



Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

**Board of Directors**

Ward 1 – Keith D. Lau

Ward 2 – Andre' Good

Ward 3 – Mike Lorenz

Ward 4 – George Catsavis

At Large Position 5 – Tracy Pennartz

At Large Position 6 – Kevin Settle

At Large Position 7 – Don Hutchings

# ***AGENDA***

**Fort Smith Board of Directors**

**STUDY SESSION**

**May 12, 2015 ~ 12:00 Noon**

**Fort Smith Public Library Community Room**

**3201 Rogers Avenue**

**CALL TO ORDER**

1. Update regarding Whirlpool TCE remediation
2. Discuss River Valley Sports Complex at Chaffee Crossing
3. Review preliminary agenda for the May 19, 2015 regular meeting

**ADJOURN**



1

## MEMORANDUM

May 8, 2015

**TO:** Mayor and Board of Directors

**FROM:** Ray Gosack, City Administrator

**SUBJECT:** Quarterly Report on Whirlpool TCE Remediation

Jeff Noel of Whirlpool Corporation will attend the May 12<sup>th</sup> study session. He'll present the quarterly update of Whirlpool's work to remediate the TCE contamination on the company's property and nearby neighborhoods. A multitude of documents regarding the remediation efforts is on the city's web site and at [www.whirlpoolfortsmith.com](http://www.whirlpoolfortsmith.com). The TCE remediation supports the following comprehensive plan policy.

*Maintain housing opportunities in urban areas  
(Housing and Neighborhoods - 2.2)*



- Ray

cc: Jeff Noel, Whirlpool Corporation

# Memo



**To:** Ray Gosack, City Administrator  
**From:** Jeff Dingman, Deputy City Administrator  
**Date:** 5/8/2015  
**Re:** River Valley Sports Complex Project - Update

*-jud*

---

Attached are materials submitted by Jake Files and Lee Webb, developers of the River Valley Sports Complex project, regarding the current status and ongoing efforts to complete this project.

As you will recall, the original date for substantial completion of this project as mentioned in the city's agreement with RVSC was June 10, 2015, which will not be realized. The developers have proposed a new date for substantial completion (March, 2016), along with an additional breakdown of the milestones for drawing on city funds for the project. I have attached a project update, a comparison of the original draw schedule versus the new proposed schedule, some weather information, and some photos.

To date, the city has paid the first two draws for a total of \$200,000 to the project. The city has allocated a total of \$1.6 million from the Parks CIP funds for this project.

Any modifications to the agreement to accommodate the new draw schedule and completion date will require approval by the Board of Directors. Mr. Files and Mr. Webb will be in attendance at the study session to answer your questions and discuss the project.

Please contact me if you have questions regarding this agenda item.

Update on the River Valley Sports Complex Progress and request for change in payment structure (no increase in amount).

Timing: We propose substantial completion by March 2016 to be open for Spring 2016 Season. We expect to be complete by the end of October 2015 barring any weather/rain delays.

Explanation of why we are behind proposed schedule:

As referenced in the current language, this was predicated on the Guard finishing their work in September 2014. We had one of the rainiest seasons on record (see notes attached from wunderground.com as backup). In August, 2014, we received 2.5x the amount of rainfall as average, and in September, 2014, we received 27.6x the average rainfall. Because of this unanticipated wet season, they were not able to complete their portion, but we do have that in the works currently (see pictures) and are working on getting this completed in the next 6 weeks. Upon that completion, we will begin on the other facets of the complex.

Request for change to Draw Schedule:

*Note-the amounts in total have not changed from the original agreement, we just put milestones into each scope to allow for better utilization of funds and progression of work.*

Signing of agreement-100k-done

Submission and approval of plans-100k-done

EARTHWORK SCOPE (\$250K):

\*Completion of 1st complex (4 fields) to grade-125k

\*Completion of 2nd complex (2nd 4 fields) and common areas but excluding parking lot-125k

BUILDINGS SCOPE (\$250K):

\*Completion of the concrete slabs for both concession buildings-100k

\*Completion of getting buildings in the dry and roofs installed on both concession buildings-100k

