

# ADVISORY PARK BOARD AGENDA

February 23, 2015  
5:30 P.M.

Meeting Rooms D&E  
City-County Government Center

160 South Macy Street  
Fond du Lac, Wisconsin

## I. CALL TO ORDER

- A. Roll Call
- B. Declaration a Quorum is Present

## II. APPROVAL OF MINUTES

- A. October 27, 2014

## III. REPORTS OF OFFICERS

- A. Lakeside Park Exploratory Committee  
Subject: An update on the Lakeside Park Exploratory Committee  
Initiator: Jordan Skiff, Director of Public Works  
(Proposed Action: **None**)
- B. Lakeside Park Concession Agreement  
Subject: An update on the Lakeside Park Concession Agreement  
Initiator: Jordan Skiff, Director of Public Works  
(Proposed Action: **None**)
- C. MSA Contract for Siting Bike Trails in Lakeside Park and Camelot Drive  
Subject: An update on the MSA Contract for the Siting Bike Trails in Lakeside Park and on Camelot Drive  
Initiator: Jordan Skiff, Director of Public Works  
(Proposed Action: **None**)
- D. General Update on Park Activities  
Subject: An update on Park Activities  
Initiator: John Kiefer, Park Superintendent  
(Proposed Action: **None**)

## IV. ADJOURN

# ADVISORY PARK BOARD MINUTES

October 27, 2014  
5:30 P.M.

Meeting Rooms D&E  
City-County Government Center

160 South Macy Street  
Fond du Lac, Wisconsin

## CALL TO ORDER

ROLL CALL: Present: - Chad Behling  
Catherine Block  
Ted Eischeid  
Daniel Feyen  
Sandra Krueger  
Doug Kindschuh  
Shawn McCrary  
John Piper  
Renee Wagner

Absent: - None

Administrative Staff: - John Kiefer, Park Superintendent  
Jordan Skiff, Dir of Public Works

Chairperson Piper declared a quorum present.

## APPROVAL OF MINUTES

### July 28, 2014

Motion made by Kindschuh to approve the minutes of the July 28, 2014 Advisory Park Board meeting as presented.

Seconded by Feyen.

ROLL CALL VOTE: Aye - Behling, Block, Feyen,  
Krueger, Kindschuh, McCrary,  
Piper, Wagner

Nay - None

Abstain - Eischeid

Carried.

**ADVISORY PARK BOARD MINUTES**

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**REPORTS OF OFFICERS**

**2015-2019 Recreation Plan**

Subject: Recommend adopting the proposed 2015-2019 Recreation Plan to the City Council

Initiator: City Staff

(Proposed Action: **Recommend Approval to City Council**)

Motion made by Eischeid to **amend** the 2015-2019 Recreation Plan adding additional language of five proposals in appropriate places of the plan.

1. There is a need to **safe areas for launching canoes and kayaks on Lake Winnebago**. These facilities are relatively easy and cheap to construct compared to normal motorized boat ramps. Facilities in the city that currently allow lake access for ice fisherman (e.g., near the north terminus of Luco Road are sufficient for this, but need parking (two parking spots minimum) and signage. There are launch site opportunities for canoes/kayaks in Lakeside Park West and Supple's marsh.
2. New neighborhood parkland. The City **should consider signing current holdings** so residents know these are public land open to low intensity use.
3. The City should **consider reaching agreement with the Fond du Lac School District to help maintain, enhance, and publicize current natural restorations on school grounds**. Current natural restorations exist at Theisen Middle School, Riverside Elementary School, Lakeshore Elementary School, and Fond du Lac High School.
4. The City should **network with the County Lands at UW-Fond du Lac, especially the recreational aspects of the Gottfried Arboretum there**, and its proposed capital developments as well as its proximity to the Fond du Lac Loop.
5. The City should **consider converting some of its current mowed areas to native prairie and native**



**ADVISORY PARK BOARD MINUTES**

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ROLL CALL VOTE:       Aye - Behling, Block, Eischeid,  
                                          Feyen, Krueger, Kindschuh,  
                                          McCrary, Piper, Wagner  
                                          Nay - None

Carried.

Meeting adjourned at 6:18 p.m.

MARGARET HEFTER  
CITY CLERK

MH/maa

# Lakeside Park User Survey Results - Preliminary

Stakeholder & Data Sub-committees

January 27, 2015

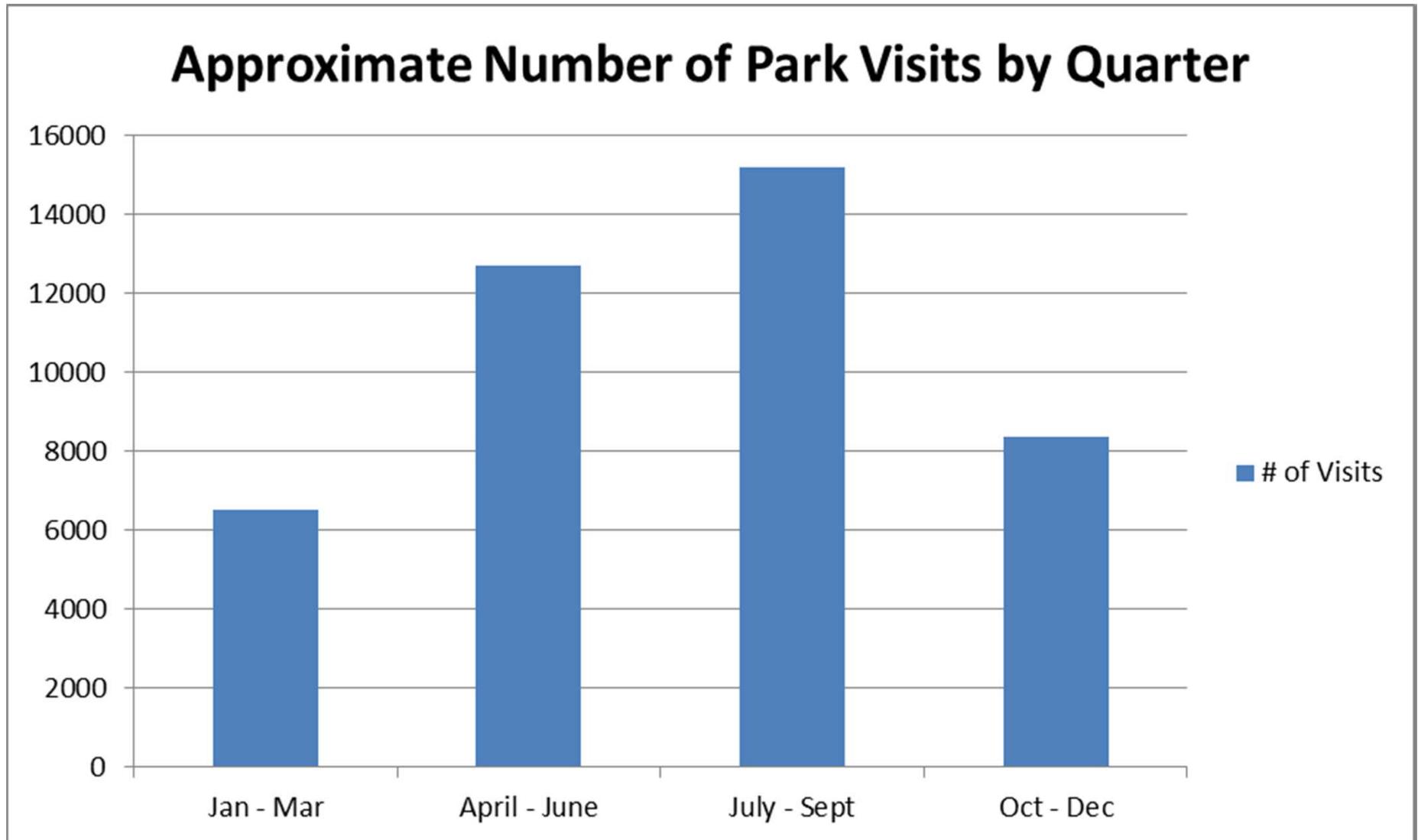
# Survey Demographics

- Approximately 2200 total respondents
  - Not all questions were answered by each respondent
- 63% of respondents have lived in Fond du Lac or in Fond du Lac County for 26+ years
- 62% of respondents were female; 36% male
- 83% of respondents are between 30 and 69 years of age
- 86% of respondents have post secondary education
- 92% of respondents indicate their race as White
- 65% of respondents are working full-time; 19% are retired

# Survey Demographics

- 52% of respondents do not have children living in their home; 44 % have children in their home; 4% have children occasionally
- 93% of respondents live within Fond du Lac County
- Responses from all stakeholder groups were represented in the survey

