



Bend Metro Park & Recreation District

September 18, 2018

# Board of Directors Agenda and Reports

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



*play for life*



## **Our Vision**

To be a leader in building a community connected to nature, active lifestyles and one another.

## **Our Mission**

To strengthen community vitality and foster healthy, enriched lifestyles by providing exceptional park and recreation services.

## **We Value**

Excellence by striving to set the standard for quality programs, parks and services through leadership, vision, innovation and dedication to our work.

Environmental Sustainability by helping to protect, maintain and preserve our natural and developed resources.

Fiscal Accountability by responsibly and efficiently managing the financial health of the District today and for generations to come.

Inclusiveness by reducing physical, social and financial barriers to our programs, facilities and services.

Partnerships by fostering an atmosphere of cooperation, trust and resourcefulness with our patrons, coworkers and other organizations.

Customers by interacting with people in a responsive, considerate and efficient manner.

Safety by promoting a safe and healthy environment for all who work and play in our parks, facilities and programs.

Staff by honoring the diverse contributions of each employee and volunteer, and recognizing them as essential to accomplishing our mission.

*play for life*

District Office | Don Horton, Executive Director

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# Board of Directors

September 18, 2018

District Office Building | 799 SW Columbia | Bend, Oregon



## 7:00 p.m. REGULAR MEETING

### VISITORS

The Board welcomes input from individuals who wish to speak at our public meetings. Meeting attendees who wish to speak are asked to submit a comment card provided at the sign-in table. When invited to the podium, please state your name and address for the record and limit your comments to three (3) minutes. Thank you for your involvement and time today.

### CONSENT AGENDA

1. Meeting Minutes – 9/4/2018

### CONVENE AS THE CONTRACT REVIEW BOARD

1. Convene as the Contract Review Board to conduct a Public Hearing pursuant to ORS 279A & C for the use of the Construction Manager/General Contractor (CM/GC) process for the Drake Park Bank and Trail Improvement Project – *Brian Hudspeth and Dave Crowther (15 min)*
2. Adjourn Contract Review Board

### EXECUTIVE DIRECTOR'S REPORT

### BOARD MEETINGS CALENDAR REVIEW

### PROJECT REPORT:

### GOOD OF THE ORDER

### ADJOURN



#### Accessible Meeting/Alternate Format Notification

This meeting location is accessible. Sign and other language interpreter service, assistive listening devices, materials in alternate format or other accommodations are available upon advance request. Please contact the Executive Assistant no later than 24 hours in advance of the meeting at [sheilar@bendparksandrec.org](mailto:sheilar@bendparksandrec.org) or 541-706-6151. Providing at least 2 business days' notice prior to the meeting will help ensure availability.



## Board of Directors

September 4, 2018

District Office Building | 799 SW Columbia | Bend, Oregon

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### BOARD PRESENT

Brady Fuller, Chair  
 Ted Schoenborn, Vice Chair  
 Ellen Grover  
 Nathan Hovekamp

### ABSENT

Lauren Sprang

### STAFF PRESENT

Don Horton, Executive Director  
 Michelle Healy, Planning and Park Services Director  
 Julie Brown, Manager of Communications and Community Relations  
 Matt Mercer, Director of Recreation  
 Sheila Reed, Executive Assistant  
 Brian Hudspeth, Development Manager  
 Jeff Hagler, Park Stewardship Manager  
 Sasha Sulia, Superintendent of Park Operations  
 Heather Brenda, Aquatic Supervisor  
 Shannon Gilman, Aquatic Coordinator  
 Emma Bell, Lead Lifeguard  
 Kim Johnson, Community Engagement Supervisor  
 Colleen McNally, Marketing Manager  
 Sue Glenn, Recreation Services Manager  
 Perry Brooks, Landscape Architect

### 5:30 MEETING CONVENED

### WORK SESSION

1. Recreation Program Report: Lifeguard Program – *Heather Brenda, Shannon Gilman and Emma Bell*

Ms. Brenda introduced the lifeguard program explaining that it is a busy program with hiring, certifying and training lifeguards. She said that 55 new lifeguards have been certified and 25 have been recertified in the last 12 months.

Ms. Brenda spoke about the Starguard Lifeguard Program that is used at Juniper Swim and Fitness Center. Using the Starguard Program, lifeguard candidates are required to pass several

screenings before being hired and many levels of training before starting a shift. This program includes specific training with evidence based protocols; practices experiential learning, risk prevention and includes an annual audit. Mandatory monthly trainings are also included and consist of hands on training, CPR/first aid, and water rescue skills.

Ms. Brenda explained that the CPR/first aid protocols are updated every year and she works with Bend Fire and Rescue to be sure that the lifeguards are trained to their standards. A reduction in rescues has occurred over the last three years. She believes the reductions are due to working on prevention, rule enforcement, height signs for waterslides and better guardian supervision and compliance.

Ms. Bell talked about the Junior Lifeguard Program; there are 38 participants this year, ages 12-15. The junior lifeguards can move through the program and can be hired at 15 if they are able to demonstrate that they are responsible enough for the position.

The Board asked about the biggest age group of rescues, if there is any collaboration with other pool operations and the differences between the Starguard Program and other programs such as Red Cross. Ms. Brenda said it is the 4-year-old age group that sees the most attention in rescue situations. She said there is collaboration with other pool facilities through ORPA, lately topics have included recruitment and retention. Ms. Brenda said in relation to the differences in lifeguard programs that Starguard is more advanced in the techniques they teach. Some examples are: rescue breaths are done in the pool and then again out of the pool, leg grabs are used so that the rescuer doesn't have to dive as deep and is less risky for the rescuer than torso to torso contact, active and passive stabilization techniques for potential spinal injuries are used as needed, and training is more intense with monthly trainings and annual audits.

## 2. Foundation Update – *Kim Johnson and Julie Brown*

Ms. Johnson introduced the Bend Park and Recreation Foundation. She explained that the foundation was established in 1974 as a nonprofit with the purpose of supporting District programs, facilities and projects. The mission of the foundation is to preserve Bend's livability by enhancing our community's parks, trails and providing access and opportunity for all.

The Board of Directors is a small Board; they provide financial oversight for the corporation, support to events and activities and advocacy for parks and recreation in our community.

Currently there are three Foundation Board Members:

- Paul Taylor – Chair
- Jane Dunham – Vice Chair
- Debbie Ross – Secretary/Treasurer

The foundation has supported many projects over the years. Some of these projects include:

- Preserved the Hollinshead property

- Facilitated the donation of Tillicum Ranch
- Funded the original skateboard area at Ponderosa Park
- Purchased and restored the historic Bend Amateur Athletic Club (Old Bend Gym)
- Raised funds for land next to Shevlin Park to serve as buffer with future development
- Funded and built two covered shelters and a playground at Big Sky Park
- Raised funds to support development of the Deschutes River Trail
- Generated community support for construction of Farewell Bend Park
- Hosted the Gopher Broke Scramble Golf Tournament 2003-2016

In addition, the foundation has been a fiscal sponsor to:

- Heroes Memorial Plaza at Brooks Park
- Pickle ball Complex at Pine Nursey Park
- Millers Landing Community Garden

The foundation also acts as a portal for community donations that support recreation scholarships, therapeutic recreation (supported with the Opdycke Fund) and programs at District facilities. This includes an annual allocation to needs-based assistance, the gap fund (provides supplemental financial support to help reduce barriers for participation) and funding for Days of Play.

Ms. Johnson went on to explain the legacy for the future through Foundation Endowment Funds. This includes the Access for All Fund (needs-based assistance) and Luke Damon Youth Sports Fund (scholarships for kids to play sports).

#### Opportunities

- Support to District approved community sponsored projects
- Growing the endowment funds
- Seeking community opportunities to raise scholarships funds, promote awareness for needs based assistance programs

Ms. Johnson said one of the challenges the foundation has is sustaining operating costs. Costs such as: tax filing, insurance, bookkeeping etc. were covered through the golf tournament fundraiser. Since the golf tournament is no longer in existence, the foundation has had trouble covering these costs. Some staff members contribute money for this purpose to help out.

Ms. Brown added that discussions have been had at the Executive Team level to discuss the role of the foundation, at this point the team is really comfortable with the support the foundation provides to the various groups. The place where the foundation is feels right for the amount of needed services.