\*Completion of both concession buildings (cert of occup)-50k

PLAYING SURFACES SCOPE (\$325K):

\*Completion of 1st complex with playing surface and irrigation-150k

\*Completion of 2nd complex with playing surface and irrigation-150k

\*Common areas surfaces complete-25k

**LIGHTING (\$200K):**

- \*Upon setting of poles for field lighting-70k
- \*Upon completion of wiring and lights on 1st complex-65k
- \*Upon completion of wiring and lights on 2nd complex-65k

**FENCING (\$200K):**

- \*Upon setting fences on fields in 1st complex-80k
- \*Upon setting fences on fields in 2nd complex-80k
- \*Completion of all other fencing including any perimeter fencing-40k

**PARKING LOTS (\$100K):**

- \*Upon grading of parking lots and striping-75k
- \*Upon landscaping of islands per city requirements-25k

**COMPLETION (\$75K):**

- \*Upon final completion-75k

**Exact Progress Report:**

We are currently in the final stages of finishing the earthwork as noted by the pictures in this report, and if you have been to the site, you would see the progress. Plans are complete and approved, and we have donations from many local businesses that will transpire when we start the actual construction on the buildings and the field work. Those businesses who are going to donate include but are not limited to J&B Supply, Georgia Pacific, ABC Block, Acme Brick, Travis Lumber, Chasen Garrett Architects, and many more. The value of these donations will be documented and reported upon completion.

**Attachments:**

- \*\*Weather Underground Report-August 2014  
1.58 inches rainfall compared to 0.62 inches average  
250% over normal
- \*\*Weather Underground Report-Sept 2014  
6.90 inches rainfall compared to 0.25 inches average  
2760% over normal
- \*\*Pictures taken week of 5/1/15

Schedule Original RVSC Const. Purchase Agreement		Proposed revision to schedule for RVSC Const. Purchase Agreement	
Execution of Contract	100,000 <i>paid</i>	Execution of Contract	100,000
Submission/Approval of Plans	100,000 <i>paid</i>	Submission/Approval of Plans	100,000
Completion of "agreed upon work by Military for the site"	250,000	Completion of 1st complex earthwork (4 fields) to grade Completion of 2nd complex earthwork (2nd 4 fields) & common areas, excluding parking lot	125,000 125,000
Completion of playing surfaces on all fields	325,000	Completion of concrete slabs for both concession buildings Completion of getting buildings in the dry and roofs installed on both concession bldgs Completion of both concession buildings (temp cert. of occup)	100,000 100,000 50,000
Completion of installation of all fencing	200,000	Completion of 1st complex with playing surface & irrigation Completion of 2nd complex with playing surface & irrigation Common areas surfaces complete	150,000 150,000 25,000
Completion of all field lighting and site lighting	200,000	Upon setting of all poles for field lighting Upon completion of wiring and lights on 1st complex Upon completion of wiring and lights on 2nd complex	70,000 65,000 65,000
Completion of all buildings (incl. shade facilities)	250,000	Upon setting fences on fields in 1st complex Upon setting fences on fields in 2nd complex Completion of all other fencing including any perimeter fencing	80,000 80,000 40,000
Completion of all parking lots	100,000	Upon grading and paving of parking lots, including striping Upon landscaping of islands per city requirements	75,000 25,000
Completion/acceptance/final	75,000	Completion/acceptance/final	75,000
	<u>1,600,000</u>		<u>1,600,000</u>