# Annual Lakeside Park User Visits



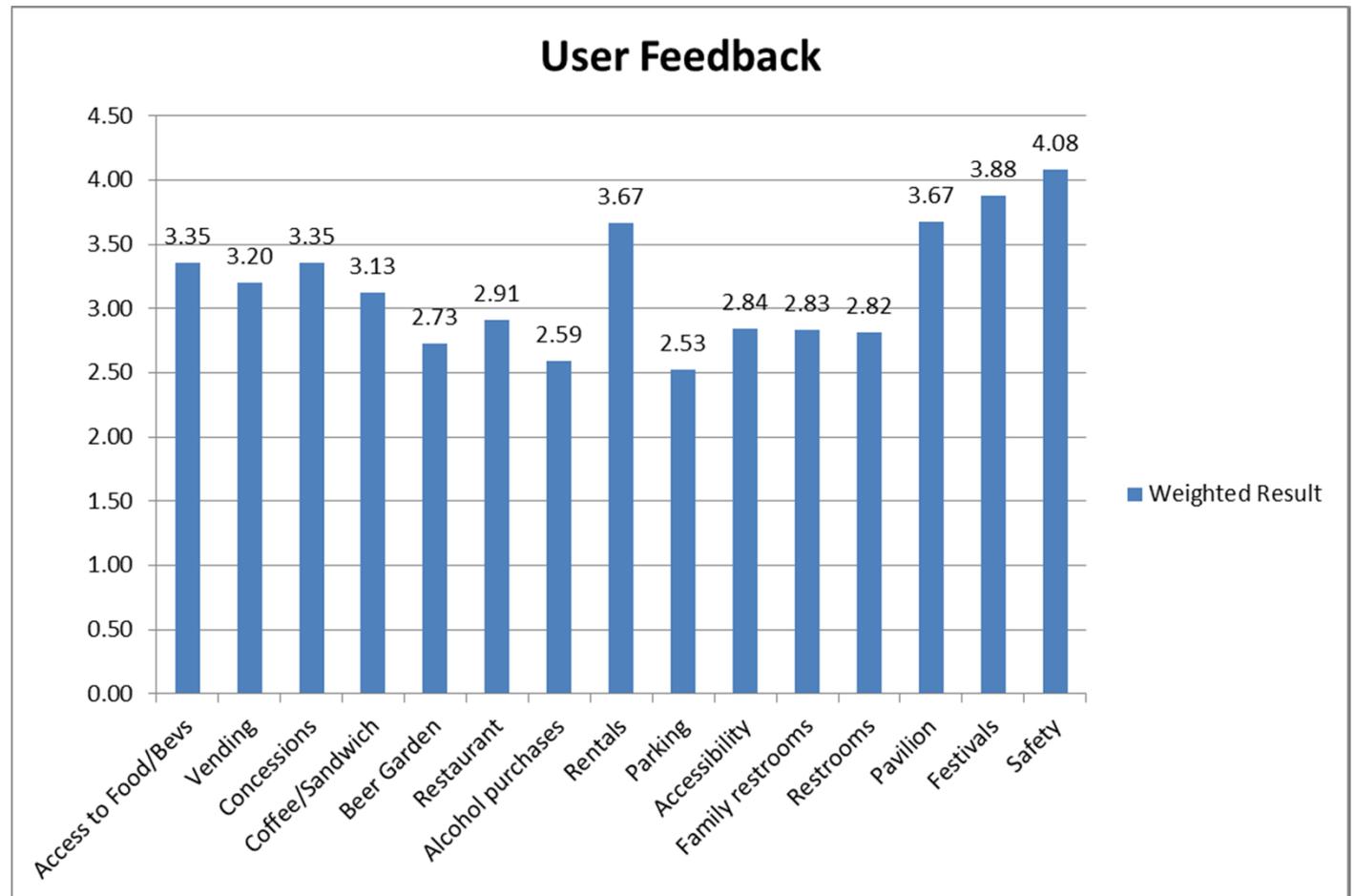
# Questions 1-15 Responses

Response Options:

- Strongly Disagree (1)
- Disagree (2)
- Neutral (3)
- Agree (4)
- Strongly Agree (5)

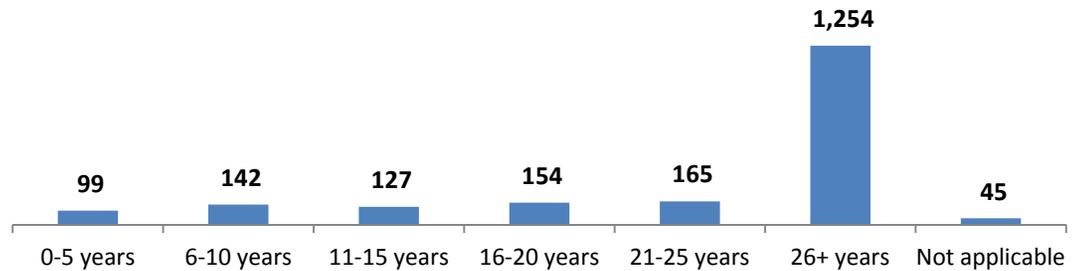
Score is calculated for each question by multiplying the number of responses for each response option by the response weight. These numbers are totaled and divided by the totals number of question responses to get the Weighted Results as shown in the graph.

Scores over 3 tend to show agreement with the question. Responses under 3 tend to show a disagreement with the question.



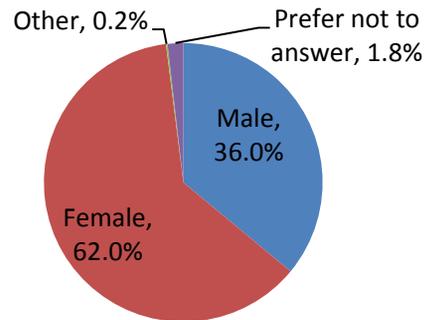
**How long have you lived in the City of Fond du Lac or in Fond du Lac County?**

0-5 years	5.0%	99
6-10 years	7.2%	142
11-15 years	6.4%	127
16-20 years	7.8%	154
21-25 years	8.3%	165
26+ years	63.1%	1,254
Not applicable	2.3%	45



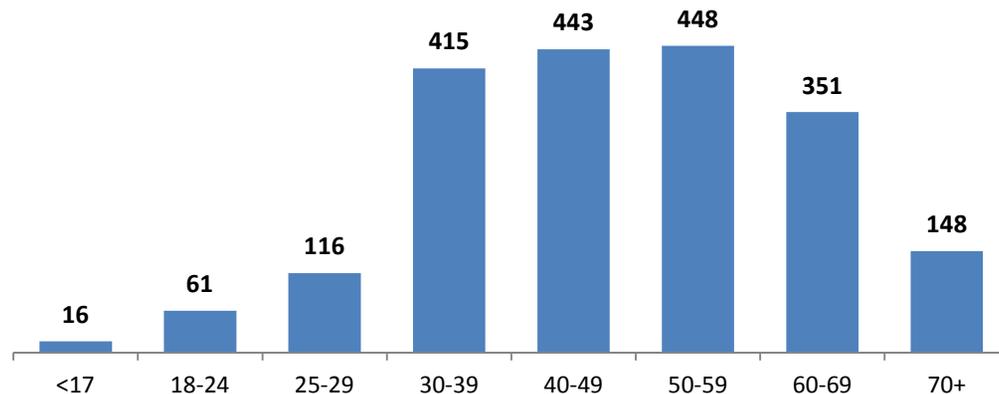
**What is your gender?**

Male	36.0%	720
Female	62.0%	1,239
Other	0.2%	4
Prefer not to answer	1.8%	35



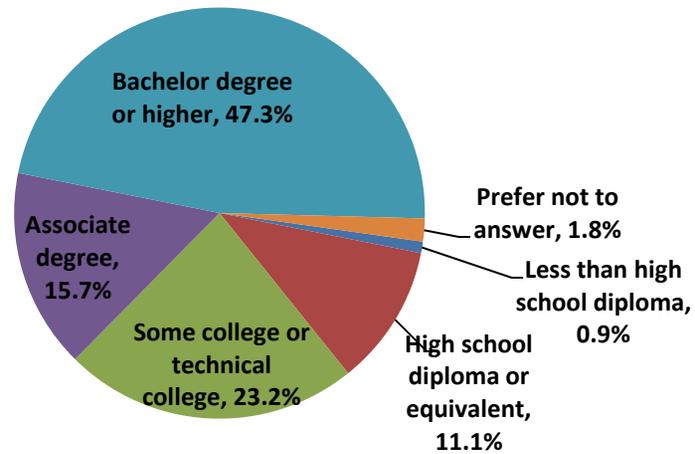
**What is your age?**

<17	0.8%	16
18-24	3.1%	61
25-29	5.8%	116
30-39	20.8%	415
40-49	22.2%	443
50-59	22.4%	448
60-69	17.6%	351
70+	7.4%	148



**What is your highest level of education completed?**

Less than high school diploma	0.9%	17
High school diploma or equivalent	11.1%	222
Some college or technical college	23.2%	463
Associate degree	15.7%	314
Bachelor degree or higher	47.3%	946
Prefer not to answer	1.8%	36



**Please indicate your race. (Select all that apply.)**

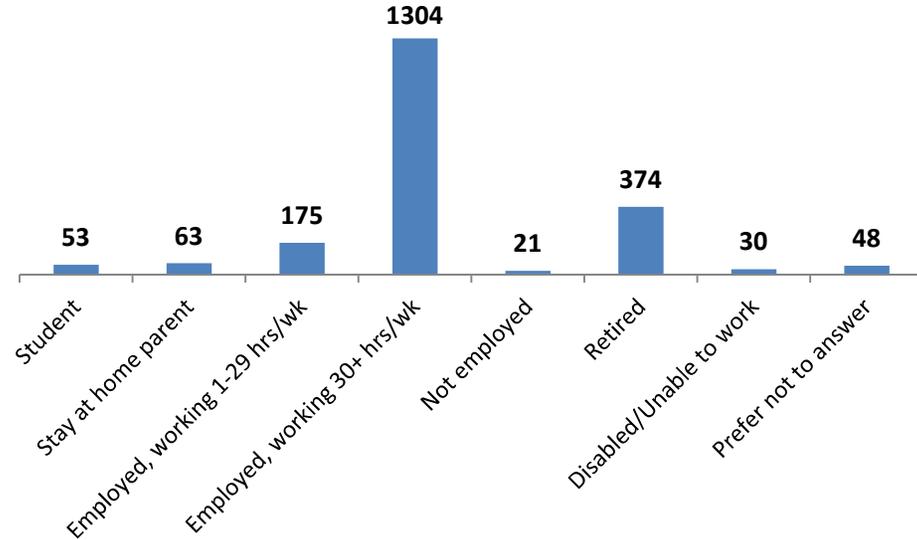
		Frequency	Other	Frequency
Black or African-American	0.3%	7	Hmong	3
American Indian or Alaskan Native	0.7%	13	Human	3
Asian	1.6%	31	American	3
Native Hawaiian & Other Pacific Islander	0.1%	1	None	7
Some Other Race	0.1%	1	Aremenian	1
Two or More Races	0.5%	10	Caucasian	2
White	91.9%	1,836	Mexican	1
Prefer not to answer	5.0%	100		
Other (please specify)	1.1%	22		

**What is your ethnicity?**

Hispanic	0.6%	12
Non-Hispanic	90.0%	1,798
Prefer not to answer	9.4%	188

**What best describes your employment status? (select all that apply)**

Student	2.7%	53
Stay at home parent	3.2%	63
Employed, working 1-29 hrs/wk	8.8%	175
Employed, working 30+ hrs/wk	65.3%	1304
Not employed	1.1%	21
Retired	18.7%	374
Disabled/Unable to work	1.5%	30
Prefer not to answer	2.4%	48