The Board asked questions about grant writing for the foundation and other fundraising. Ms. Johnson responded that the foundation does not write any grants. If the foundation were to write grants, in order to receive grant funding, there is typically an expectation that the

Foundation Board Members would contribute funds as well. This is an idea to consider, but it has not been the expectation of Board members. The composition of the Board would need to change if the Board expectation is to donate money and fundraise. She said fundraising is difficult in Bend because there are a lot of groups trying to raise money. The Gopher Broke Golf Tournament had run its course and it ended because the dollars raised did not justify the staff time it took to put on the event.

3. Cost Recovery Guidelines for Rentals and Special Events – *Matt Mercer and Michael Egging*

Mr. Egging showed these two tables. They have been shown before; he asked that the Board keep these in mind as he moves through the presentation that shows the impact of the recommendations on the fees. He explained the Cost Type Chart pointing out that the green shaded areas are the only costs that the District is trying to recover; the orange areas represent uncaptured costs, or subsidized costs. The next chart shows the recommended cost recovery levels for each type of function and renter.

Facility Type	Cost Type					
	Reservation Costs	Direct Service Costs	Operating Costs	Organizational Support Costs	Capital Improvements	Initial Investment
Parks and Shelters	Yes	Yes	No	No	No	No
Athletic Fields	Yes	Yes	No	No	No	No
Operated Recreation Facilities <small>(ISFC, Pavilion, Senior Center)</small>	Yes	Yes	Yes	No	No	No
Rental Halls	Yes	Yes	Yes	Yes	Yes	No

	Expression/ Incidental	Partner	Non-Profit	Private	Commercial
Community Events	0%	0-50%	50-75%	N/A	100-125%
Athletic Field Sports User Groups	N/A	0-50%	75-100%	100-125%	125-150%
Operated Facility Sports User Groups	N/A	0-50%	75-100%	100-125%	125-150%
Exclusive Rentals	N/A	0-50%	100-125%	125-150%	150-200%

Mr. Egging spoke about applying the cost recovery guidelines to our rentals today. He said that the fees at other agencies were looked at around the state for comparison; this research supports the increases that are recommended. The guidelines also follow the same philosophy as the District’s fee-based recreation programs. The recommendations, if applied, will result in an overall increase in revenue. However, this process is more about aligning rentals with the District tax use & fee philosophy, than it is an effort to just generate more revenue. He reiterated from last meeting that the current rental revenue is approximately \$500,000 and accounts for only about six percent of all fees and charges gathered by the District. This is a one-time realignment.

Mr. Egging explained applying cost recovery guidelines:

- Calculate current cost of providing service
- Apply 5 percent annual index for estimation future costs
- Determine the fee adjustment needed to align with cost recovery targets
- Plan fee implementation strategies (one time or phase in, fee structure changes)
- Future fees after adjustments

Next he reviewed the cost recovery overview and said we are close with some current fees, others are not far out of alignment, but there are a few outliers that are substantially out of alignment.

Mr. Mercer reviewed the adjustments that need to be made in each category. He showed the following slides and explained the reasons for the adjustments. Several of these costs have not been raised in many years and he commented that they are well below the costs charged by other agencies in the state.

<p><b><u>COMMUNITY EVENTS</u></b></p> <p><b>Non-profit: Current 40%/Target 50%-75%</b></p> <ul style="list-style-type: none"> <li>• Current Base Fees: \$490-\$1,045 per day</li> <li>• Fee Adjustment</li> </ul> <p>Year 1: + ≈\$75-\$160 per day Year 2: + ≈\$85-\$180 per day</p> <p><b>Commercial: Current 89%/Target 100%-125%</b></p> <ul style="list-style-type: none"> <li>• Current Base Fees: \$710-\$1,760 per day</li> <li>• Fee Adjustment</li> </ul> <p>Year 1: + ≈\$140-\$350 per day Year 2: + ≈\$170-\$420 per day</p>	<p><b><u>SPORT USER GROUPS AT THE PAVILION</u></b></p> <p><b>Non-profit: Current 158%/Target 75%-100%</b></p> <ul style="list-style-type: none"> <li>• Current Fees: \$200 per hour</li> <li>• Fee Adjustment <ul style="list-style-type: none"> <li>– Reduce practice fee to \$150</li> <li>– Increase tournament fee to \$250</li> </ul> </li> </ul>
<p><b><u>SPORT USER GROUPS AT JSFC</u></b></p> <p><b>Non-profit: Current 70%/Target 75%-100%</b></p> <ul style="list-style-type: none"> <li>• Current Fees: \$10 per lane hour</li> <li>• Fee Adjustment <ul style="list-style-type: none"> <li>+ \$1 per lane hour</li> </ul> </li> </ul> <p><b>Swim Club: Current 40%/Target 75%-100%</b></p> <ul style="list-style-type: none"> <li>• Current Practice Fees: \$24-\$29 per month per swimmer</li> <li>• Current Meet Fees: \$12.50 per lane hour</li> <li>• Fee Adjustment <ul style="list-style-type: none"> <li>-Revise fee structure; phase-in over 2-3 years</li> <li>-Keep meet fee the same</li> </ul> </li> </ul> <p><b>HS Water Polo Clubs: Current 26%/Target 75%-100%*</b></p> <ul style="list-style-type: none"> <li>• Revise fee structure; phase-in over multiple years</li> </ul>	<p><b><u>SPORT USER GROUPS ON ATHLETIC FIELDS</u></b></p> <p><b>Nonprofit: Current 27%/Target 75%-100%</b></p> <ul style="list-style-type: none"> <li>• Current Fees (per field) <ul style="list-style-type: none"> <li>\$5 per hour for practice use</li> <li>\$100 per day for game use</li> </ul> </li> <li>• Fee Adjustment <ul style="list-style-type: none"> <li>Year 1: + \$5 per hour for practice use</li> <li>+ \$50 per day for game use</li> <li>Future: + \$5 per hour for practice use</li> </ul> </li> </ul> <p><b>Commercial: Current 107%/Target 125%-150%</b></p> <ul style="list-style-type: none"> <li>• Current Fees (per field) <ul style="list-style-type: none"> <li>\$200 per day</li> </ul> </li> <li>• Fee Adjustment <ul style="list-style-type: none"> <li>+ \$50 per day</li> </ul> </li> </ul>



**HOLLINSHEAD AND ASPEN HALL**

**Non-profit: Current 175%/Target 100%-125%**

- Current Fees: \$35-\$65 per hour
- Fee Adjustment  
Decrease ≈\$10 per hour

**Private: Current 110%/Target 125%-150%**

- Current Fees: \$450-\$1,050 per day
- Fee Adjustment  
+ ≈\$0-\$350 per day

**Commercial: Current 115%/Target 150%-200%**

- Current Fees: \$585-\$1,365 per day
- Fee Adjustment  
+ ≈\$300 per day

**PAVILION**

**Non-profit: Current 100%/Target 100%-125%**

- Current Fees: \$1,000 per day
- No Fee Adjustment

**Private: Current 125%/Target 125%-150%**

- Current Fees: \$1,250 per day
- Fee Adjustment  
+ ≈\$50 per day

**Commercial: Current 145%/Target 150%-200%**

- Current Fees: \$1,500 per day
- Fee Adjustment  
+ ≈\$100 per day

**SENIOR CENTER – EVENT ROOM**

**Non-profit: Current 100%/Target 100%-125%**

- Current Fees: \$45-\$52.50 per hour
- No Fee Adjustment

**Private: Current 140%/Target 125%-150%**

- Current Fees: \$55-\$75 per hour
- No Fee Adjustment

**Commercial: Current 175%/Target 150%-200%**

- Current Fees: \$65-\$97.50 per hour
- No Fee Adjustment

**PICNIC SHELTERS**

**Non-Profit: Current 100%/Target 100%-125%**

- Current Fees: \$60-\$132
- No Fee Adjustment

**Private: Current 100%/Target 125%-150%**

- Current Fees: \$60-\$132
- Fee Adjustment  
+ ≈\$20-\$28

**Commercial: Current 120%/Target 150%-200%**

- Current Fees: \$75-\$165
- Fee Adjustment  
+ ≈\$25-\$35

The Board asked questions about how these costs will be implemented and absorbed by the users, particularly for nonprofits. It was recognized by the Board that the costs will likely be passed on to the individual players, but should not create a big impact to the individual players. The phase in plan will help users and clubs to plan ahead for the fee increase. Mr. Egging assured the Board that there will be outreach with the clubs ahead of the changes as well.