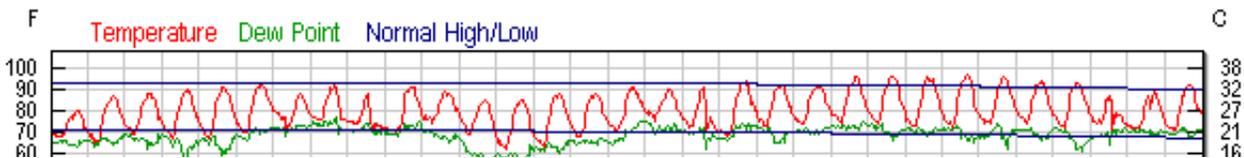


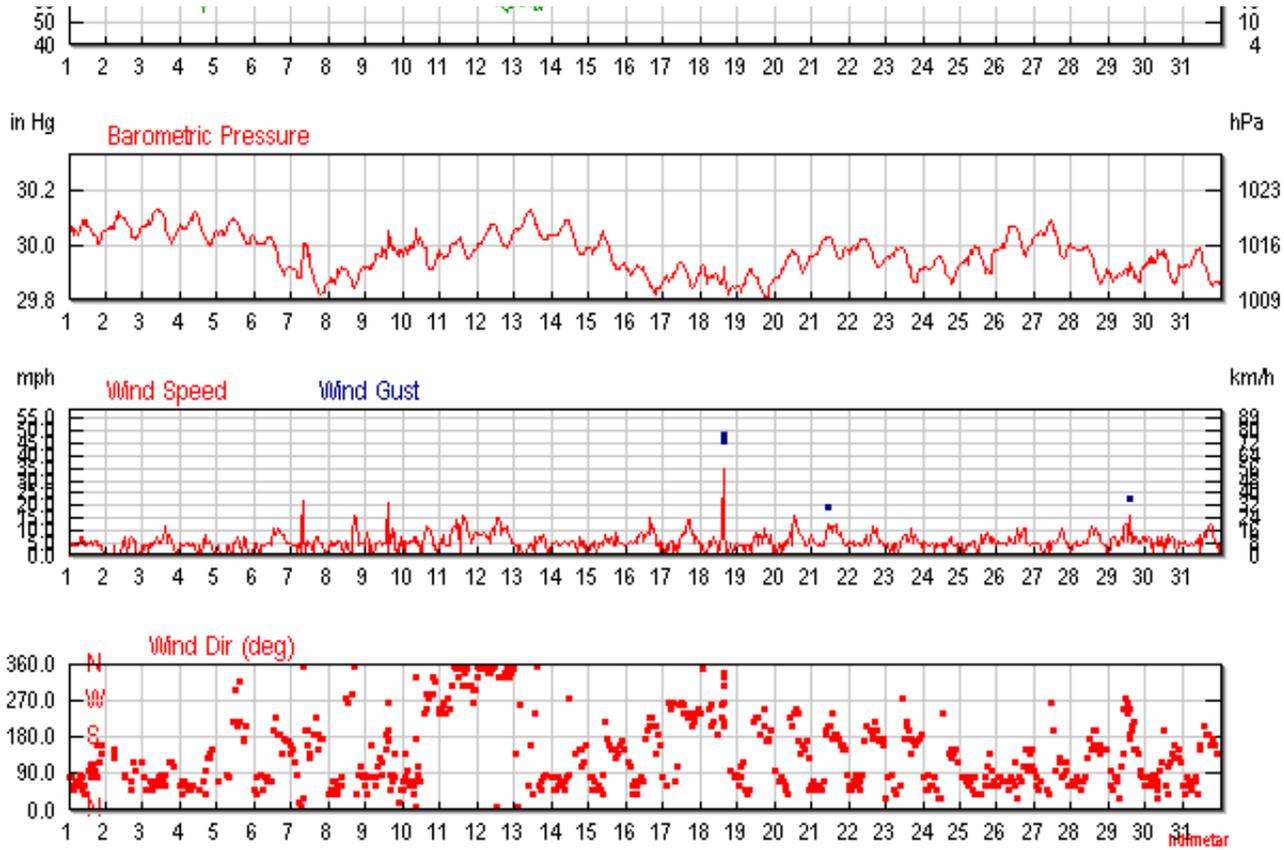
Weather History for KFSM - August, 2014

Month of August, 2014

Daily	Weekly	Monthly	Custom				
				<b>Max</b>	<b>Avg</b>	<b>Min</b>	<b>Sum</b>
Temperature							
Max Temperature		99 °F	92 °F	82 °F			
Mean Temperature		87 °F	82 °F	74 °F			
Min Temperature		76 °F	71 °F	61 °F			
Degree Days							
Heating Degree Days (base 65)		0	0	0	0		
Cooling Degree Days (base 65)		22	17	9	528		
Growing Degree Days (base 50)		36	32	24	981		
Dew Point							
Dew Point		78 °F	69 °F	56 °F			
Precipitation							
Precipitation		0.62 in	0.05 in	0.00 in	1.58 in		
Snowdepth		-	-	-	-		
Wind							
Wind		39 mph	5 mph	0 mph			
Gust Wind		48 mph	24 mph	16 mph			
Sea Level Pressure							
Sea Level Pressure		30.13 in	29.97 in	29.80 in			