**Children in Household**

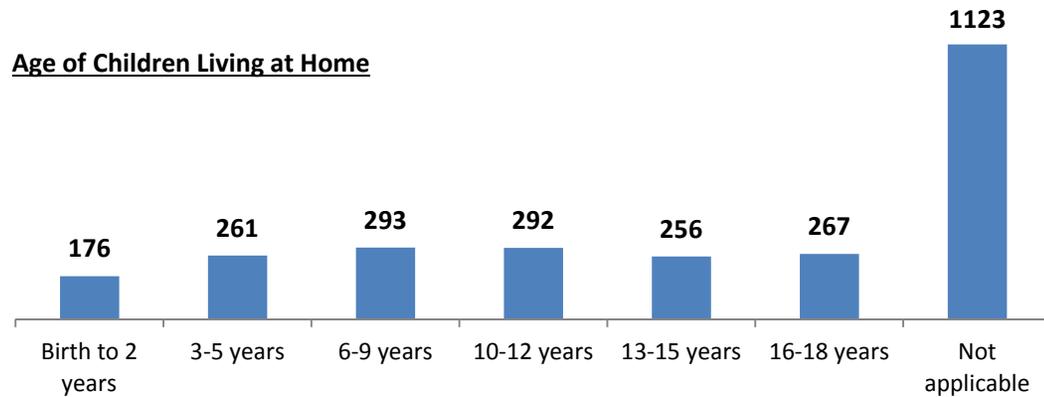
**Do you have children living in your home?**

Yes	43.9%	877
No	52.5%	1048
Sometimes	3.7%	73

**How old are the children living in your home?**

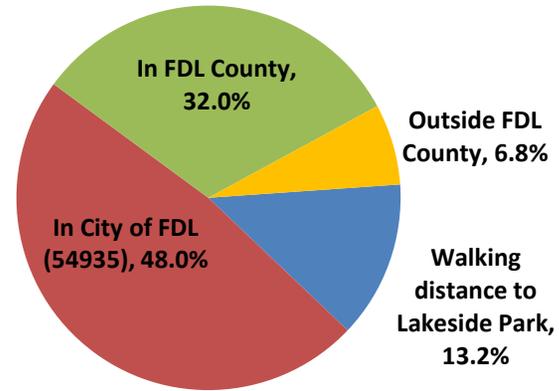
Birth to 2 years	8.8%	176
3-5 years	13.1%	261
6-9 years	14.7%	293
10-12 years	14.6%	292
13-15 years	12.8%	256
16-18 years	13.4%	267
Not applicable	56.2%	1123

**Age of Children Living at Home**



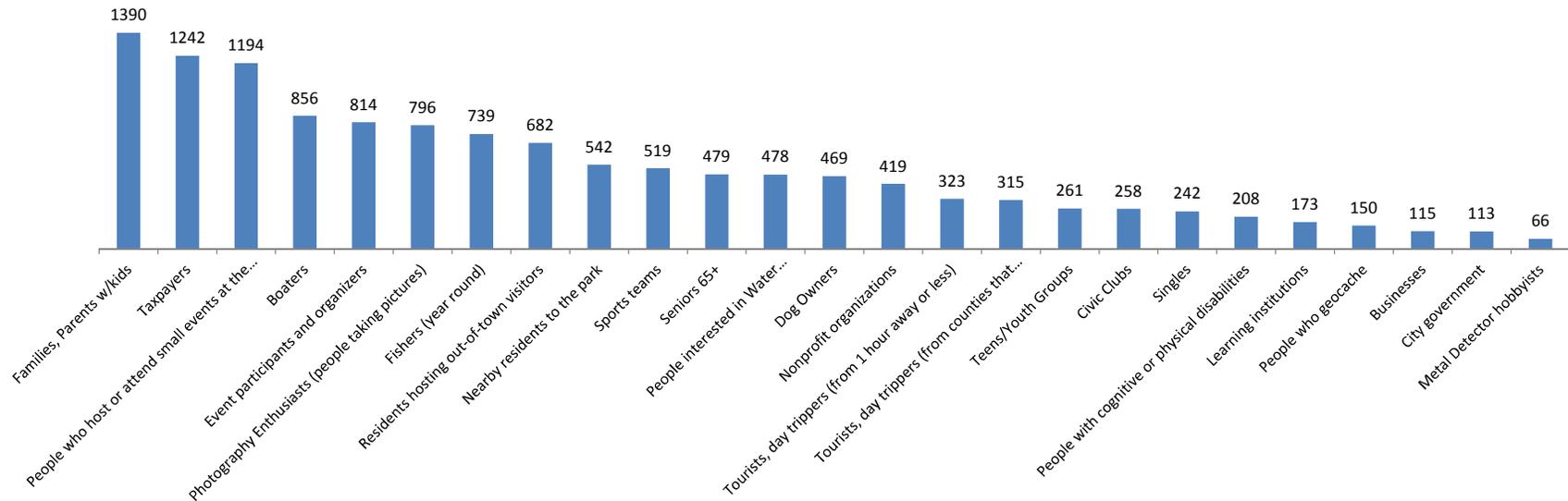
Please indicate your home's location relative to Lakeside Park or Lakeside Park West.

Walking distance to Lakeside Park	13.2%	263
In City of FDL (54935)	48.0%	960
In FDL County	32.0%	640
Outside FDL County	6.8%	135



**With which of the following groups that use Lakeside Park do you identify?  
(Please select all that apply.)**

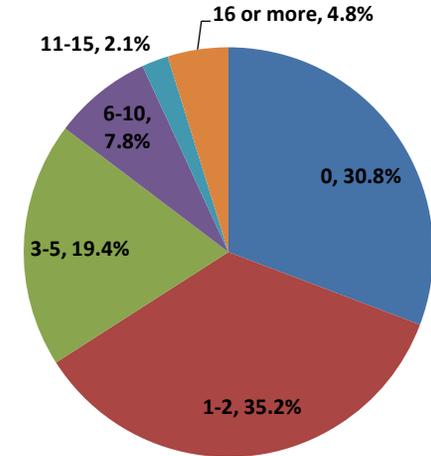
Answer Options	Response %	Response Count
Families, Parents w/kids	60.3%	1390
Taxpayers	53.9%	1242
People who host or attend small events at the park (family reunions, birthday parties, ...)	51.8%	1194
Boaters	37.1%	856
Event participants and organizers	35.3%	814
Photography Enthusiasts (people taking pictures)	34.5%	796
Fishers (year round)	32.1%	739
Residents hosting out-of-town visitors	29.6%	682
Nearby residents to the park	23.5%	542
Sports teams	22.5%	519
Seniors 65+	20.8%	479
People interested in Water Quality/Environmental issues	20.7%	478
Dog Owners	20.3%	469
Nonprofit organizations	18.2%	419
Tourists, day trippers (from 1 hour away or less)	14.0%	323
Tourists, day trippers (from counties that border Lake Winnebago: Calumet, Outagam...	13.7%	315
Teens/Youth Groups	11.3%	261
Civic Clubs	11.2%	258
Singles	10.5%	242
People with cognitive or physical disabilities	9.0%	208
Learning institutions	7.5%	173
People who geocache	6.5%	150
Businesses	5.0%	115
City government	4.9%	113
Metal Detector hobbyists	2.9%	66
<b>Total</b>		<b>12843</b>



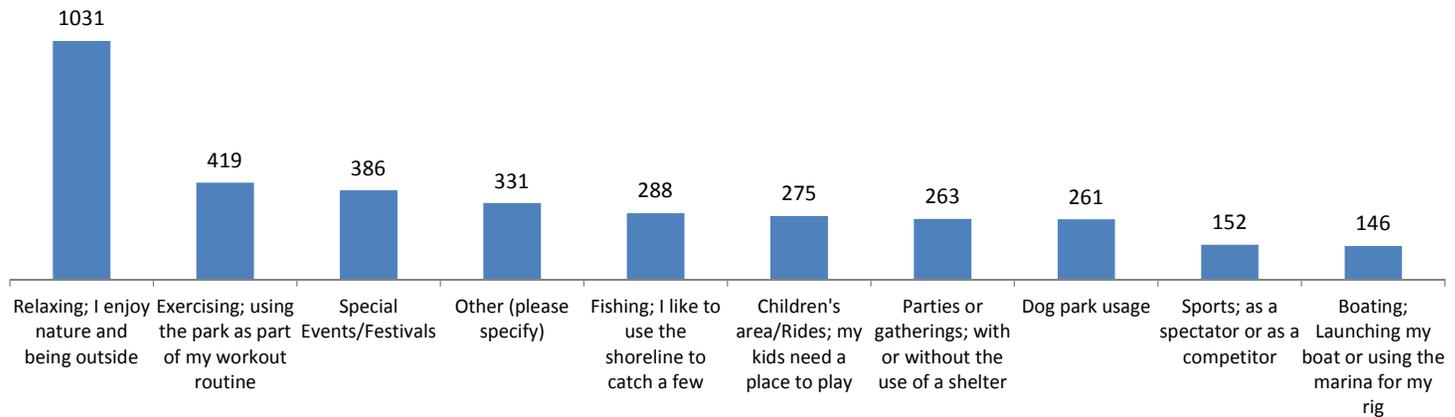
## Frequency of Park Visits

January to March

Answer Options	Response Percent	Response Count	Approximate Visits
0	30.8%	674	-
1-2	35.2%	770	1,155
3-5	19.4%	424	1,696
6-10	7.8%	170	1,360
11-15	2.1%	47	611
16 or more	4.8%	105	1,680
answered question		2,190	6,502