The Board showed concern for charging more than 100 percent of the cost recovery for commercial users that are profiting off of the use of the facility. They talked through the costs understanding that the excess recovery can go into the longer term subsidization of more community oriented events. Executive Director Horton pointed out that there are still costs attributed to these rentals that are subsidized as referenced on the Cost Type Chart. He also stated that staff run events are scrutinized through a budgeting process to see if it is a feasible (affordable) project for the District; the commercial rentals are subsidized automatically as part of the rental without the benefit of the budgeting process and impact on staff. In actuality, they receive the priority over how the parks are being used, even over the District staff.

Mr. Mercer explained all the slides and the impact to the various groups; some groups will see a cost increase, while others will see a decrease. This alignment brings the fees to an equitable distribution among users and groups.

The Board discussed the importance of stressing to users that cost recovery levels are not recovering all costs with the fee increases.

Mr. Egging reviewed the next steps:

- October 2 Board Meeting: Board approval of cost recovery levels
- Finalize plan to adjust fees and/or level of service to support cost recovery targets
- Coordinate with other providers/venues
- Inform stakeholders of adjustments, where feasible
- Begin implementing fee schedules (Nov.-Jun.)

### **7:00 p.m. REGULAR MEETING**

#### **VISITORS**

Mary Angellotti and Cindy Murphy: Ms. Murphy said that she disagrees with the comment that was published in the newspaper that there is not a lot of opposition to taking out the covered bridge in Shevlin Park. She presented a signed petition with over 200 signatures to keep the bridge in place. She asked why the decision to tear down the covered bridge was made without public input. Ms. Murphy would like to use the money that has been allocated for the project to repair the bridge instead of tearing it down. She understands that the covered bridge was built for a movie, but the trestle is historic. She added that the bridge is part of the history of many Bendites. Ms. Angellotti stated that when she spoke to all the people while gathering signatures for the petition, people shared their history and memories of the bridge. They would all like to see it repaired. She mentioned that the bridge has tourist value and is rated as one of the top 25 places to see in Bend on Trip Advisor. Both asked the Board to reconsider their decision and repair the bridge.

Michele Moore: Ms. Moore expressed her concern about drone use in parks. She is remarked that our parks are beautiful and peaceful. She mentioned ways that people recreate in the parks that do not have a negative impact on other people. She said that a drone is fun for one and the rest of the park users have to live with the noise, and the noise is annoying, unlike noise created by children and people having fun. Drones are intrusive and she asked why does a drone user need a landscaped park? She recommended an altitude restriction and regulation to how close a drone can be flown near people. Ms. Moore made some recommendations: the District could require a permit for drone users with a safety course requirement; children should not be able to use without an adult, create something that provides structure for drone use and create a park area just for drone use. Other ideas included: ban drones from certain parks and limit the hours they can be used.

Ryan Thomas: Mr. Thomas thanked the Board for the opportunity to speak. He is a hobbyist and owns a local hobby shop. He said he would like to address some myths vs. facts and stated that he agrees with many of things that Ms. Moore said. Most drone users don't want conflicts in shared spaces. Some of the myths are that drones are used for spying, this comes from the military and Hollywood. Drones are a terrible platform for this because the cameras aren't good

enough. Another myth is that drones are dangerous; he knows of no evidence that anyone has been injured and feels that this comes from perception rather than actual use. Using resources to ban drones or monitoring people using drones can be better used for signage that separates the spaces and guidelines for users. He would like the Use of resources to be productive and hopes that changes made are based on facts and not perceptions.

David Leath: Mr. Leath is a commercially licensed drone operator for the City of Bend. He said there are about ten people operating drones for the city, serving as police and first responders. The parks are an incredible resource for us to use as practice. He said that as a practice, they use the parks in less busy times and do not fly in parks like Shevlin Park. The FAA does regulate the use of drones and has an entire set of rules. The rules are on the FAA website. Mr. Leath would like the District to keep the ability to fly drones in the parks. He said that there is a need to have more outreach and let people know what they are doing with drones. Drones are valuable for search and rescue, police officers carry them in cars for search and rescue, firefighters use to look at fires, and they are used for inspection of utilities and are a valuable resource.

James Mahoney: Mr. Mahoney is in favor of aircraft in parks. He and a small group of friends use Tillicum Park to fly radio controlled aircraft. The average age of the group is 80 years old. The group likes this park because the park is close to town, not well used and accessible to people with mobility issues. He describes the aircraft they fly as silent. If denied access to do this in the park, it would be very difficult to find an alternative property that offers the proximity and access for no cost.

Bob Wren: Mr. Wren said he was hoping to hear from more people that are against the use of drones in parks to gain a better understanding of why people don't like them. When Mr. Wren is flying in parks, people ask about the drones and are very curious. His experience is that drone flyers want to avoid conflict with other park users. Even when flying drones in an area that people enter into, they will leave the area to avoid conflict. The idea of creating a place for drones to fly like at Tillicum Park would likely get the users to go to that park. In response to the comment about not flying in the mornings or evenings, he said that doesn't work because the winds pick up in the middle of the day.

Ryan Jordan: Mr. Jordan represents a club called Central Oregon Porch Flyers, he said the goal of the club is to have fun and spend time with friends. He said his experience with flying in parks has been very positive, he goes out of his way to show people what the drones are doing by sharing goggles with others so they can see what the drone sees. He stated that the goal is not to harass or spy and agrees that there are parks that should not allow drones. Mr. Jordan likes to fly in Pine Nursery, Big Sky and Tillicum Parks. He commented that a runway in Tillicum Park would bring more people to that location. Pine Nursery and Big Sky are good parks to use because of proximity, but hard to use because they are so busy with sports. Some flyers use cameras to get good nature shots in the mornings and evenings so limiting hours would be difficult. He closed with stating that their group is supportive of rules that promote good, safe flying.

Calvin Chen: Mr. Chen is a drone racer, as a racer he said he is very aware of safety, noise and where to fly his drone. He said that there is a community of people that will help new users to be aware of these things too. Mr. Chen understands the noise issue and remarked that his wife hates the sound of drones. He thinks that the time of day should be considered for drone use. Mr. Chen loves flying in parks especially when no one is around. He said that kids love these toys and are very interested in them. Mr. Chen is involved with school programs that show kids the technology it takes to build a drone; he teaches them about the different types and how to use them.

Dan Dawson: Mr. Dawson flies with the local search and rescue agencies as a first responder. He practices in the parks. If there are people around, he said he will leave. He told the Board he really appreciates being able to use the parks for practice and he supports the existing rules.

Jaren Morris: Mr. Morris has been flying model plans since he was a child, he moved onto drones as an adult. He said he appreciates being able to use the parks for flying and there have been a lot of opportunities for him to share his experiences. Beyond flying, he has met other people that share his interest in the parks. Mr. Morris likes to share his experiences with other people and brings an extra set of goggles to show people what he is doing with the drone. He stated that he does agree that there are some parks that should not allow drones. Shevlin park is a good example, he said it is a great park to fly, but would be disturbing to park users and wildlife. He stated that as a community, they do their best to make sure that they are not disturbing others.

***Director Fuller closed the public hearing at 7:43 p.m.***

#### **CONSENT AGENDA**

1. Meeting Minutes – 8/21/2018

***Director Grover made a motion to approve the consent agenda. Director Schoenborn seconded. The motion passed unanimously, 4-0.***

#### **BUSINESS SESSION**

1. Park Rules Second Reading and Adoption of Ordinance No.11 – *Jeff Hagler*

Ms. Sulia spoke about the public comments that were received and the redline changes that have been made to the park rules. Staff contacted the media, put on district website and social media sites and directed outreach to user groups in order to solicit responses from the community. The District received comments from 29 individuals, 24 comments were related to drones, four on e-bikes and one on various other topics.

Mr. Hagler discussed the key public comments

E-Bikes: Comments were about speed and definition of e-bikes

Bridges: Comments about safety of tethering, this resulted in the addition of Article 7.8

Drones: Comments about noise, privacy and safety

Mr. Hagler stated that past experience does not reflect that drones are a problem in the parks. He added that the rules have not changed; the rule state that drones are allowed in all parks.