Monthly Weather History Graph





Search for Another Location

Airport or City:

Submit

Trip Planner

Search our weather history database for the weather conditions in past years. The results will help you decide how hot, cold, wet, or windy it might be!

Date:

Astronomy

Aug. 07, 2014	Rise	Set
Actual Time	6:30 AM CDT	8:15 PM CDT
Civil Twilight	6:03 AM CDT	8:42 PM CDT

<u>Nautical Twilight</u>	5:30 AM CDT	9:15 PM CDT
<u>Astronomical Twilight</u>	4:54 AM CDT	9:50 PM CDT
Moon	5:30 PM CDT	3:03 AM CDT
<u>Length of Visible Light</u>	14h 39m	
<u>Length of Day</u>	13h 44m	

**Waxing Gibbous, 87% of the Moon is Illuminated**

Aug 7	Aug 10	Aug 17	Aug 25	Sep 2
Waxing Gibbous	Full	Last Quarter	New	First Quarter

Safari Power Saver  
Click to Start Flash Plug-in  
ORDER NOW  
CONTOUR® FROM CO

Daily Weather History & Observations

2014	Temp. [°F]			Dew Point [°F]			Humidity [%]			Sea Level Press. (in)			Visibility (mi)		
	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	low
Aug	82	76	69	67	66	64	90	74	58	30.09	30.06	30.01	10	9	6
	88	77	66	70	66	64	100	73	46	30.12	30.07	30.02	10	5	0
	90	80	69	70	68	63	97	69	41	30.13	30.07	30.01	10	9	5
	91	80	68	69	65	56	93	63	32	30.12	30.06	30.00	10	9	6
	93	80	67	70	66	60	90	63	36	30.10	30.05	30.01	10	9	4
	94	82	70	73	70	67	90	68	46	30.03	29.97	29.89	10	9	7
	90	82	73	74	73	69	93	76	59	30.01	29.91	29.82	10	8	1
	94	85	75	78	74	70	94	76	57	29.92	29.89	29.84	10	9	5
	90	82	73	75	72	70	93	78	63	30.05	29.97	29.91	10	9	2

93	82	71	76	72	69	93	75	56	30.06	29.98	29.90	10	9	2
90	83	75	72	69	66	87	67	47	30.03	29.98	29.95	10	10	10
86	77	67	68	61	56	78	58	37	30.08	30.03	29.99	10	10	10
87	74	61	65	60	57	90	64	37	30.13	30.07	30.02	10	10	10
89	77	64	67	64	61	93	66	38	30.09	30.03	29.97	10	10	10
90	79	68	68	67	65	90	68	46	30.05	29.97	29.91	10	10	9
93	82	71	76	70	65	85	69	52	29.93	29.88	29.82	10	10	10
92	84	76	76	73	70	91	72	52	29.94	29.89	29.84	10	10	10
94	83	71	73	69	63	93	73	52	29.93	29.88	29.82	10	9	1
96	83	69	75	71	67	97	72	46	29.91	29.86	29.80	10	10	10
94	84	73	74	70	66	94	68	41	29.98	29.93	29.88	10	10	7
94	84	74	74	72	70	88	67	46	30.03	29.99	29.95	10	10	10
97	87	76	76	74	72	94	70	45	30.02	29.97	29.92	10	10	7
98	87	75	75	72	67	94	66	38	29.99	29.94	29.87	10	10	6
97	85	73	73	72	69	94	68	42	29.96	29.92	29.86	10	10	8
99	87	74	74	70	66	94	65	35	30.00	29.95	29.90	10	10	10
97	86	74	75	70	63	87	61	34	30.07	30.02	29.96	10	10	7
96	85	74	73	71	67	87	63	39	30.09	30.02	29.95	10	10	9
94	84	73	73	68	62	93	65	36	30.00	29.94	29.86	10	9	4
90	81	72	73	70	65	94	70	46	29.94	29.90	29.87	10	10	3
90	82	73	72	71	69	93	73	52	29.98	29.94	29.86	10	9	5
94	83	72	73	71	69	93	70	46	29.99	29.92	29.85	10	10	10