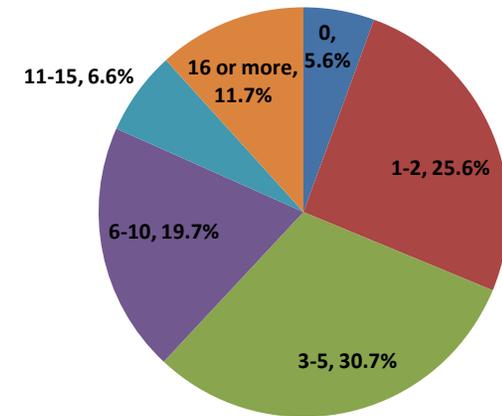
Answer Options	Response Percent	Response Count
Relaxing; I enjoy nature and being outside	63.4%	1031
Exercising; using the park as part of my workout routine	25.8%	419
Special Events/Festivals	23.7%	386
Other (please specify)	20.3%	331
Fishing; I like to use the shoreline to catch a few	17.7%	288
Children's area/Rides; my kids need a place to play	16.9%	275
Parties or gatherings; with or without the use of a shelter	16.2%	263
Dog park usage	16.0%	261
Sports; as a spectator or as a competitor	9.3%	152
Boating; Launching my boat or using the marina for my rig	9.0%	146



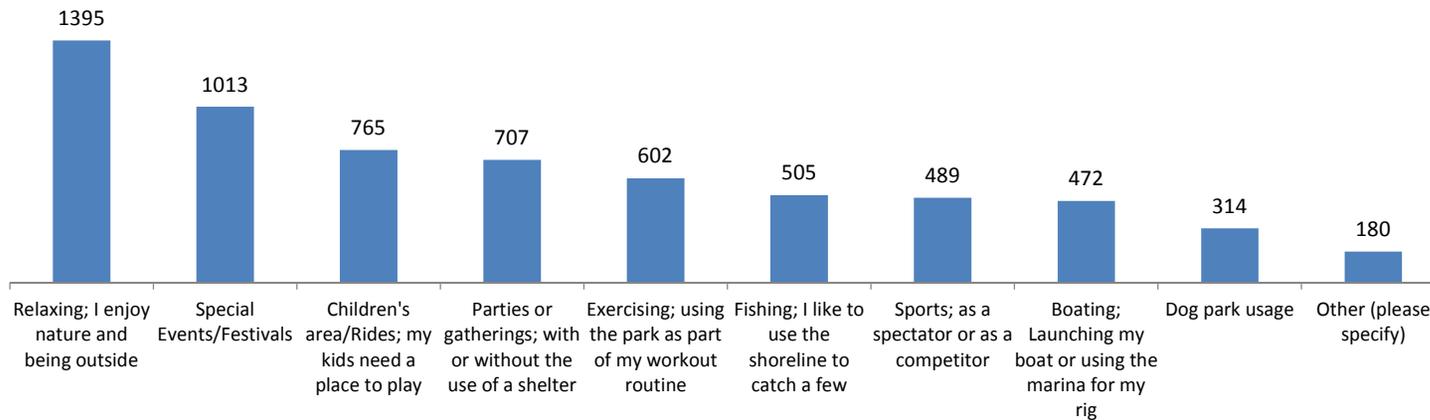
## Frequency of Park Visits

April to June

Answer Options	Response Percent	Response Count	Approximate Visits
0	5.6%	121	-
1-2	25.6%	548	822
3-5	30.7%	659	2,636
6-10	19.7%	423	3,384
11-15	6.6%	142	1,846
16 or more	11.7%	251	4,016
answered question		2,144	12,704



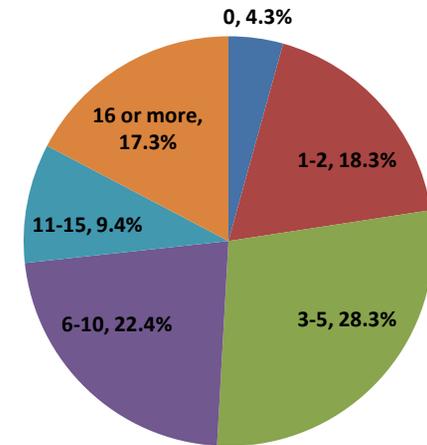
Answer Options	Response Percent	Response Count
Relaxing; I enjoy nature and being outside	68.4%	1395
Special Events/Festivals	49.7%	1013
Children's area/Rides; my kids need a place to play	37.5%	765
Parties or gatherings; with or without the use of a shelter	34.7%	707
Exercising; using the park as part of my workout routine	29.5%	602
Fishing; I like to use the shoreline to catch a few	24.8%	505
Sports; as a spectator or as a competitor	24.0%	489
Boating; Launching my boat or using the marina for my rig	23.1%	472
Dog park usage	15.4%	314
Other (please specify)	8.8%	180



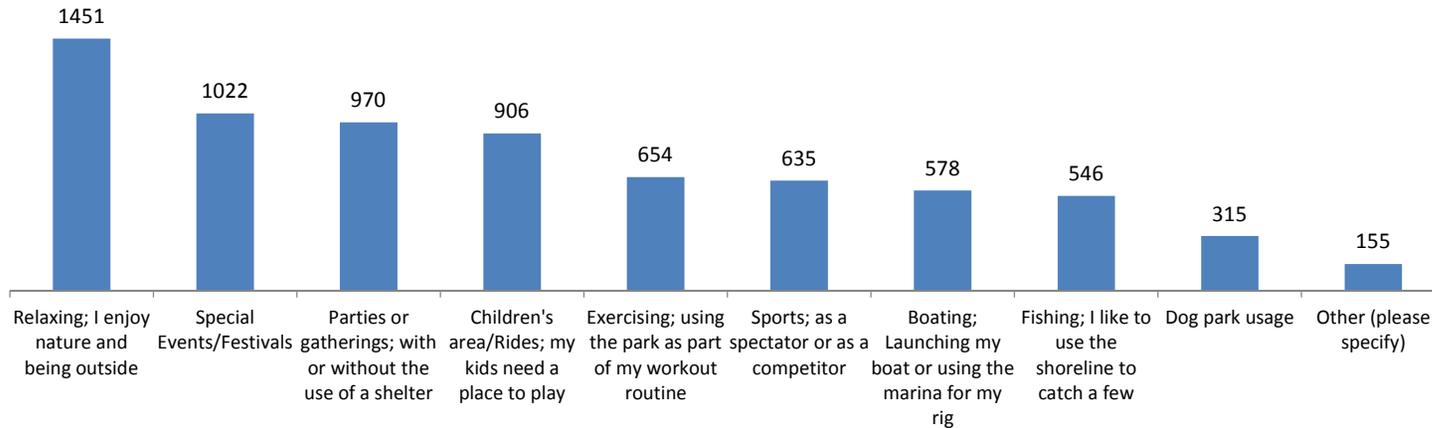
## Frequency of Park Visits

July to September

Answer Options	Response Percent	Response Count	Approximate Visits
0	4.3%	90	-
1-2	18.3%	387	581
3-5	28.3%	598	2,392
6-10	22.4%	474	3,792
11-15	9.4%	199	2,587
16 or more	17.3%	365	5,840
answered question		2,113	15,192



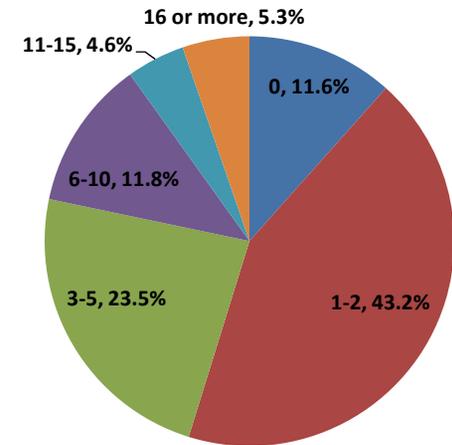
Answer Options	Response Percent	Response Count
Relaxing; I enjoy nature and being outside	70.9%	1451
Special Events/Festivals	49.9%	1022
Parties or gatherings; with or without the use of a shelter	47.4%	970
Children's area/Rides; my kids need a place to play	44.3%	906
Exercising; using the park as part of my workout routine	31.9%	654
Sports; as a spectator or as a competitor	31.0%	635
Boating; Launching my boat or using the marina for my rig	28.2%	578
Fishing; I like to use the shoreline to catch a few	26.7%	546
Dog park usage	15.4%	315
Other (please specify)	7.6%	155



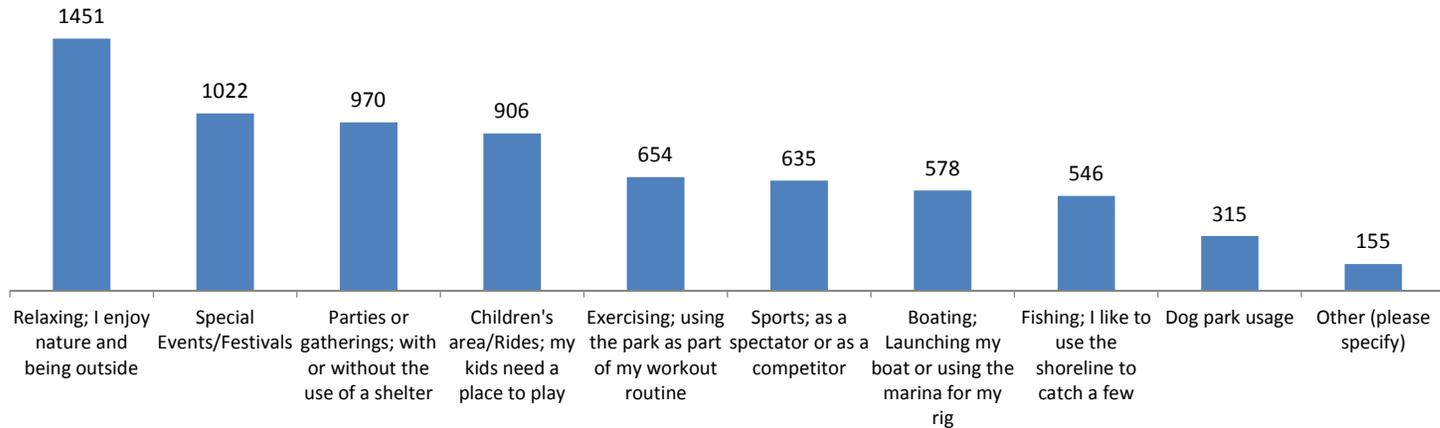
## Frequency of Park Visits

October to December

Answer Options	Response Percent	Response Count	Approximate Visits
0	11.6%	245	-
1-2	43.2%	912	1,368
3-5	23.5%	495	1,980
6-10	11.8%	249	1,992
11-15	4.6%	97	1,261
16 or more	5.3%	111	1,776
answered question		2,109	2109