Ms Sulia said Ordinance 11 is the document of rules that apply to all parks. In addition, there are guidelines for all the facilities or sites. The guidelines provide more detail, are on the website and at shops that sell some of the features that are covered. Guidelines cover slack lining and hammocks, drone use, geocaching, etc. There are also guidelines available that cover facility rules (JSFC, skate parks, dog parks).

Mr. Hagler discussed changes from the first reading that include:

- Restroom use: Language clarification of a person assisting a child or person of opposite gender.
- Electric bikes: Will be restricted where other bikes are also restricted, as requested by the Board at the first reading.
- Slacklines, hammocks, geocaching and drones: All have guidelines specific to their use.
- Drones: Changed word drone to unmanned aerial vehicles.
- Tethering: Added tethering to bridges to the rules.
- Park hours: Reworded Sunrise to Sunset as requested by the Board.
- Appeals: Added language to better define appeals as requested by the Board.

The Board discussed the idea of banning drones from Riley Ranch and Shevlin Park due to the public comments that were received tonight and through email and phones calls since the first reading of the rules. It was suggested that the staff discuss and report back to the Board about the decision. Executive Director Horton said that there has not been much conflict with drones in the parks. The District needs to consider that it cannot control airspace and could consider voluntary compliance of park users. Recreational immunity could be jeopardized with this type of ban and will also need to be considered. Ms. Clason remarked that the District cannot control airspace, but could prohibit launching and landing the parks.

The Board encouraged some discussion of creating facilities at Tillicum Park for drone use. It was also noted that there is a need for effective education on the website and in the community at specialty shops that sell the devices that are being discussed.

***Director Grover made a motion to conduct the second reading of Ordinance No. 11 by title only. Director Schoenborn seconded. Motion passed unanimously, 4-0.***

***Director Fuller read the second reading of Ordinance No. 11 with changes reflected in the second reading***

**Director Schoenborn made a motion to adopt Ordinance No. 11, Park Rules & Regulations, replacing Ordinance No. 9. Director Grover seconded. Motion passed unanimously, 4-0.**

2. Approve IGA with City of Bend for Quimby and 8<sup>th</sup> Ave. – *Perry Brooks (10 min)*

Mr. Brooks spoke about the development of Goodrich Park that has prompted the needed improvements to the area surrounding the park. He said that as part of the development requirements the District will be required to make ROW (right of way) improvements on frontage on both Quimby Avenue and 11<sup>th</sup> Street. In addition to those improvements, the District will also be extending the sidewalk along the west side of 11<sup>th</sup> Street from the park boundary to the intersection of Penn Avenue and 11<sup>th</sup> Street.

Mr. Brooks said that in an attempt to create a safer crossing of Penn Avenue to the neighborhood to the South, that this park is meant to serve as their neighborhood park, District staff is working closely with the City on identifying solutions to get bikes and pedestrians across Penn Avenue.

The breakdown of the shared project is as follows:

#### District

- Manage the design of the ROW improvements
- Bid and contract for the construction of the improvements
- Provide construction oversight during the duration of construction
- Provide billing information to the City at the end of the project for reimbursement

#### City of Bend

- Provide input at milestones during the design of the improvements
- Provide input during the construction of the improvements
- City will provide permits for their portion of the improvements
- Provide the District reimbursement at the end of the project for all costs associated with the design and construction of the improvements

Mr. Brooks talked about the public outreach efforts. He remarked that District staff heard from neighbors and their concerns about increased speed and cut through traffic on Quimby Avenue from people trying to avoid traffic congestion on Neff Avenue. In an effort to address these concerns, District staff and the design team are working closely with the City on creating a road design that is narrower in attempt to slow traffic and discourage drivers from using it as a cut through.

The District's responsibility for the ROW improvements ends about 250 feet short of the intersection of 8<sup>th</sup> Street and Quimby Avenue. The City will be completing this section of Quimby Avenue as well as sidewalk improvements on the east side of 8<sup>th</sup> Street.

The IGA spells out the roles and responsibilities for both the District and the City. The District will provide project management during the design and construction of the improvements.

Within the agreement there are milestones that will allow the City to complete review of the design and provide oversight during construction. The City will reimburse the District for the costs associated with design and construction at the end of the project.

Director Fuller asked if any utilities want to lay any lines down before paving the road. Mr. Brooks said that has been checked, but he will ask again to be certain.

**Director Hovekamp moved to authorize the Executive Director to negotiate and finalize an IGA with the City of Bend for the road improvements on NE 8<sup>th</sup> Street and Quimby Avenue. Director Grover seconded. Motion passed unanimously, 4-0.**

3. CM/GC for Drake Bank and Trail Improvement Project – *Brian Hudspeth (30 min)*

Mr. Hudspeth recommends using a Construction Manager/General Contractor (CM/GC) for the Drake Park bank and trail project. He presented an outline of the timing as follows:

- Aug 22: Burden of Proof and required statewide posting sent out for publishing
- Sept. 4: Update Board of Directors on status
- September 18 – Convene Contract Review Authority to hold a public meeting and adopt a resolution to use CM/GC alternate form of contracting
- September 19 – Publish request for proposal (RFP) for CM/GC
- November 6 – Award CM/GC contract

Mr. Hudspeth explained the reasons for using a CM/GC saying that the primary reason for a CM/GC on this project would be for constructability. Many areas of the trail through zones four and five have very limited and difficult access. The CM/GC will also be used for estimating the final sets of construction documentation, and would provide better procurement and advanced scheduling.

Director Fuller asked the following questions:

Is the consultant on this project advising the District for the CM/GC?

Is there a budget for the contractor?

Does the contractor include the overhead and profit in the bid?

Is the work that the contractor can self-perform limited?

Mr. Hudspeth replied that the consultant is not giving any input on the CM/GC and staff is comfortable managing this based on prior experience; however, the consultant does support using a CM/GC. The RFP lists a dollar figure that is presumed to be reasonable for this work. It is up to the contractor to define their costs in the bid as well, and it is calculated into the scoring of the proposals. Mr. Hudspeth said that the overhead and profit is negotiated later in the guaranteed maximum price (GMP). The RFP does call out a range for the general contractor fee of 5-10 percent and the contract does stipulate what can be included in this fee. State law dictates the work that can be self-performed through the ORS regulations.

Director Fuller addressed the Board commenting that he supports this effort because he believes that this is more about risk management than saving money.

### **EXECUTIVE DIRECTOR'S REPORT**

Mirror Pond Solutions Workgroup: Executive Director Horton passed out a summary of key facts and information (document is attached to this report). The first part of the handout describes the history of the project and the second part is a spreadsheet that looks at funding options. Executive Director Horton said that when the committee met, it wasn't to come up with recommendations on how to fund the sediment removal; it was to come up with options on how to fund it. The options were broken down into categories of amount of money and timing of money that could be secured. He stated that the purpose of this tonight is to give the Board information on what occurred and to discuss next steps. Executive Director Horton commented that Councilor Abernethy pointed out at the meeting that if the group wants to seek grant money, the workgroup would need to look at the total project. The project encompasses the dredge, the banks, storm water, etc. Executive Director Horton said the District and City both realize that the general fund cannot be taxed a lot for this and the goal is to find alternate funding. He reiterated that if the expectation is that the general funds from the District and City will pay for this then it is probably not going to happen. Making this clear in the meeting resulted in a very positive approach to seeking other opportunities as a solution.

South UGB Bridge Project: Mary Orton has been hired by Oregon Consensus; she is back from her summer retreat. Executive Director Horton and Ms. Healy have met with her and walked the site for the proposed bridge. She has been given names of about 20 people to interview that are on both sides of the issue. She is starting right away. Executive Director Horton says he feels optimistic that this is the right way to go. The consensus building has not yet started; the interviews are to see if this process will work. Ms. Orton will evaluate this as she interviews those involved. The contact list came from the District and she is asking those she interviews if there are others she should speak with as well. She has also vetted the list that was provided.

