



## *City Attorney*

**DATE:** March 16, 2021  
**FROM:** Janelle Combs, City Attorney  
**ITEM:** Water Service Contract

### **REQUEST**

Consider approval of the Water Service Contract with 161 Commercial, LLC DBA Centennial Park.

Please place this item on the 3/23/2021 City Commission regular meeting agenda.

### **BACKGROUND INFORMATION**

The owners of Centennial Park have requested an agreement with the City so they can charge their individual lot renters with the water they use, instead of a flat fee. Attached is a draft of that contract. If approved, any manufactured home park would be able to use generally the same agreement form, changed for location and entity.

### **RECOMMENDED CITY COMMISSION ACTION**

Approve the Water Service Contract with 161 Commercial, LLC DBA Centennial Park.

### **STAFF CONTACT INFORMATION**

Janelle Combs | City Attorney, 355-1340 or [jcombs@bismarcknd.gov](mailto:jcombs@bismarcknd.gov)

Michelle Klose | Utility Operations Director, 355-1700 or [mklose@bismarcknd.gov](mailto:mklose@bismarcknd.gov)

City of Bismarck  
WATER SERVICE CONTRACT

Contract No: 665-3

Water User Entity: 161 Commercial, LLC DBA Centennial Park

1. PARTIES: The Parties to this Water Service Contract (this “Contract”) are:

City of Bismarck  
221 N 5<sup>th</sup> Street  
Bismarck ND 58506  
Attn: Public Works Director Utility Operations

known herein as the “CITY,” and,

161 Commercial, LLC DBA Centennial Park  
PO Box 1378  
Bismarck, ND 58502-1378

known herein as the “USER” (the CITY and the USER together may be referred to herein as the “Parties”).

2. PURPOSE: The purpose of this Contract is for the CITY to sell treated water to the USER, and for USER to resell the water to residents of his manufactured home park located at 2500 Centennial Road, Bismarck, North Dakota, (“PARK”). The USER will make payment to the CITY at the rates and pursuant to the terms and conditions set forth in this Contract. This Contract is for the sale of treated water and does not apply to other city services that are provided and billed to this property.

3. TERM OF CONTRACT: The term of the Contract (the “Term”) shall be for five (5) years, unless terminated sooner pursuant to the terms of this Contract. The Term shall begin on April 1, 2021, and will continue until March 31, 2026, unless terminated sooner pursuant to the terms of this Contract.

4. TERMINATION:

a. Mutual Termination. This Contract may be terminated at any time by mutual consent of the Parties in writing

b. Default by USER. If the USER fails to make payment as required by this Contract within the time specified herein, or any extension thereof, or if USER breaches any of the terms of this agreement, the CITY will provide a 30-day written notice of default (the “User Default Notice”) to the USER prior to termination of the whole or any part of this Contract.

c. Termination by Either Party. Either party may terminate the contract with 6-months’ written notice to the other party. During the 6-month notice period, the CITY

will provide adequate water supply, as described under the terms of this agreement, and USER shall pay all amounts due until the expiration of the 6-month period.

5. WATER SERVICE: The CITY agrees to sell water to the USER, at the point of metered connection. The USER is responsible for transporting the water from the point of connection. USER must have a separate Commercial Utility Service Agreement in effect for services, which Agreement is in addition and separate from this Contract.

In times of water shortages, the USER will share restrictions in the same proportion as other customers of the CITY, and the USER will limit pumping and implement restrictions. In no event shall any liability accrue against the CITY or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from water shortages.

6. METERING WATER USAGE: This section applies to the single metered connection the USER has with the CITY. The USER has a water meter and Electronic Read Transmitter (“ERT”) from the CITY in use. The USER will operate and maintain, at its own expense, at the point of delivery, the necessary the properly measuring the quantity of water delivered to the USER.

The USER may test the accuracy of the metering equipment every other year, and such tests shall be performed in the presence of a CITY representative. At any time, the CITY can test the metering equipment at the CITY’s expense, with the test performed in the presence of a USER representative.

The CITY shall have access to the metering equipment belonging to the USER at all reasonable times for the purpose of verifying meter readings.

A claim of error presented after a payment has become delinquent shall not prevent discontinuance of service as provided in this contract. The USER agrees to continue to make payments for water service after a claim of error has been presented; however, USER may make payments under protest, and such payments will not prejudice the USER’s claim of error.

Any meter registering at a rate of error more than five percentage (5%), the CITY shall replace the Universal Metering Equipment (“UME”) at the CITY’s expense. In the event the rate of error is more than five percentage (5%), the current month’s bill will be recalculated, using the same water usage as the prior year for that month, as adjusted for documented growth in the USER’s system.

If any meter fails to register for any period, the amount of water delivered during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless the CITY and the USER shall agree upon a different amount.