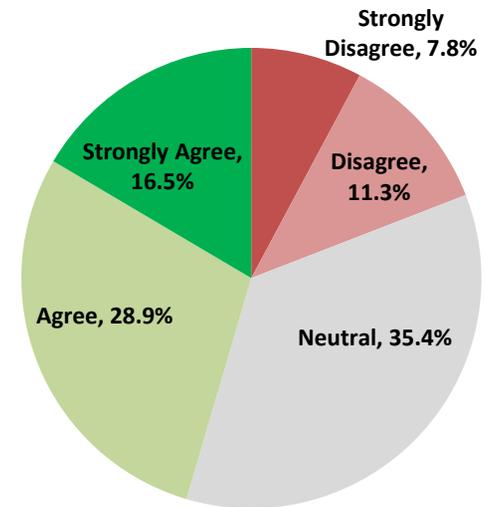


Answer Options	Response Percent	Response Count
Relaxing; I enjoy nature and being outside	70.9%	1451
Special Events/Festivals	49.9%	1022
Parties or gatherings; with or without the use of a shelter	47.4%	970
Children's area/Rides; my kids need a place to play	44.3%	906
Exercising; using the park as part of my workout routine	31.9%	654
Sports; as a spectator or as a competitor	31.0%	635
Boating; Launching my boat or using the marina for my rig	28.2%	578
Fishing; I like to use the shoreline to catch a few	26.7%	546
Dog park usage	15.4%	315
Other (please specify)	7.6%	155



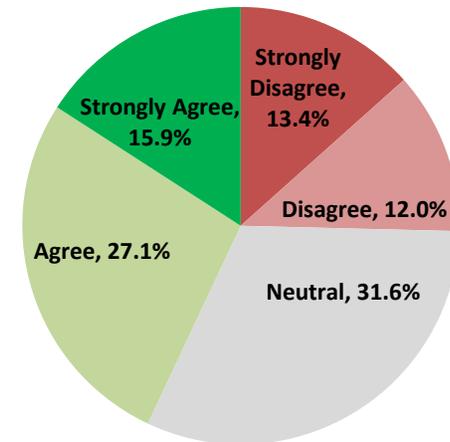
**1. When visiting Lakeside Park, I want access to food and beverages.**

Answer Options	Response Percent	Response Count
Strongly Disagree	7.8%	159
Disagree	11.3%	232
Neutral	35.4%	724
Agree	28.9%	592
Strongly Agree	16.5%	338
answered question		2045



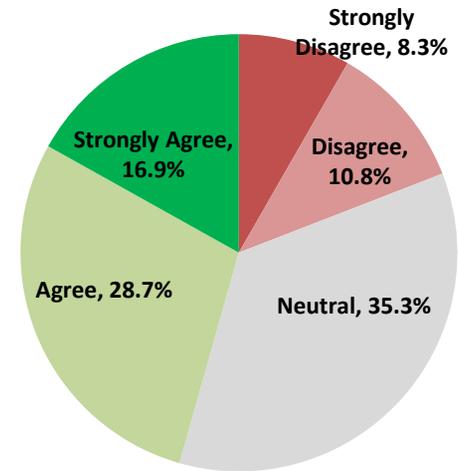
**2. When visiting Lakeside Park, I would like to have vending machines available (soda, water, SoBe, Gatorade, etc.).**

Answer Options	Response Percent	Response Count
Strongly Disagree	13.4%	273
Disagree	12.0%	244
Neutral	31.6%	643
Agree	27.1%	552
Strongly Agree	15.9%	324
answered question		2036



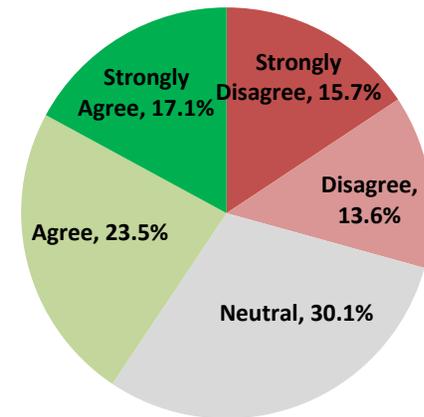
**3. When visiting Lakeside Park, I would like to have standard concessions available (hot dog, hamburger, popcorn, candy, soda, etc.).**

Answer Options	Response Percent	Response Count
Strongly Disagree	8.3%	169
Disagree	10.8%	219
Neutral	35.3%	717
Agree	28.7%	583
Strongly Agree	16.9%	343
answered question		2031



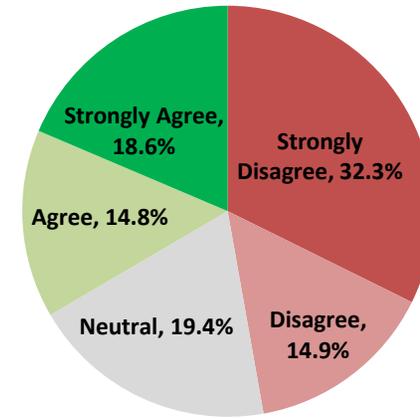
**4. When visiting Lakeside Park, I would like to have a coffee/sandwich shop available.**

Answer Options	Response Percent	Response Count
Strongly Disagree	15.7%	318
Disagree	13.6%	276
Neutral	30.1%	609
Agree	23.5%	475
Strongly Agree	17.1%	345
answered question		2023



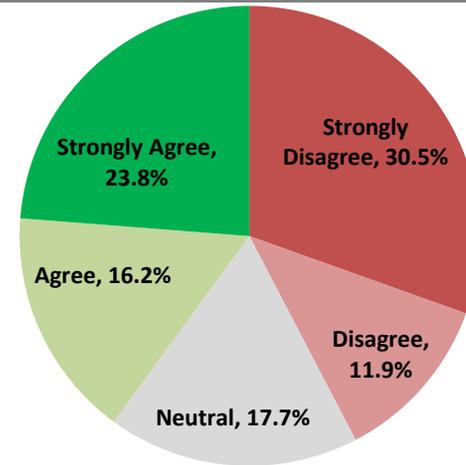
5. When visiting Lakeside Park, I would like to have a beer garden available (place with outdoor access and bar).

Answer Options	Response Percent	Response Count
Strongly Disagree	32.3%	653
Disagree	14.9%	301
Neutral	19.4%	393
Agree	14.8%	300
Strongly Agree	18.6%	376
answered question		2023



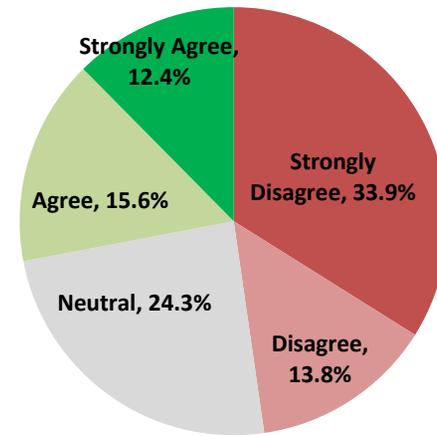
6. When visiting Lakeside Park, I would like to have a full service restaurant and bar available (full lunch/dinner menu where I can sit and enjoy dinner while looking over Lake Winnebago).

Answer Options	Response Percent	Response Count
Strongly Disagree	30.5%	618
Disagree	11.9%	242
Neutral	17.7%	359
Agree	16.2%	328
Strongly Agree	23.8%	482
answered question		2029



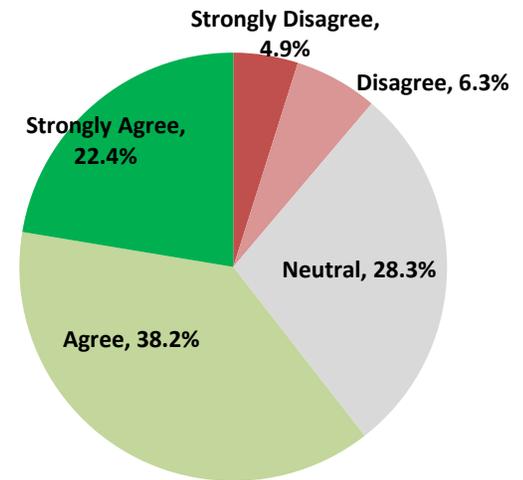
**7. Alcoholic beverages should be available for sale in Lakeside Park.**

Answer Options	Response Percent	Response Count
Strongly Disagree	33.9%	672
Disagree	13.8%	273
Neutral	24.3%	483
Agree	15.6%	310
Strongly Agree	12.4%	246
answered question		1984



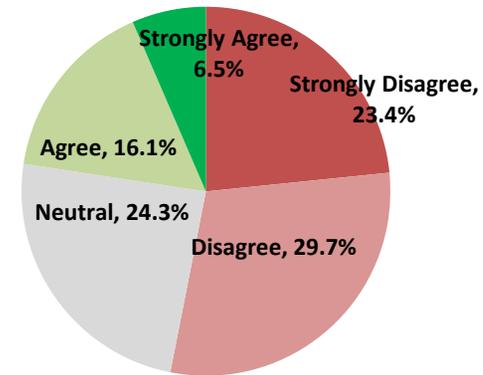
**8. I want to rent boats/bikes/kayaks when visiting Lakeside Park.**

Answer Options	Response Percent	Response Count
Strongly Disagree	4.9%	97
Disagree	6.3%	124
Neutral	28.3%	561
Agree	38.2%	757
Strongly Agree	22.4%	443
answered question		1982



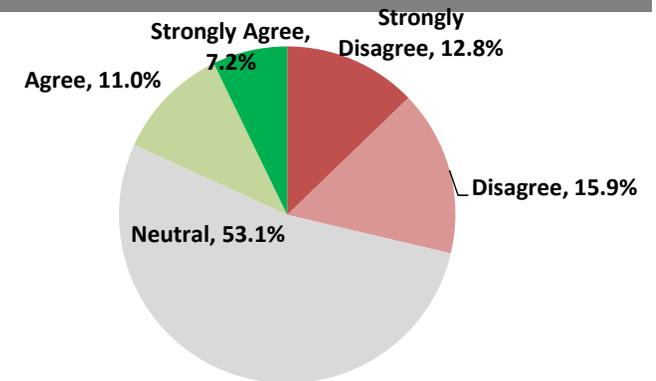
**9. When visiting Lakeside Park, I have a problem finding a place to park my vehicle.**