Big Sky Master Plan: Executive Director Horton reported that the hearings officer has made a ruling on the plan. Field lighting will not be allowed, lighting of the RC track or slopestyle course will not be allowed, eliminated access points to the old fire station on Hamby Road and Neff Road, but leaves one of the access points on the south side open for access. Neither slopestyle course nor the RC vehicle track will be allowed use for races or competition. Some of these decisions the District will be appealing. The District wants to be able to have the competitions as they are allowed today. No trails within 250 ft. from the northern boundary will be allowed to have events (this means no slopestyle events). No use of permanent amplified sound. The rule today says that temporary amplified sound can be used for events, but this ruling now says this will not be permitted. The sound ruling will be appealed as well, but will not appeal the lighting restrictions or access points.

Empire Road Roundabout: The District has a signed agreement now. The District is providing the City with land for the roundabout. The City will provide the land for the Northpointe Park,



build an undercrossing for the trails, have some parallel trails, in some cases there will be trails instead of sidewalks. If improvements are being made to the park, the District has the right to approve the plans and will take over ownership when finished. A pedestrian bridge that links the park and the school and goes over the canal will provide safe passage for children walking to school.

Two volunteers from the Board are needed to codify personnel policies. Directors Fuller and Sprang will volunteer for this.

**BOARD MEETINGS CALENDAR REVIEW**

**PROJECT REPORT: Attachment in Board Report**

**GOOD OF THE ORDER**

**ADJOURN 9:17**

Prepared by,  
Sheila Reed  
Executive Assistant

\_\_\_\_\_  
Brady Fuller, Chair

\_\_\_\_\_  
Ted Schoenborn, Vice-Chair

\_\_\_\_\_  
Ellen Grover

\_\_\_\_\_  
Nathan Hovekamp

\_\_\_\_\_  
Lauren Sprang

## **MIRROR POND SUMMARY OF KEY FACTS AND INFORMATION**

### **DRAFT 8-10-18**

#### **The Problem**

- Mirror Pond is a collector for sediment flowing through the Deschutes River, which backs up into the pond and further upstream as a result of Newport Avenue Dam, owned by Pacific Power.
- The 100-year-old banks along the river are currently failing and storm drains built several decades ago need to be replaced or capped.
- The pond was last dredged in 1984 to remove sediment, which was funded by a federal grant, City of Bend, Bend Parks and Recreation District (BPRD), and citizens.

#### **History and Timeline in Studying Options and Developing a Solution**

- The technical issues on sediment removal were studied in 2006 by a stakeholder committee and resulted in a report presented to City Council.
- The Mirror Pond Steering Committee was created by City Council in 2009 to oversee the development of a series of scenarios to address the sediment build-up and was comprised of representatives from BPRD, City of Bend, environmental organizations, business and neighborhood associations and other community stakeholders.
- This committee formed an Ad Hoc Advisory Committee to study and negotiate a potential agreement with Pacific Power on the future of the Newport Avenue Dam. The Ad Hoc Advisory Committee was comprised of City Councilor Mark Capell, BPRD Executive Director, Don Horton and Mirror Pond Steering Committee member, Ned Dempsey.
- The City Council and BPRD Board unanimously approved a resolution in December 2013 to affirm the recommendation of the Mirror Pond Ad Hoc Advisory Committee to pursue the preservation of Mirror Pond.
- Based on this direction, scientifically based illustrations were developed to depict visual concepts that were then taken to the public for input.
- Community meetings and on-line surveys resulted in input from over 4,000 people.
- Community input indicated an even division between those who preferred the river to flow in a more natural-like manner versus those who preferred the current look of the pond.
- In an effort to respond to an evenly divided community, a third option was developed that reintroduced habitat to the banks of the river along Drake Park, created fish passage, and preserved the water elevation of Mirror Pond. This option was supported by 74% of those polled.
- Community feedback of this third option addressed seven key interests and values identified in a public process, including:
  - Maintain the historic character and picturesque appeal of Mirror Pond.
  - Maintain or improving public spaces.
  - Enhance natural habitat.
  - Provide fish passage.
  - Reduce the quantity of sediment deposited in the river/pond.
  - Reduce the frequency that the pond needs to be dredged.
  - Identify funding with minimal burden on taxpayers.
- This input culminated with a resolution approved by both the BPRD Board and City Council in March 2015 that reflected these community values.
- The City and BPRD shared in the cost of creating this vision and spent \$275,840. Goals identified in this resolution include:
  - Maintain Mirror Pond in near historic form
  - Enhance habitat
  - Maintain or improve public access
  - Identify funding other than tax dollars.
  - Reduce the frequency and quantity of future sediment efforts
- To date, BPRD has spent an additional \$205,325 on bank and trail design

### **Mirror Pond Dam Ownership**

- Upon passage of this resolution, the Mirror Pond Ad Hoc Advisory Committee participated in discussions with Pacific Power lasting from 2014 to 2015 about future ownership of Newport Avenue Dam given their initially stated desire to dispose of this asset.
- In 2016, Pacific Power changed direction and ultimately decided to retain ownership of the dam, which narrowed potential solution sets.
- Pacific Power stated that after exploring what divestment of the dam looked like for their organization and the community, it made sense to take a step back and re-evaluate and take some of the uncertainty off the shoulders of the community.

### **Private Sector Involvement**

- In 2013, Mirror Pond Solutions (MPS), led by Bill Smith and Todd Taylor, was formed to explore private sector involvement in preserving Mirror Pond.
- MPS purchased land beneath the surface of Mirror Pond in 2015.
- MPS joined the City and BPRD as an interested party in negotiating the future of the Newport Avenue Dam with Pacific Power and became involved with the Ad Hoc Advisory Committee.
- After Pacific Power announced their intent to keep the Dam, MPS initiated efforts to secure the permits necessary to dredge Mirror Pond.
- MPS signed a non-binding memorandum of understanding with BPRD, which calls for both entities to work together toward the resolution of the Mirror Pond Project by identifying responsibilities of both entities and calls for MPS to donate the land beneath Mirror Pond to BPRD upon completion of dredging and setting in place a solution to fund future care of the pond.
- Since 2017, MPS has organized community fundraising efforts that have raised over \$320,000 towards dredging Mirror Pond.
- In the Spring of 2018, MPS received notice that all permits necessary to dredge Mirror Pond were approved, including US Army Corps of Engineers (USACE), Oregon Dept. of State Lands (DSL), and Oregon Dept. of Environmental Quality (DEQ).
- To date, MPS has spent \$434,000 on permitting and other direct costs
- MPS has explored financing options and are willing to carry a note to finance the project over a ten-year period.

### **Summary of Project Elements**

- In an effort to reflect the community values stated in the Vision Document adopted by the City Council and BPRD Board by resolution in 2015, preserving Mirror Pond can be broken into four major elements including:
  1. Connecting the Deschutes River Trail;
  2. Restoring the banks along the pond;
  3. Replacing and/or modernizing stormwater outfalls; and
  4. Dredging accumulated sediment (both for present day and ongoing maintenance).
- Estimated costs and status for each of these elements are as follows:
  - Elements #1 and #2 are being led by BPRD and are currently at 60% design, estimated to cost \$6.5M upon completion.
  - Element #3 is being led by the City of Bend and has been included in the 20 yr. Stormwater Masterplan which includes replacement and/or modernization of the 13 outfalls, estimated to cost \$3.5M upon completion as well as additional costs estimated at \$8M to prevent sediment from entering into Mirror Pond (class V estimate).
  - Element #4 is being led by MPS and has developed a cost estimate for sediment removal at \$6.7M.

**Funding Options**

- In May 2018 at a joint meeting between the City Council and the BPRD Board, MPS requested that both bodies participate in a Working Group to explore funding options for dredging Mirror Pond
- MPS invited Council and Park & Recreation representatives to a meeting that was held on July 25<sup>th</sup> to share the history included in this outline as well as brainstorm funding options to be delivered by staff to the respective governing bodies.
- As discussed above, the project should best be thought of as including all four elements working together to preserve Mirror Pond for future generations. The cost estimates and funding gaps are summarized in the following table:

Project Element	Lead Agency	Cost Est.	Secured and/or Identified Funding & Source	Funding Gap	Possible Implementation Timeline
Trail Connection	BPRD	\$6.5M	\$6.5M - General Fund and System Development Charges	\$0	2015-2020
Riverbank Restoration					
Stormwater Outfalls	City of Bend	\$3.5M (+\$8M of CIP work to prevent future stormwater runoff)	Stormwater Fund	\$0	2015-2030
Dredging and ongoing maintenance	MPS	\$6.7M	TBD- see Exhibit A and Private Donations (\$320k to date)	\$6.4M	2016-2019
<i>Total Project</i>		<i>\$16.7M (\$24.7M including CIP)</i>		<i>\$6.4M</i>	

- A complete listing of funding options was discussed, including several criteria that further elicit viability, which can be found in 'Exhibit A'.

