, provided the defaulting party has not cured or in good faith diligently commenced to cure the breach during the 7-day notice period.

**Article 8 – Other Terms and Conditions**

**8.1 Assignment**

Neither party shall assign their interest in this Agreement without the express written consent of the other, except as to the assignment of proceeds.

**8.2 Governing Law**

The law in effect at the Landscape Architect's principal place of business shall govern this Agreement.

**8.3 Complete Agreement**

This Agreement represents the entire understanding between the Client and the Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral with respect to its subject matter. The person(s) signing this Agreement on behalf of the parties hereby individually warrant that they have full legal power to execute this Agreement on behalf of the respective parties and to bind and obligate the parties with respect to all provisions contained herein. This Agreement may be amended only in a writing signed by both the Client and the Landscape Architect.

**Landscape Architect**

11/9/22

Date

**Client**

\_\_\_\_\_

\_\_\_\_\_

Date

**Exhibit 'A' – Landscape Architect's Scope of Services – Sam McQuade Sr. Softball Complex  
Playground Replacement Project**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties. Architect shall provide Basic Services as set forth below.

**Schematic Design (SD) Phase Services – Completed by BPRD Staff**

**Design Development (DD) Phase Services – Completed by BPRD Staff**

**Construction Documents (CD) Phase Services**

- a. If necessary, Surveying Services to determine existing conditions at project site will be added by amendment to the agreement and is not included in this scope of services.
- b. Based on the BPRD approved Design Development Plans, AGL will prepare a set of plans and specifications for the purpose of construction.
- c. The following services and plans will be prepared and will serve as the construction documents for the project:
  1. Existing Conditions and Removals Plan
  2. Site Layout and Materials Plan
  3. Site Landscape Plan
  4. Construction Details

**Bidding Phase Services**

- a. Prepare Advertisement for Bids, to be advertised for a period not less than 21-days.
- b. Distribute plans and specifications to prospective bidders and local building exchange(s).
- c. Answer questions and issue addenda to clarify or correct construction documents.
- d. Assist BPRD in opening bids, prepare bid tabulation, and prepare a recommendation of award.
- e. Attend Park Board Meeting to present the disposition of bids and answer questions from Park Board Commissioners.

**Construction Administration (CA) Phase Services**

- a. Facilitate a pre-construction conference with Owner / Contractor(s) to discuss scope of improvements, schedule, and contractor coordination items.
- b. Visit the site to observe construction progress and provide Owner additional assurance of contractor's general conformance to plans and specifications. Includes Three (3) Visits to the Site.
- c. Review Contractor's Request for Payment and provide recommendations to Owner on payment based on percentage completion of items on invoice / application.
- d. Perform Substantial and Final Completion Review with Owner and Contractor. Prepare punchlist of items to be completed prior to final payment.

**Services and Compensation Not Included**

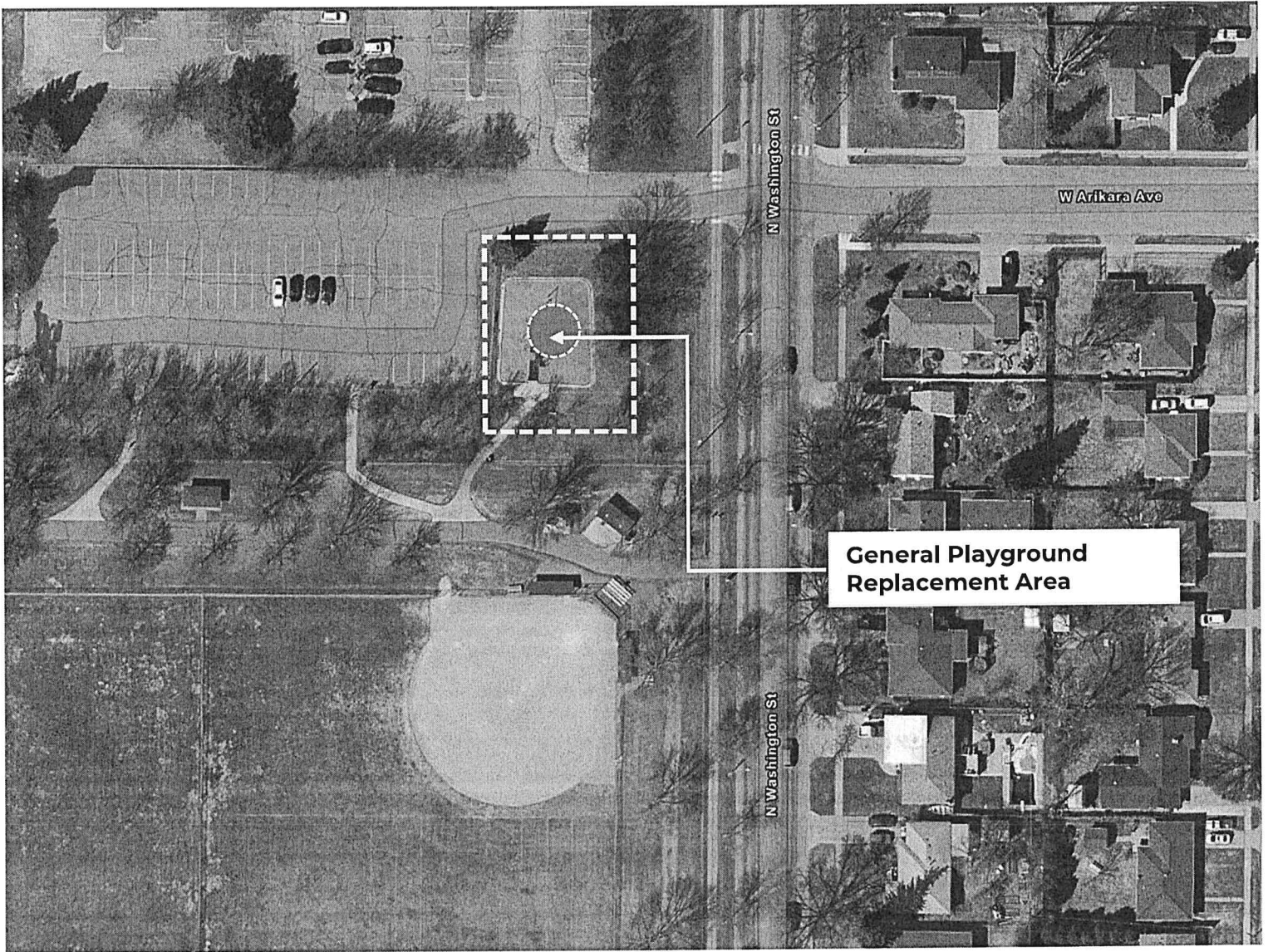
Due to no additional parking or building structures being proposed, submittal documents and services related to the City of Bismarck Site Plan Review and Stormwater and Floodplain Management Reporting are not anticipated to be included as part of the above services and therefore no compensation is included.