Answer Options	Response Percent	Response Count
Strongly Disagree	23.4%	464
Disagree	29.7%	587
Neutral	24.3%	481
Agree	16.1%	318
Strongly Agree	6.5%	129
answered question		1979



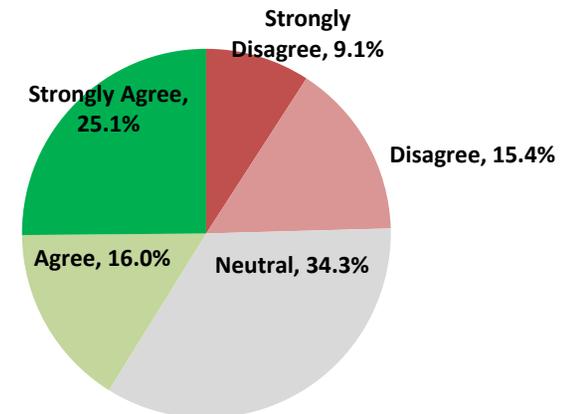
**10. When visiting Lakeside Park, I find it needs to be more accessible for people with disabilities.**

Answer Options	Response Percent	Response Count
Strongly Disagree	12.8%	249
Disagree	15.9%	308
Neutral	53.1%	1031
Agree	11.0%	214
Strongly Agree	7.2%	140
answered question		1942



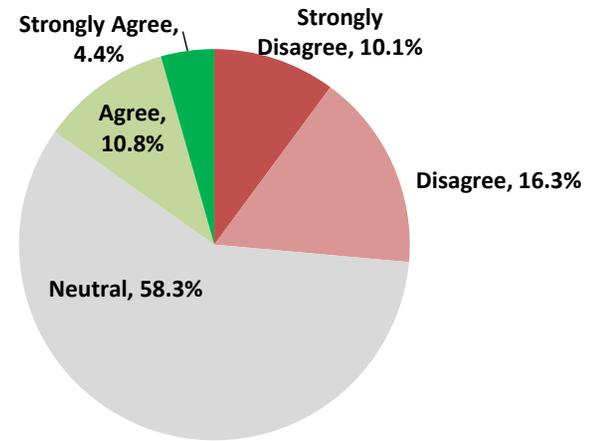
**How people who identified with having cognitive or physical disabilities responded:**

Strongly Disagree	9.1%	16
Disagree	15.4%	27
Neutral	34.3%	60
Agree	16.0%	28
Strongly Agree	25.1%	44
answered question		175



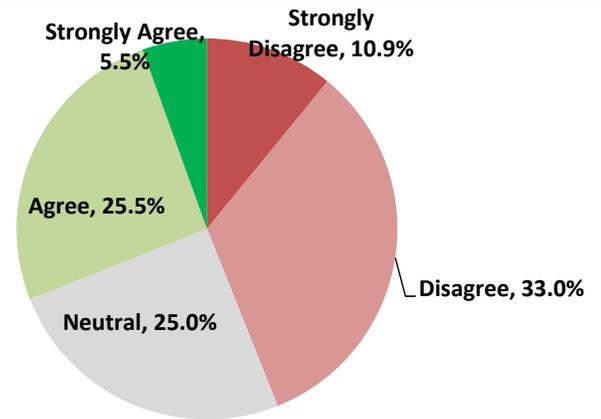
**11. There are a sufficient number of public baby changing stations or restrooms for families with small children in Lakeside Park.**

Answer Options	Response Percent	Response Count
Strongly Disagree	10.1%	192
Disagree	16.3%	309
Neutral	58.3%	1104
Agree	10.8%	205
Strongly Agree	4.4%	84
answered question		1894



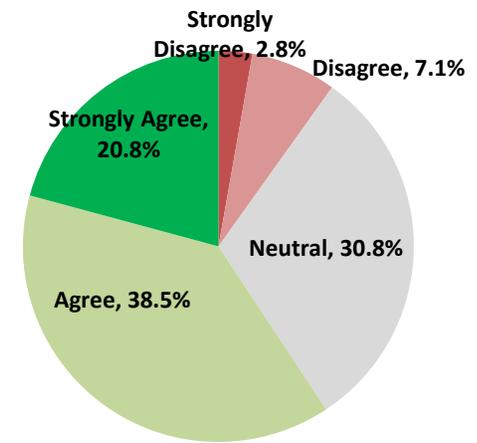
**12. There are a sufficient number of public restrooms in Lakeside Park.**

Answer Options	Response Percent	Response Count
Strongly Disagree	10.9%	214
Disagree	33.0%	647
Neutral	25.0%	491
Agree	25.5%	501
Strongly Agree	5.5%	108
answered question		1961



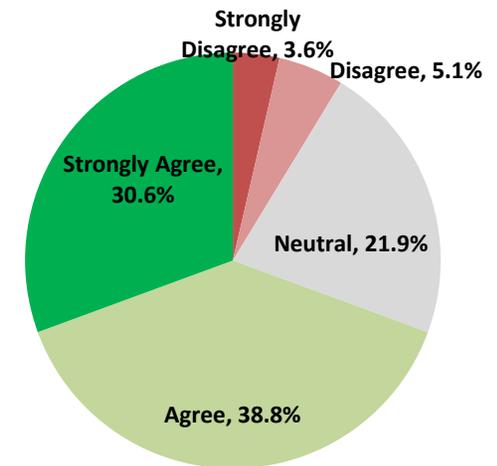
**13. The current Pavilion (next to the bandstand) is a great space to rent for special events. - Reponses**

Answer Options	Response Percent	Response Count
Strongly Disagree	2.8%	55
Disagree	7.1%	138
Neutral	30.8%	602
Agree	38.5%	751
Strongly Agree	20.8%	407
answered question		1953



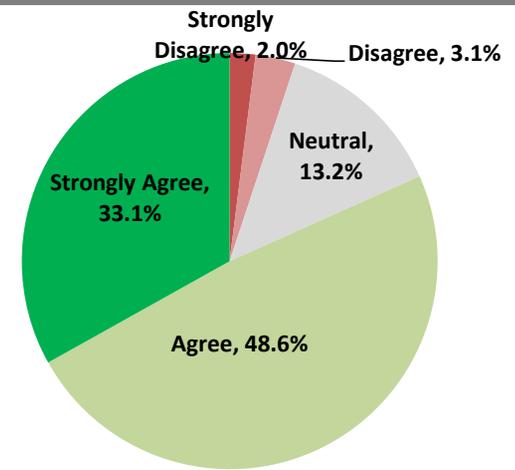
**14. There should be more festivals like Walleye Weekend/Art on the Island/Car Shows being held in Lakeside Park.**

Answer Options	Response Percent	Response Count
Strongly Disagree	3.6%	72
Disagree	5.1%	100
Neutral	21.9%	433
Agree	38.8%	766
Strongly Agree	30.6%	605
answered question		1976



15. I feel safe when visiting Lakeside Park.

Answer Options	Response Percent	Response Count
Strongly Disagree	2.0%	39
Disagree	3.1%	62
Neutral	13.2%	260
Agree	48.6%	960
Strongly Agree	33.1%	655
answered question		1976





**PROFESSIONAL SERVICES**

More ideas. Better solutions.

## Professional Services Agreement

This AGREEMENT (Agreement) is made today 01/26/2015 by and between CITY OF FOND DU LAC (OWNER) and MSA PROFESSIONAL SERVICES, INC. (MSA), which agree as follows:

**Project Name:** Conceptual Layout, Planning & Field Survey of Existing Bridge Structures in Lakeside Park

### The scope of the work authorized is:

Investigate conceptual trail routes thru the Lakeside Park area starting in the southeast corner of the park near E. Harbor Drive as described below.

Option #1 would be to continue north along the east side of N. Park Avenue past the harbor, making a connection to the lighthouse area, then proceeding westerly along the lakeshore, over the channel inlet, past the boat launch area on the east side of the river inlet, southerly along the property line between the wastewater treatment plant and property currently owned by Mercury Marine to Water Street, then along Water Street southerly to a terminus at W. Scott Street.

Option #2 would be to continue north along N. Park Avenue to the start of the harbor area and turn west across an existing bridge, past the existing baseball diamonds, then proceeding northerly and westerly thru the park utilizing existing trails and bridges to the lakeshore west of the channel, thence following a similar path as the first option to a terminus at W. Scott Street.

It is anticipated that City staff will furnish any available pertinent project information for use by MSA. This may include reports, investigations, property descriptions, land use restrictions, development agreements, permits/approvals, easements, data from previous designs, concept maps, wetland delineations, architectural building plans, and any other information relative to the layout of the proposed trail improvements.

MSA's scope of services is as follows.

### A. CONCEPTUAL LAYOUT & PLANNING

MSA will work with the City staff to prepare a concept plan for each route option. Each option will be presented for consideration based upon the merits of:

- Parking and street access.
- Aesthetics and proximity to existing features, structures and/or the lakeshore.
- Safety and ADA accessibility.

- Permitting issues.
- Ease of future maintenance and the related upkeep costs.
- Initial construction cost.

MSA will prepare draft conceptual layouts of each route option along with related discussion items and present this information to City staff at a review meeting. At the attendee's option during this meeting, the group may reconvene at Lakeside Park to observe the general location and discuss specific details for each of the two routes.

Additional items to be addressed at the review meeting are:

- Clarify design requirements (standards, concepts, and/or concerns) and related City preferences. Discuss areas of concern (such as crossing Park Avenue) and offer preliminary thoughts on how to address these concerns.
- Review any site constraints affecting construction (stockpiling equipment and/or materials, erosion control, safety provisions, dust and noise control, interference with the operations of adjacent facilities, etc.).
- Discuss City staff observations regarding safety concerns, maintenance activities/problems and other related issues.
- Review any applicable design requirements related to possible permitting issues.
- Review lighting options and relative costs for the trail route.