**Next Step**

- The City Council and Park and Recreation Board will receive this summary including funding options at their respective meetings in August 2018 and will make a decision on how to proceed.

FUNDING SOLUTIONS MATRIX		YES	LEGAL	NO	\$\$\$	VALUE	\$	<12 MO	TIMING	>36 MO	YES	SUSTAINING	NO
1	Increase Stormwater Charge	●	●	●	●	●	●	●	●	●	●	●	●
2	City Bond Measure (Operating Levy)	●	●	●	●	●	●	●	●	●	●	●	●
3	Franchise Fee Increase (PP&L)	●	●	●	●	●	●	●	●	●	●	●	●
4	Cash Contributions/In-Kind Contributions (Individual)	●	●	●	●	●	●	●	●	●	●	●	●
5	Grant	●	●	●	●	●	●	●	●	●	●	●	●
6	TRT (Transient Room Tax)	●	●	●	●	●	●	●	●	●	●	●	●
7	General Fund Contribution	●	●	●	●	●	●	●	●	●	●	●	●
8	Conservation based program to offset FF increase (PPL to fund)	●	●	●	●	●	●	●	●	●	●	●	●
9	Urban Renewal Funds	●	●	●	●	●	●	●	●	●	●	●	●
10	LID (local improvement district)	●	●	●	●	●	●	●	●	●	●	●	●
11	Sale of Surplus Property by Public Agency	●	●	●	●	●	●	●	●	●	●	●	●
12	"User Fee"	●	●	●	●	●	●	●	●	●	●	●	●
13	Bureau of Reclamation (BOR) funds	●	●	●	●	●	●	●	●	●	●	●	●
14	PPL Cash	●	●	●	●	●	●	●	●	●	●	●	●
15	Legislative Ask	●	●	●	●	●	●	●	●	●	●	●	●
INDIRECT SUPPORT FOR HEALTH OF RIVER													
16	BOR Operations (Wrcklup)	●	●	●	●	●	●	●	●	●	●	●	●
17	City Stormwater Project	●	●	●	●	●	●	●	●	●	●	●	●

Test 1 - Is it legal?  
 Test 2 - Does it raise very little, some, or all of the required funds?  
 Test 3 - Can it be implemented within permit timelines (12 months)?  
 Test 4 - Does it provide a mechanism for sustaining funds (for future)?

<b>LOCAL CONTRACT REVIEW BOARD AGENDA COMMUNICATION</b>
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<b>AGENDA DATE:</b>	September 18, 2018
<b>SUBJECT:</b>	Public Hearing – Construction Manager/General Contractor (CM/GC) Contracting Method for the Drake Park Bank & Trail Improvement Project
<b>STAFF RESOURCE:</b>	Brian Hudspeth, Development Manager David Crowther, Business Manager
<b>PREVIOUS BOARD ACTION:</b>	None – as the Contract Review Board
<b>ACTION PROPOSED:</b>	Conduct a Public Hearing to discuss the use of a CM/GC contracting method for the Drake Park Bank and Trail Improvement Project; adopt Resolution No. 417, Adopting Written Findings of Fact; Granting Bidding Exemption; Authorizing Construction of the Drake Park Bank and Trail Improvement project using a CM/GC; and Authorizing Selection by Request for Proposals
<b>STRATEGIC PLAN:</b>	
<b>Theme:</b>	Community Connection
<b>Objective:</b>	Analyze and Adapt to Changing Community Need
<b>Initiative:</b>	Acquire land, and plan and develop trails, river access, parks, natural areas and recreation facilities to meet identified community demand and future need.

**BACKGROUND**

The State of Oregon Revised Statutes require a public hearing be held for the Local Contract Review Board (LCRB) to take comments on the District's findings for an exemption from the competitive bidding requirements for certain public contract pursuant to ORS 279C.335. The District proposes to use the Construction Manager/General Contractor (CM/GC) alternative contracting method for the construction project known as the Drake Park Bank and Trail Improvement project. Findings to support this exemption are attached to Resolution No. 417, as Exhibit A. After receiving public comment, the Board shall close the public hearing. The Board shall then consider public comment, Resolution No. 417 and the proposed findings (Exhibit A).

If the Board adopts Resolution No. 417, exempting the Drake Park Bank & Trail Improvement project from competitive bidding and directs staff to use the CM/GC approach, the request for proposals (RFP) for the CM/GC contractor will be publicly advertised and will be open to all interested and experienced contractors. The RFP process will be fair and unbiased. The solicitation for CM/GC proposers will specify the methods by which the CM/GC shall competitively select other contractors and subcontractors to perform the work. In addition, in the event the CM/GC contractor (or affiliate) performs some portion of the work, the CM/GC will be required to include,

at a minimum, public opening of sealed bids in order to ensure competition. The RFP process will be publicly advertised and the process will be available to the public for review.

**BUDGETARY IMPACT**

The 2019-23 Capital Improvement Plan (CIP) allocates \$5,245,595 for project funding, of which, \$2,185,273 is property tax revenue, \$2,245,595 is System Development Charges (SDCs) and \$500,000 is alternate funding. Staff will likely apply for a local government grant next spring as alternate funding for this project.

At this stage the CM/GC contract will include only that portion of the work that includes the fee for pre-work services. The construction portion of the contract (the GC portion) and other construction management services will be funded after the pre-work services concludes and the bidding process is complete. The process leans to a guaranteed maximum price (GMP) which will be an exhibit to the CM/GC contract once approved by the Board.

**STAFF RECOMMENDATION**

Staff recommends the Board exempt the Drake Park Bank and Trail Improvement Project from competitive bidding and adopt Resolution No. 417 authorizing staff to use the CM/GC contracting method.

**MOTION**

***I make a motion to adopt Resolution No. 417 exempting the Drake Park Bank and Trail Improvement project from competitive bidding, and use the Construction Manager/General Contractor alternative contracting method to award a construction services contract for the Drake Park Bank and Trail Improvement project.***

**ATTACHMENT**

Resolution No. 417  
Exhibit A - Findings

**RESOLUTION No. 417**

**ADOPTING FINDINGS OF FACT, GRANTING BIDDING EXEMPTION, AND  
AUTHORIZING CONSTRUCTION OF THE DRAKE PARK BANK AND TRAIL  
IMPROVEMENT PROJECT USING THE CONSTRUCTION MANAGER/GENERAL  
CONTRACTOR (CM/GC) METHOD**

WHEREAS, the Board of Directors of Bend Park and Recreation District (“District”) is the Local Contract Review Board for the District, and in that capacity has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C, and

WHEREAS, ORS 279C.335(2) authorizes the Local Contract Review Board to exempt certain public improvement contracts from traditional competitive bidding and the District’s Public Contracting Rules authorize the selection of a contractor through the CM/CG process as set forth in Rule 137-049-0690, and

WHEREAS, the Board has determined that the Drake Park Bank & Trail Improvements should be constructed using a CM/GC process;

WHEREAS, a public hearing for the purpose of taking testimony of draft Findings of Fact justifying an exemption from traditional competitive bidding was held on September 18, 2018, as required by ORS 279C.335(5);

NOW, THEREFORE, the Board hereby resolves as follows:

**NOW, THEREFORE**, the Board of Directors, acting as the District’s Local Contract Review Board, hereby resolves as follows:

1. The written Findings of Fact attached hereto as Exhibit A are adopted.
2. An exemption from traditional construction bidding processes is declared and use of the CM/GC alternative form of contracting is authorized.
3. Staff is directed to execute the process for soliciting for and obtaining the services of a qualified CM/GC for the design and construction of the Drake Park Bank & Trail Improvements

ADOPTED by the Board of Directors on this 18<sup>th</sup> day of September 2018.