If indeed these services are deemed to be necessary by the City of Bismarck, they will be added by amendment to the agreement for professional services.

Costs for public advertisement of the bids (Bismarck Tribune) to be paid directly by BPRD.



Exhibit B – Project Area Map



 **Project Area Map – Not to Scale**



This is **Exhibit C, Landscape Architect's Schedule of Reimbursable Expenses and Hourly Rates**, referred to in and part of the Agreement for Professional Services dated November 17, 2022.

## **Landscape Architect's Estimated Reimbursable Expenses**

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### *A. Schedule of Reimbursable Expenses*

1. Printing and Reproduction Costs: \$300.00

### *B. Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Exhibit D and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates are subject to annual review and adjustment.

### *C. Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

Landscape Architect I:	<u>\$85/hour</u>
Landscape Architect II:	<u>\$95/hour</u>
Principal Landscape Architect:	<u>\$ 120 /hour</u>

## TASK ORDER

This is Task Order No. 9  
consisting of 3 pages.

### Task Order

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In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services ("Agreement") dated February 18<sup>th</sup>, 2021, the Owner and Engineer agree as follows:

#### 1. Background Data

Effective Date of Task Order: November 10<sup>th</sup>, 2022

Owner: Bismarck Parks & Recreation District

Engineer: Apex Engineering Group, Inc.

Specific Project (title): Sertoma Park Water Service Improvements

Specific Project (description): Civil engineering services related to improving the existing 6" cast iron water service that runs through Sertoma Park to the Dakota Zoo.

#### 2. Services of Engineer

The specific services to be provided or furnished by Engineer under this Task Order are:

1. Preliminary Design - Provide preliminary (30%) design documents including cost estimates and proposed schedules to minimize disruptions to tennis court area operations.
2. Final Design - Provide a full set of bidding documents, both plans and specifications. Provide a final cost estimates.
3. Bidding Services – Aid in the bidding process by submitting advertisements, issuing bidding documents, addenda, answering bidder's questions, conducting a bid opening, and issuing bid tabulations and recommendations.
4. Construction Administration – Prepare contract documents and coordinate with the Owner and the Contractor on contract execution. Administer the construction contract. Conduct a pre-construction meeting. Review and process pay requests. Coordinate Contractor requests for information (RFIs). Conduct field inspections and issue any corrective actions needed.
5. Construction Observation - Provide EJCDC Resident Project Representative ("RPR") to assist in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. Professional archeological monitoring during construction will be the responsibility of the Contractor and will be outlined in the bid documents.

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#### Task Order Form

This document is based in part on excerpts from copyrighted EJCDC documents. Those portions of the text that originated in copyrighted EJCDC documents remain subject to the copyright.

**3. Owner's Responsibilities**

Owner's responsibilities are set forth in the Agreement with the following modifications: **None**.

**4. Task Order Schedule**

The anticipated time period for providing Services is as follows:

<u>Item</u>	<u>week of</u>
Task order Execution	November 10 <sup>th</sup> , 2022
Final Plans and Specifications	February 2023
Bid Opening	March 2023

**5. Payments to Engineer**

1. Owner shall pay Engineer for services rendered under this Task Order as follows:

Lump Sum	\$30,852
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2. Bid advertising costs are included.

3. The anticipated distribution of fees is:

Preliminary Engineering and Survey	23%
Final Design	33%
Bidding Phase Services	13%
Construction Phase Services	32%
Total	100%

4. The terms of payment are set forth in the Agreement with the following modifications: **None**

**6. Other Modifications to the Agreement:**

Other terms and conditions of the Agreement that are modified in this Task Order are: **None**

**7. Attachments: None**

**8. Terms and Conditions**

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

OWNER:

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

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

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

ENGINEER:

By: Mike Berg

Title: Principal/Project Manager

Date Signed: 11/9/22

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: \_\_\_\_\_

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

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Mike Berg

Title: Principal/Project Manager

E-Mail Address: Mike.Berg@ApexEngGroup.com

Phone: 701-323-3952

Task Order Form

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11-9-22

Bismarck Parks & Recreation District  
Attn: Kevin Klipfel  
400 E Front Ave  
Bismarck, ND 58504

RE: Resignation request

Dear Kevin

As I have won the election for Burleigh County Commissioner, I am requesting to be relieved of my position as a Bismarck Parks and Recreation Commissioner effective at the end of 2022.

Thank you

Wayne Munson