After the review meeting, MSA will make revisions as discussed and prepare the final conceptual planning documents.

Deliverables: Attendance at one review meeting (combined with Camelot Trail).  
 One electronic (PDF format) version of the conceptual planning documents including the following items for each of the two options: a colorized concept plan overlaid on aerial photography, estimates of probable construction cost and a narrative outlining the pros and cons of each option.

Conceptual Layout & Planning ..... \$8,400

**B. FIELD SURVEY OF EXISTING BRIDGE STRUCTURES**

MSA will provide a partial field survey of each bridge structure in order to access the structure's compliance with ADA accessibility regulations. The purpose of this survey would be to collect enough information so as to be able to determine the approach and deck grades of each existing structure.

Deliverables: One electronic (PDF format) version of an ADA compliance report for each bridge structure including photographs of the structure plus surface elevations and slopes.

Field Survey of Existing Bridge Structures ..... \$1,100

**The schedule to perform the work is:** Approximate Start Date: 02/02/2015  
Approximate Completion Date: 05/01/2015

**The estimated fee for the work is:** \$9,500.00

**The retainer amount required is:** None

**NOTE: The retainer will be applied toward the final invoice on this project.**

All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a lump sum basis.

**Approval:** Authorization to proceed is acknowledged by signatures of the parties to this Agreement.

**CITY OF FOND DU LAC, WI**

**MSA PROFESSIONAL SERVICES, INC.**

\_\_\_\_\_  
Joseph P. Moore

City Manager

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

P.O. Box 150

Fond du Lac, WI 54935

Phone: 920-322-3470

Fax: 920-322-3471



\_\_\_\_\_  
Michael J. Laue

MSA Team Leader

Date: 02/09/2015

201 Corporate Drive

Beaver Dam, WI 53916

Phone: (920) 392-5140

Fax: (920) 887-4250

**MSA PROFESSIONAL SERVICES, INC. (MSA) –  
GENERAL TERMS AND CONDITIONS OF SERVICES (PUBLIC - Wisconsin)**

1. **Scope and Fee.** The quoted fees and scope of services constitute the best estimate of the fees and tasks required to perform the services as defined. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service, activities often cannot be fully defined during initial planning. As the project progresses, facts uncovered may reveal a change in direction which may alter the scope. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required. The OWNER agrees to clarify and define project requirements and to provide such legal, accounting and insurance counseling services as may be required for the project

2. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Past due balances shall be subject to an interest charge at a rate of 12% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

3. **Costs and Schedules.** Costs and schedule commitments shall be subject to change for delays caused by the OWNER's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including, without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults, by suppliers of materials or services, process shutdowns, acts of God or the public enemy, or acts of regulations of any governmental agency. Temporary delays of services caused by any of the above which result in additional costs beyond those outlined may require renegotiation of this agreement.

4. **Access to Site.** Owner shall furnish right-of-entry on the project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. MSA will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

5. **Location of Utilities.** Consultant shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend Consultant in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to Consultant by others.

6. **Professional Representative.** MSA intends to serve as the OWNER's professional representative for those services as defined in this agreement, and to provide advice and consultation to the OWNER as a professional. Any opinions of probable project costs, reviews and observations, and other decisions made by MSA for the OWNER are rendered on the basis of experience and qualifications and represents the professional judgment of MSA. However, MSA cannot and does not guarantee that proposals, bid or actual project or construction costs will not vary from the opinion of probable cost prepared by it.

7. **Construction.** This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work of the contractors or subcontractors.

8. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, and use a level of effort consistent with current professional standards in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

MSA does not make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, MSA will not accept those terms and conditions offered by the OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

9. **Construction Site Visits.** MSA shall make visits to the site at intervals appropriate to the various stages of construction as MSA deems necessary in order to observe, as an experienced and qualified design professional, the progress and quality of the various aspects of Contractor's work.

The purpose of MSA's visits to, and representation at the site, will be to enable MSA to better carry out the duties and responsibilities assigned to and undertaken by MSA during the Construction Phase, and in addition, by the exercise of MSA's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, MSA 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 MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

10. **Termination.** This Agreement shall commence upon execution and shall remain in effect until terminated by either party, at such party's discretion, on not less than thirty (30) days' advance written notice. The effective date of the termination is the thirtieth day after the non-terminating party's receipt of the notice of termination. If MSA terminates the Agreement, the OWNER may, at its option, extend the terms of this Agreement to the extent necessary for MSA to complete any services that were ordered prior to the effective date of termination. If OWNER terminates this Agreement, OWNER shall pay MSA for all services performed prior to MSA's receipt of the notice of termination and for all work performed and/or expenses incurred by MSA in terminating Services begun after MSA's receipt of the termination notice. Termination hereunder shall operate to discharge only those obligations which are executory by either party on and after the effective date of termination. These General Terms and Conditions shall survive the completion of the services performed hereunder or the Termination of this Agreement for any cause.

This agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof should be effective unless agreed in writing and duly executed by the parties hereto.

11. **Betterment.** If, due to MSA's error, any required or necessary item or component of the project is omitted from the construction documents, MSA's liability shall be limited to the reasonable costs of correction of the construction, less what OWNER'S cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that MSA will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

12. **Hazardous Substances.** OWNER acknowledges and agrees that MSA has had no role in generating, treating, storing, or disposing of hazardous substances or materials which may be present at the project site, and MSA has not benefited from the processes that produced such hazardous substances or materials. Any hazardous substances or materials encountered by or associated with Services provided by MSA on the project shall at no time be or become the property of MSA. MSA shall not be deemed to possess or control any hazardous substance or material at any time; arrangements for the treatment, storage, transport, or disposal of any hazardous substances or materials, which shall be made by MSA, are made solely and exclusively on OWNER's behalf for OWNER's benefit and at OWNER's direction. Nothing contained within this Agreement shall be construed or interpreted as requiring MSA to assume the status of a generator, storer, treater, or disposal facility as defined in any federal, state, or local statute, regulation, or rule governing treatment, storage, transport, and/or disposal of hazardous substances or materials.

All samples of hazardous substances, materials or contaminants are the property and responsibility of OWNER and shall be returned to OWNER at the end of a project for proper disposal. Alternate arrangements to ship such samples directly to a licensed disposal facility may be made at OWNER's request and expense and subject to this subparagraph.

13. **Insurance.** MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

14. **Reuse of Documents.** Reuse of any documents and/or services pertaining to this project by the OWNER or extensions of this project or on any other project shall be at the OWNER's sole risk. The OWNER agrees to defend, indemnify, and hold harmless MSA for all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or services by the OWNER or by others acting through the OWNER.

15. **Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, agents, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that MSA is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of MSA to defend the OWNER on any claim arising under this agreement.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless, MSA, and MSA's officers, directors, members, partners, agents, consultants, and employees (hereinafter "MSA") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of the OWNER or the OWNER's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "OWNER"). In no event shall this indemnity agreement apply to claims between MSA and the OWNER. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that the OWNER is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of the OWNER to defend MSA on any claim arising under this agreement.

To the fullest extent permitted by law, MSA's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss or damages caused in part or by the negligence of MSA and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that MSA's negligence bears to the total negligence of OWNER, MSA, and all other negligent entities and individuals.

16. **Dispute Resolution.** OWNER and MSA desire to resolve any disputes or areas of disagreement involving the subject matter of this Agreement by a mechanism that facilitates resolution of disputes by negotiation rather than by litigation. OWNER and MSA also acknowledge that issues and problems may arise after execution of this Agreement which were not anticipated or are not resolved by specific provisions in this Agreement. Accordingly, both OWNER and MSA will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless OWNER and MSA mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Neither demand for mediation nor any term of this Dispute Resolution clause shall prevent the filing of a legal action where failing to do so may bar the action because of the applicable statute of limitations. If despite the good faith efforts of OWNER and MSA any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in any state or federal court having jurisdiction.

17. **Exclusion of Special, Indirect, Consequential and Liquidated Damages.** Consultant shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the project or this contract.

18. **State Law.** This agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

19. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be, at MSA's option, Sauk County, Wisconsin, or any county in which MSA has an office.

20. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations, inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes any other prior understanding entered into between the parties on the subject matter hereto.



**PROFESSIONAL SERVICES**

More ideas. Better solutions.

## Professional Services Agreement

This AGREEMENT (Agreement) is made today 01/26/2015 by and between CITY OF FOND DU LAC (OWNER) and MSA PROFESSIONAL SERVICES, INC. (MSA), which agree as follows:

**Project Name:** Conceptual Layout, Planning & Grant Application Assistance for the Camelot Trail

### The scope of the work authorized is:

Investigate conceptual trail routes for the Camelot Trail from the intersection of S. Main Street and E. Pioneer Road southerly to Camelot Drive as described below.

Option #1 would be to continue south approximately 1,900 feet along the west side of S. Main Street (within the existing right-of-way) to the intersection with Camelot Drive and then continue east along Camelot Drive to tie in with an existing trail system in this area.

Option #2 would be to continue east along the south side of E. Pioneer Road to Mihill Avenue, then south along Mihill Avenue (using the existing street) to the intersection with Camelot Drive and then continue east along Camelot Drive to tie in with an existing trail system in this area. This option presents a challenge relating to safety thru a narrow corridor and confined space past the Needsom Supplies store located at the southeast quadrant of the S. Main Street and E. Pioneer Road intersection.

Option #3 would be to continue south along the west side of S. Main Street to the intersection with East Lane, then continue east along East Lane to Mihill Avenue, then south along Mihill Avenue to the intersection with Camelot Drive and then continue east along Camelot Drive to tie in with an existing trail system in this area.

It is anticipated that City staff will furnish any available pertinent project information for use by MSA. This may include reports, investigations, property descriptions, land use restrictions, development agreements, permits/approvals, easements, data from previous designs, concept maps, wetland delineations, architectural building plans, and any other information relative to the layout of the proposed trail improvements.

MSA's scope of services is as follows.

#### A. CONCEPTUAL LAYOUT & PLANNING

MSA will work with the City staff to prepare a concept plan for each route option being approximately 1.3 miles in length. Each option will be presented for consideration based upon the merits of:

- Safety and traffic flow.