7. GENERAL OBLIGATIONS: The USER is responsible for the design, operation, and maintenance of its water system. The USER is responsible for the installation of the points of connection with the CITY’s water system and for any water lines necessary to connect with the USER’s water system. The connecting facilities, the meters, and any other lines or apparatus necessary for the USER’s connections shall be the property of the USER.

The USER shall be responsible for the control, distribution, and use of all water delivered to the USER by the CITY under this Contract, beyond the point of delivery, and all services, maintenance, and repair of the USER's distribution system. The USER agrees that it will comply with the rules and regulations of the Environmental Protection Agency and the North Dakota Department of Health for water use, distribution, and discharge. Any costs associated with causing the USER's water distribution system to comply with any state or federal agency regulations shall be borne by the USER.

The USER will install, operate, and maintain, at its own expense, the necessary private metering equipment for properly measuring the quantity of water delivered to each individual lot within the PARK. Generally accepted, reliable commercial meters may be used by the USER to resell the amount of water to each individual lot. No later than April 1<sup>st</sup> of each year, USER shall provide CITY a list of how much water was resold within Centennial Park, what any user fee or connection fee or any other fee relating to the water that is charged during the entire prior calendar year. The total amount of water, connection, administrative or other fees that can be attributed to the water shall not exceed 100% of the actual cost of water purchased by USER from the CITY at the Centennial Park location. If USER collects proceeds in excess of 100% of the cost of the water purchased, USER shall be considered a consecutive water user with the State Department of Environmental Quality for this site. Any items reimbursed for the cost of water lines with the PARK, administrative fees or invoicing costs shall not be charged to the resident with this water rate.

The USER shall hold the CITY, its officers, agents, employees and successors, and assigns harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the operation, maintenance, and replacement of the USER's distribution system. The USER's distribution system includes all works extending from the point of delivery of water to the USER.

8. WATER SERVICE, WATER RATES AND PAYMENT FOR WATER SERVICE: The USER agrees to make payments for water service in accordance with the following terms and conditions:

a. The water rate ("Water Rate") for services provided under this Contract shall be the standard fees applied to multifamily accounts. The CITY will make annual adjustments to the USER's Water Rate, and such annual adjustment shall be the same percent adjustment as other adjusted customer rates.

b. Periodically, the cost of service will have a more detailed review in conjunction with the review of all utility operation rates by the CITY, and the price will be adjusted accordingly.

c. The CITY will furnish to the USER a monthly utility bill for water service. All payments for water service shall be made no later than 15 days following receipt of the statement from the CITY.

d. Payments not made within 45 days of the billing shall be considered delinquent and in default.

e. During any period when the USER is in default, the USER shall remain obligated to make all payments required under this Contract. Any action of the CITY pursuant to this section shall not limit or waive any remedy provided by the Contract or by law for the recovery of money due or which may become due under this Contract.

f. Amounts unpaid by the USER after 45 days shall be imposed a penalty of one and one half percent (1.5%) per month of the amount of such delinquent payment.

9. REMEDIES NOT EXCLUSIVE: The use by either Party of any remedy specified herein for the enforcement of this Contract is not exclusive and shall not deprive the Party using such remedy of, or limit the application of, any other remedy provided by law.

10. AMENDMENTS: This Contract may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law, but such amendments will not be binding or effective unless made in writing or executed by the parties.

11. WAIVER OF RIGHTS: Any waiver at any time by either Party of its rights with respect to a default or any other matter arising in connection with this Contract, shall not be deemed to be a waiver with respect to any other default or matter.

12. NOTICES: All notices that are required either expressly or by implication to be given by any Party to the other under this contract shall be in writing. All such notices shall be deemed to have been given and delivered, if delivered personally or if delivered by registered or certified mail. All notices shall be addressed to the Parties at their addresses as shown on the signature page of this contract.

13. ASSIGNMENT: The provisions of this Contract shall apply to and bind the successors and assigns of the respective Parties, but no assignment or transfer of this Contract, or any part hereof or interest herein, shall be valid until and unless approved by the non-assigning Party in writing.

14. MERGER CLAUSE: This Contract constitutes the entire agreement between the Parties. No waiver, consent, modification, or change of terms of this Contract shall bind either party unless in writing, signed by the Parties, and attached herein. Such waiver, consent, modification, or change, if made, shall be effective only in a specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.

**IN WITNESS WHEREOF**, the parties hereto have executed this WATER SERVICE CONTRACT on the day and year written below.

**CITY OF BISMARCK**

Dated this \_\_\_\_\_ day of March, 2021.

Attest:

\_\_\_\_\_  
Steve Bakken, President  
Board of City Commissioners

\_\_\_\_\_  
Keith J. Hunke  
City Administrator

**161 COMMERCIAL, LLC DBA CENTENNIAL**

Dated this \_\_\_\_ day of March, 2021.

Attest:

\_\_\_\_\_  
By Matt Geiger, Its \_\_\_\_\_