Attest:

---

Don P. Horton, Executive Director

---

Brady Fuller, Board Chair



**BEFORE THE BOARD OF DIRECTORS OF THE BEND METRO PARK AND  
RECREATION DISTRICT**

**Process for Using the CM/GC Method off Contracting for Construction of  
Drake Park Band and Trail Improvements**

INTRODUCTION. Due to the scope of the Drake Park Bank and Trail Improvements project, the complexity of trail design and in-water work, and the desire to identify, as early as possible in the construction process, any issues with the project design, the District staff is recommending that the District use the Construction Manager/General Contractor (CM/GC) with a Guaranteed Maximum Price (GMP) construction delivery method.

In summary, the CM/GC process consists of two parts: (1) An RFP for professional services to obtain a qualified person or firm to act as the construction manager; and (2) a determination of the costs of construction to be performed by the same person or firm acting as a general contractor, after quoting a guaranteed maximum price (GMP) for construction. Because this approach is an alternative to the traditional design-bid-build construction method contemplated by Oregon's public contracting code, use of this process requires that the Local Contract Review Board grant a specific exemption from the standard competitive bid process for the use of this contracting method.

Oregon Revised Statutes (ORS) 279C.335 permits the District's Board of Directors, acting as the Local Public Contract Review Board, to exempt specific projects from the standard competitive bidding requirements of ORS 279C after following required statutory procedures, specifically adopting written findings of fact justifying both use of an exemption from bidding and an alternative contracting method; holding a public hearing on the adoption of the findings; and declaring an exemption from competitive bidding. When approving the exemption the Local Contract Review Board "shall, where appropriate, direct the use of alternative contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods, which are also consistent with the public policy of encouraging competition."

The findings in support of the exemption must show that (a) the exemption is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts; and (b) awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the contracting agency or the state agency that seeks the exemption or, if the contract is for a public improvement described in ORS 279A.050 (3)(b), to the contracting agency or the public.

The findings must consider, but are not limited to, the following information:

- (a) Operational, budget and financial data;
- (b) Public benefits;
- (c) Value engineering;
- (d) Specialized expertise required;

- (e) Public safety;
- (f) Market conditions;
- (g) Technical complexity; and
- (h) Funding sources.

RECOMMENDATION. Board members are asked to review these Findings of Fact and Proposed Resolution, ask questions, take public comments, and provide input at the District Board's September 18, 2018 meeting. Board action on this proposal is recommended.

## **EXHIBIT A**

### **FINDINGS OF FACT**

#### **JUSTIFYING THE USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) FORM OF CONTRACTING FOR CONSTRUCTION OF THE DRAKE PARK BANK AND TRAIL IMPROVEMENTS**

Use of the CM/GC method to construct the Drake Park Bank and Trail Improvements should: (a) result in substantial cost savings; and (c) not encourage favoritism nor diminish competition. Specific findings substantiating these conclusions are as follows:

#### **COST SAVINGS**

1. **FINDING:** The CM/GC method will likely reduce financial risk to the District, resulting in cost savings.
  - A. **REDUCED FINANCIAL RISK POSED BY MARKET AND PROJECT CONDITIONS:** Because the project has a limited budget, it is essential to reduce the risk of cost overruns. Over and above the multitude of current, highly variable construction market conditions (e.g., competition of other projects, environmental issues that limit construction materials, shortage of qualified craftsman, etc.) that make it difficult to project construction costs and timelines, the complexity of this project makes it difficult to establish the best work sequence for ensuring the project is completed as efficiently as possible. Use of a construction manager to coordinate and supervise these processes is expected to minimize the variables that can result in increased costs.
  - B. **GUARANTEED MAXIMUM PRICE (GMP) ESTABLISHES A MAXIMUM PRICE PRIOR TO COMPLETION OF FINAL CONSTRUCTION DOCUMENTS:** Because the CM/GC participates in the design development phase, the person or firm will be able to obtain a complete understanding of the District's needs, the architect's design intent, the scope of the project, and the operational needs of District staff and those who utilize District services. This will result in a clearer understanding of the project scope needed to develop the guaranteed maximum price for construction. During this phase, the CM/GC will be able to offer suggestions regarding design improvement and constructability concerns, and make other suggestions for reducing

costs, and offer as fair and accurate guaranteed maximum price for construction.

2. **FINDING:** Early selection of the CM/GC creates more informed, better quality decision-making by the project construction team. A more efficient construction team saves the District money and provides other public benefits.

- A. **ADVANTAGES THE CM/GC BRINGS TO THE TEAM:** The technical complexity of this construction project will be best addressed through the CM/GC process.

The construction project is highly complex because it involves significant construction and re-construction of complicated sections of public trail, including in-water boardwalks and inaccessible areas of trail construction. Use of a CM/GC with specialized expertise in project coordination in conjunction with the team approach will result in a better coordinated project, reduced cost uncertainty, and earlier identification of problem areas.

The CM/GC process helps clarify several critical variables valuable to the project design: It guarantees the maximum price (GMP) to complete the project; determines the construction schedule; establishes the sequence of work; is contractually bound to implement the final project design within the GMP; and participates as an essential member of the project design and construction team. Benefits of this approach include developing the design documents to reflect the best work plan that accommodates both the District and contractor; achieving the best grouping of the bid packages that will help ensure better trade coverage; more efficient construction staging; and help with adjusting the work plan in the event unforeseen circumstances arise.

- B. **FEWER CHANGE ORDERS:** When the CM/GC participates in the design process, fewer change orders occur during project construction. This is due to the CM/GC's better understanding of the owner's needs and the architect's design intent. As a result, the project is more likely to be completed on time and within budget. In addition, fewer change orders reduce the administrative costs of project management for both the District and the contractor.
- C. **GMP CHANGE ORDERS COST LESS:** When CM/GC change orders are required, they are typically processed at a lower cost under the GMP. The design-bid-build method typically results in the contractor charging 15% markup on construction change orders. The GMP method applies lower predetermined markups. District experience has been the markup is in the range of 8-10%.
- D. **SAVINGS:** Under the GMP method, when the CM/GC completes the project, any savings between the GMP and the actual cost accrue to the District. The CM/GC bears the risk of cost overruns.
- E. **CONTRACTOR'S FEE IS LESS:** CM/GC contracts are designed to create a better working relationship with the contractor. As a consequence, the overhead and profit fee is generally in the 3-5% range, and contractors indicate this is slightly lower than

the fee anticipated on similar design-bid-build contracts.

3. **FINDING:** The CM/GC process offers a unique opportunity for value engineering that is not possible through the design-bid-build process.

A. **VALUE ENGINEERING AND CM/GC PARTICIPATION IN THE DESIGN PROCESS:** An essential part of each construction project is the value-engineering evaluation. Value engineering is the means used to determine the best project design that meets the needs and priorities of the owner, within the owner's budget. Value engineering is done most effectively by a team consisting of the owner, architect, consultants, and the contractor. When the contractor participates, the team can render the most comprehensive evaluation of all factors that affect the cost, quality, and schedule of the project.

Under the traditional design-bid-build method, the contractor would not participate in this evaluation; hence, value engineering would be conducted without the benefit of:

- The ability to set the schedule;
- The ability to sequence work; and
- Commitment from the contractor to implement the design within the schedule and budget.

Through integrated participation, a project scope and design evolve that has greater value for the owner, and is not likely to be the same project created by the design-bid-build method.

### **NO DIMINISHING OF COMPETITION OR ENCOURAGING FAVORITISM**

**FINDING.** The CM/GC will be selected through a competitive process using a Request for Proposal process authorized by the Board of Directors, and complying with public contracting rules and requirements. Competition will not be inhibited nor will favoritism be encouraged.

A. **SOLICITATION PROCESS:** Pursuant to ORS 279C.360, the CM/GC solicitation will be advertised at least once in the *Bend Bulletin* and the *Daily Journal of Commerce*. In addition, the solicitation will be available through the Premier Builder's Exchange, and on the District's website.