- Site constraints, conflicts with utilities and other site features.
- Future maintenance and the related upkeep cost.
- Initial construction cost.

MSA will prepare draft conceptual layouts of each route option along with related discussion items and present this information to City staff at a review meeting. At the attendee's option during this meeting, the group may reconvene at the site to observe the general location and discuss specific details for each of the routes.

Additional items to be addressed at the review meeting are:

- Clarify design requirements (standards, concepts, and/or concerns) and related City preferences.
- Review any site constraints affecting construction (conflicts with existing features, erosion control during construction, safety provisions, interference with the operations of adjacent facilities, etc.).
- Discuss City staff observations regarding safety concerns, maintenance activities/problems and other related issues.
- Review any applicable design requirements related to possible permitting issues and/or property negotiation rights (if applicable).

After the review meeting, MSA will make revisions as discussed and prepare the final conceptual planning documents.

Deliverables: Attendance at one review meeting (combined with Lakeside Trail).  
 One electronic (PDF format) version of the conceptual planning documents including the following items for each of the two options: a colorized concept plan overlaid on aerial photography, estimates of probable construction cost and a narrative outlining the pros and cons of each option.

Conceptual Layout & Planning ..... \$8,100

**B. FIELD SURVEY OF EAST PIONEER ROAD**

MSA will provide a partial field survey of the south side of E. Pioneer Road in the area of the Needsom Supplies store in order to access the conflicts between a new trail location and the existing infrastructure. The purpose of this survey would be to collect enough information so as to be able to determine the location of the street right-of-way, existing utilities and other related features in this confined corridor.

Deliverables: One electronic (PDF format) version of a map detailing the location of existing infrastructure as they relate to a possible trail route thru this area.

Field Survey of E. Pioneer Road ..... \$800

C. GRANT APPLICATION ASSISTANCE

MSA will assist City staff with the preparation of applications for the Federal National Recreational Trails Act (NRTA) and the DNR Stewardship Program. Under the NRTA Program, funding is allocated every 3 years to allow each applicant to ask for up to \$200,000 of grant money (otherwise in other years it is a maximum grant of \$45,000). The NRTA is a 50/50 grant program and the application is very similar to the Stewardship Grant program. This program cannot be matched with Stewardship funds. It is a standalone grant program.

All applications are due by May 1. Apply for both NRTA and Stewardship and see which one is more lucrative. Important Note: All property rights, including acquisitions and/or easements, must be secured prior to these applications being submitted. Therefore the focus of the grant application will be on the segment of trail along Camelot Drive from either S. Main Street or the Mihill Avenue intersections to the new east-west street.

Deliverables: One completed application for the Federal National Recreational Trails Act and a second one for the DNR Stewardship Program.

Grant Application Assistance ..... \$5,600

**The schedule to perform the work is:** Approximate Start Date: 02/02/2015  
Approximate Completion Date: 05/01/2015

**The estimated fee for the work is:** \$14,500.00

**The retainer amount required is:** None

**NOTE: The retainer will be applied toward the final invoice on this project.**

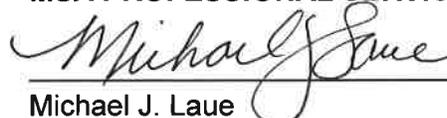
All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a lump sum basis.

**Approval:** Authorization to proceed is acknowledged by signatures of the parties to this Agreement.

**CITY OF FOND DU LAC, WI**

**MSA PROFESSIONAL SERVICES, INC.**

\_\_\_\_\_  
Joseph P. Moore  
City Manager  
Date: \_\_\_\_\_  
P.O. Box 150  
Fond du Lac, WI 54935  
Phone: 920-322-3470  
Fax: 920-322-3471

  
\_\_\_\_\_  
Michael J. Laue  
MSA Team Leader  
Date: 02/09/2015  
201 Corporate Drive  
Beaver Dam, WI 53916  
Phone: (920) 392-5140  
Fax: (920) 887-4250

**MSA PROFESSIONAL SERVICES, INC. (MSA) –  
GENERAL TERMS AND CONDITIONS OF SERVICES (PUBLIC - Wisconsin)**

1. **Scope and Fee.** The quoted fees and scope of services constitute the best estimate of the fees and tasks required to perform the services as defined. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service, activities often cannot be fully defined during initial planning. As the project progresses, facts uncovered may reveal a change in direction which may alter the scope. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required. The OWNER agrees to clarify and define project requirements and to provide such legal, accounting and insurance counseling services as may be required for the project

2. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Past due balances shall be subject to an interest charge at a rate of 12% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

3. **Costs and Schedules.** Costs and schedule commitments shall be subject to change for delays caused by the OWNER's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including, without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults, by suppliers of materials or services, process shutdowns, acts of God or the public enemy, or acts of regulations of any governmental agency. Temporary delays of services caused by any of the above which result in additional costs beyond those outlined may require renegotiation of this agreement.

4. **Access to Site.** Owner shall furnish right-of-entry on the project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. MSA will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

5. **Location of Utilities.** Consultant shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend Consultant in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to Consultant by others.

6. **Professional Representative.** MSA intends to serve as the OWNER's professional representative for those services as defined in this agreement, and to provide advice and consultation to the OWNER as a professional. Any opinions of probable project costs, reviews and observations, and other decisions made by MSA for the OWNER are rendered on the basis of experience and qualifications and represents the professional judgment of MSA. However, MSA cannot and does not guarantee that proposals, bid or actual project or construction costs will not vary from the opinion of probable cost prepared by it.

7. **Construction.** This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work of the contractors or subcontractors.

8. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, and use a level of effort consistent with current professional standards in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

MSA does not make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, MSA will not accept those terms and conditions offered by the OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

9. **Construction Site Visits.** MSA shall make visits to the site at intervals appropriate to the various stages of construction as MSA deems necessary in order to observe, as an experienced and qualified design professional, the progress and quality of the various aspects of Contractor's work.

The purpose of MSA's visits to, and representation at the site, will be to enable MSA to better carry out the duties and responsibilities assigned to and undertaken by MSA during the Construction Phase, and in addition, by the exercise of MSA's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, MSA 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 MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

10. **Termination.** This Agreement shall commence upon execution and shall remain in effect until terminated by either party, at such party's discretion, on not less than thirty (30) days' advance written notice. The effective date of the termination is the thirtieth day after the non-terminating party's receipt of the notice of termination. If MSA terminates the Agreement, the OWNER may, at its option, extend the terms of this Agreement to the extent necessary for MSA to complete any services that were ordered prior to the effective date of termination. If OWNER terminates this Agreement, OWNER shall pay MSA for all services performed prior to MSA's receipt of the notice of termination and for all work performed and/or expenses incurred by MSA in terminating Services begun after MSA's receipt of the termination notice. Termination hereunder shall operate to discharge only those obligations which are executory by either party on and after the effective date of termination. These General Terms and Conditions shall survive the completion of the services performed hereunder or the Termination of this Agreement for any cause.

This agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof should be effective unless agreed in writing and duly executed by the parties hereto.

11. **Betterment.** If, due to MSA's error, any required or necessary item or component of the project is omitted from the construction documents, MSA's liability shall be limited to the reasonable costs of correction of the construction, less what OWNER'S cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that MSA will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

12. **Hazardous Substances.** OWNER acknowledges and agrees that MSA has had no role in generating, treating, storing, or disposing of hazardous substances or materials which may be present at the project site, and MSA has not benefited from the processes that produced such hazardous substances or materials. Any hazardous substances or materials encountered by or associated with Services provided by MSA on the project shall at no time be or become the property of MSA. MSA shall not be deemed to possess or control any hazardous substance or material at any time; arrangements for the treatment, storage, transport, or disposal of any hazardous substances or materials, which shall be made by MSA, are made solely and exclusively on OWNER's behalf for OWNER's benefit and at OWNER's direction. Nothing contained within this Agreement shall be construed or interpreted as requiring MSA to assume the status of a generator, storer, treater, or disposal facility as defined in any federal, state, or local statute, regulation, or rule governing treatment, storage, transport, and/or disposal of hazardous substances or materials.

All samples of hazardous substances, materials or contaminants are the property and responsibility of OWNER and shall be returned to OWNER at the end of a project for proper disposal. Alternate arrangements to ship such samples directly to a licensed disposal facility may be made at OWNER's request and expense and subject to this subparagraph.

13. **Insurance.** MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

14. **Reuse of Documents.** Reuse of any documents and/or services pertaining to this project by the OWNER or extensions of this project or on any other project shall be at the OWNER's sole risk. The OWNER agrees to defend, indemnify, and hold harmless MSA for all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or services by the OWNER or by others acting through the OWNER.

15. **Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, agents, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that MSA is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of MSA to defend the OWNER on any claim arising under this agreement.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless, MSA, and MSA's officers, directors, members, partners, agents, consultants, and employees (hereinafter "MSA") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of the OWNER or the OWNER's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "OWNER"). In no event shall this indemnity agreement apply to claims between MSA and the OWNER. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that the OWNER is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of the OWNER to defend MSA on any claim arising under this agreement.

To the fullest extent permitted by law, MSA's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss or damages caused in part or by the negligence of MSA and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that MSA's negligence bears to the total negligence of OWNER, MSA, and all other negligent entities and individuals.

16. **Dispute Resolution.** OWNER and MSA desire to resolve any disputes or areas of disagreement involving the subject matter of this Agreement by a mechanism that facilitates resolution of disputes by negotiation rather than by litigation. OWNER and MSA also acknowledge that issues and problems may arise after execution of this Agreement which were not anticipated or are not resolved by specific provisions in this Agreement. Accordingly, both OWNER and MSA will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless OWNER and MSA mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Neither demand for mediation nor any term of this Dispute Resolution clause shall prevent the filing of a legal action where failing to do so may bar the action because of the applicable statute of limitations. If despite the good faith efforts of OWNER and MSA any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in any state or federal court having jurisdiction.

17. **Exclusion of Special, Indirect, Consequential and Liquidated Damages.** Consultant shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the project or this contract.

18. **State Law.** This agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

19. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be, at MSA's option, Sauk County, Wisconsin, or any county in which MSA has an office.

20. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations, inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes any other prior understanding entered into between the parties on the subject matter hereto.