B. **FULL DISCLOSURE:** To ensure full disclosure of all information, the Request for Proposals solicitation package will include:

1. Detailed Description of the Project
2. Contractual Terms & Conditions
3. Selection Process
4. Evaluation Criteria
5. Role of Evaluation Committee
6. Provisions for Comments
7. Complaint Process and Available Remedies

C. SELECTION PROCESS: Other highlights of the selection process will include:

1. A pre-proposal vendor conference will be announced and held. This conference will be open to all interested parties. During this pre-proposal conference, as well as any time prior to ten (10) days before the close of the solicitation, interested parties will be able to ask questions, request clarifications and suggest changes in the solicitation documents if such parties believe that the terms and conditions of the solicitation are unclear, inconsistent with industry standards, or unfair and unnecessarily restrictive of competition.
2. Sealed proposals will be submitted to the Business Manager, located at the District Administration Offices at 799 SW Columbia Street, Bend, Oregon 97702, and opened publicly at the time specified in the advertisements.
3. The evaluation process will determine whether a proposal meets the screening requirements of the RFP, and to what extent. The following process will be used:
  - a. Proposals will be evaluated for completeness and compliance with the screening requirements of the RFP. Those proposals that are materially incomplete or non-responsive will be rejected.
  - b. Proposals considered complete and responsive will be evaluated to determine if they meet and comply with the qualifying criteria of the RFP. If a proposal is unclear, the proposer may be asked to provide written clarification. Those proposals that do not meet all requirements will be rejected.
  - c. Proposals will be independently scored by the voting members of the Selection Committee. Scores will then be combined and assigned to the proposals.
  - d. The Selection Committee may convene to select from the highest-scoring proposers, a group of up to three finalists (if three are available) for formal interviews.
  - e. The Selection Committee may conduct the interviews. The selection committee reserves the right to make a determination without conducting interviews.
  - f. The Selection Committee will use the interview, if conducted, to confirm the scoring of the proposal and to clarify any questions. Based upon the revised scoring, the Selection Committee will rank the proposers, and provide an award recommendation to the Executive Director who will seek acceptance from the Board of Directors of the District to proceed with the contract negotiation with the highest-ranked proposer.
  - g. The Executive Director will negotiate a contract with the top-ranked firm. If an agreement cannot be reached, the District will have the option to enter into an agreement with the second-ranked firm, and so forth.
4. Competing proposers will be notified in writing of the selection of the apparent successful proposal and will be given five (5) calendar days after receipt of the notice to review the RFP file and evaluation report at the District offices. Any questions or concerns about the selection process will be subject to the requirements of the District's Public Contracting Rules, must be in writing, and must be delivered to the District's Business Manager within five (5) calendar days after mailing of the selection notice. No protest of the award selection shall be considered after this time period.
5. The contract achieved through this process will require the CM/GC to use an open

competitive selection process to bid all components of the job. The CM/GC's overhead and fee will be evaluated as one of the scoring criteria. Overhead, which includes supervision, bonding, insurance, and mobilization, must be within the industry standard range of approximately 10%. The CM/GC's fee must be within the industry standard range of 3-5%. Since these amounts will be scored as part of the competitive RFP process, the entire dollar value of the project will be awarded through open competitive processes, at either the general contractor or subcontractor level.

**Board Calendar  
2018-2019**

*\*This working calendar of goals/projects is intended as a guide for the board and subject to change.*

**October 2**

Work Session

- ◆ Recreation Program Report – (15 min)
- ◆ Alcohol Permits – *Sasha Sulia (40 min)*

Business Session

- ◆ PCMS Fields Award Design Contract – *Ian Isaacson (15 min)*
- ◆ Approve Park and Facility Rental Cost Recovery Levels – *Matt Mercer and Michael Egging (30 min)*
- ◆ Mirror Pond Funding Options Discussion – *Don Horton (45 min)*
- ◆ Approve BMX Ground Lease – *Matt Mercer (15 min)*

**October 16**

Work Session

- ◆ River Summer Recreation Update – *Julie Brown and Sasha Sulia (30 min)*
- ◆ River stewardship grant update – *Perry Brooks (20 min)*
- ◆ SDC Methodology Project Scope – *Michelle Healy and Lindsey Lombard (30 min)*

Business Session

**November 6**

Work Session

- ◆ Recreation Program Report – (15-min)
- ◆ 2018 Events in Parks Report – *Chris Zerger & Sasha Sulia (20 min)*

Consent Agenda

- ◆ Codify amended policies

Business Session

**November 20**

Work Session

- ◆ Community Recreation Survey Report - *Matt Mercer (45 min)*

Business Session

- ◆ Empire Crossing Park – Award Construction Contract – *Jason Powell (20 min)*

**December 4**

Work Session

- ◆ Recreation Program Report – (15-min)
- ◆ Athletic Field Report and Policy Implementation Update – *Becky Young and Michael Egging (45 minutes)*

Business Session

- ◆ Appoint Budget Committee Member(s) – *Lindsey Lombard*

**December 18**

Work Session

- ◆ City of Bend Climate Action Plan – *Sasha Sulia, Cassie Lacey and Gillian Ockner (30 min)*

Business Session

- ◆ Approve Guaranteed Maximum Price for Construction of Larkspur Community Center – *Brian Hudspeth (45 min)*
- ◆ Shevlin Park ADA / Bridge Work Award Construction Contract – *Brian Hudspeth (20 min)*

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**January 2019**

Board Workshop – 8:00 a.m. – 4:00 p.m.

- ◆ Annual Strategic Action Plan (Mid-Year Review)
- ◆ Financial Forecast
- ◆ Capital Improvement Plan (CIP) Discussion
- ◆ Property Tax Prioritization
- ◆ Board Self-Assessment

**January 15**

Work Session

Business Session

**February 5**

Work Session

- ◆ Recreation Program Report – *(15 min)*
- ◆ Approve updated Fees and Charges Policy and Out of District Fee Policy – *Matt Mercer (45-min)*

Business Session

- ◆ Goodrich Park Award Construction Contract – *Jason Powell (20 min)*

**February 19**

Work Session

- ◆ Preliminary Larkspur Business Plan Review – *Matt Mercer and Sue Glenn (45 min)*

Business Session

- ◆ Approve Cost Recovery /Subsidy Allocation levels for Recreation Programs and Services – *Matt Mercer (45 min)*
- ◆ Cedarwood Trailhead Award Design Contract – *Perry Brooks (20 min)*

**March 5**

Work Session

- ◆ Recreation Program Report *(15 min)*

Business Session

- ◆ Northpointe Park Award Design Contract – *Laura Underhill (20 min)*

**March 19**

Work Session

- ◆ Outreach Report – *Amanda Jamison, Kathya Avilia Choquez (30 min)*
- ◆ Needs-Based Assistance Report – *Sue Boettner (30 min)*

Business Session

- ◆ Approve Needs-Based Assistance Plan for FY 2019-20 – *Sue Boettner (30 min)*

**April 2**

Work Session

Business Session



**April 16**

Work Session

Business Session

**April - Budget Committee Tour**

**May 7**

Work Session

- ◆ Recreation Program Report (15 min)

Business Session

**May BUDGET MEETINGS (Tentative: May 20, 22 & 23)**

**May 21**

*Board Meeting Canceled*

**June 4**

Work Session

- ◆ Recreation Program Report (15 min)

Business Session

- ◆ Adopt Resolution No. XXX – Adopting a Revised Fee Schedule for System Development Charges, effective July 1, 2019 – *Lindsey Lombard*
- ◆ Hold Public Hearing and Adopt Resolution No. XXX – Adopting the Budget and Making Appropriations for Fiscal Year 2019-20, and Adopt Resolution No. XXX - Imposing and Categorizing Taxes for Fiscal Year 2018-19 – *Lindsey Lombard*
- ◆ Adopt Resolution No. XXX – Adopting the Capital Improvement Plan Summary for Fiscal Years Ending 2020 - 2024 – *Michelle Healy (10 min)*

**June 18**

Work Session

Business Session

**TBD**

IGA with the City for Planning – *Michelle Healy and Don Horton (45 min)*

Award construction contract for Big Sky Park – *Brian Hudspeth (15 min)*

Alpenglow’s BNSF Aerial Easement – Ian Isaacson

PCMS Fields Award Construction Contract – Brian Hudspeth

Adopt Strategic Plan

Strategic Plan Update

First and Second Reading for SDC Ordinance and Methodology

SDC Methodology Updates

Extend Applicable Athletic Field Policies to Operated Recreation Facilities – Matt Mercer

Independent Contractor Guidelines for Recreation Programs?? – Matt Mercer

Recreation Programming Plan – Matt Mercer and Michael Egging

Drake Park DRT Trail Easements – *Brian Hudspeth (20 min)*