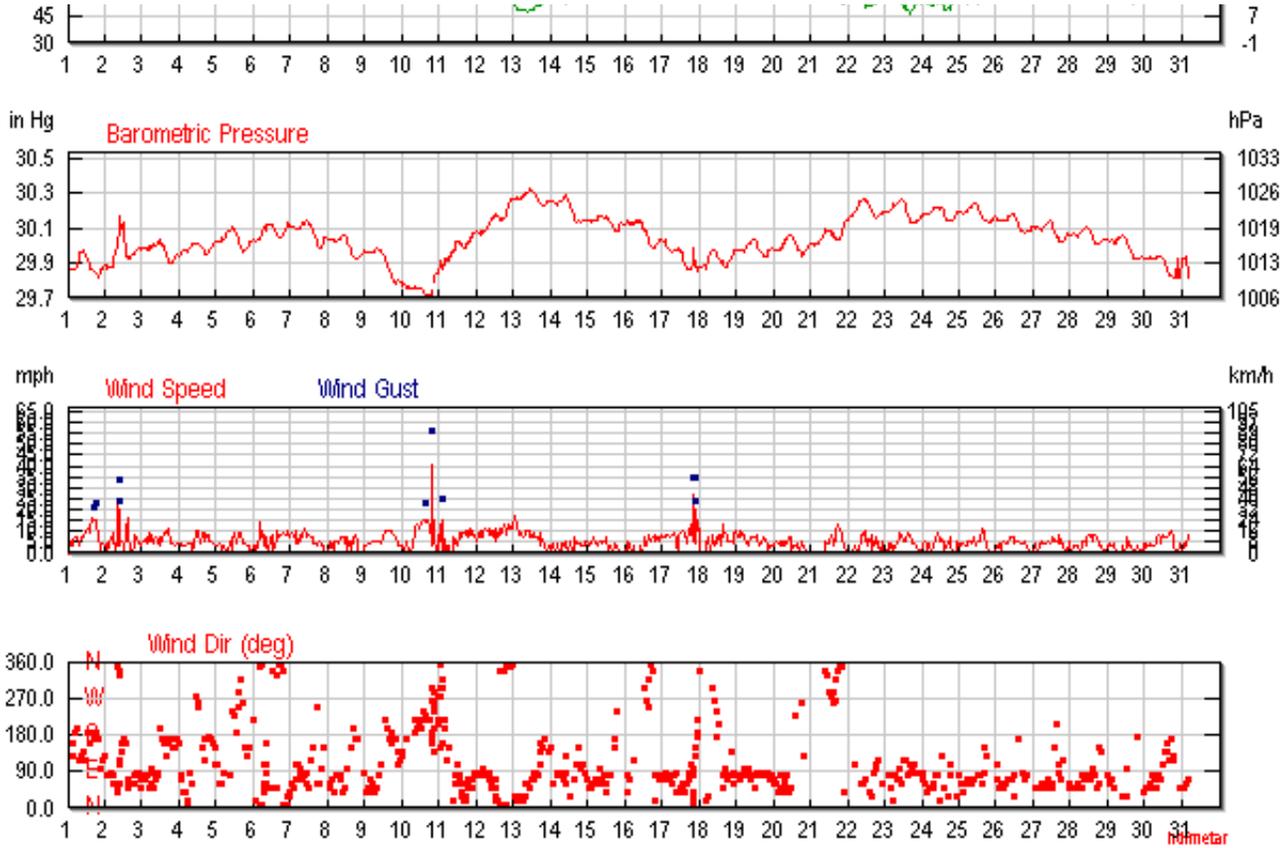
Weather History for KFSM - September, 2014

Month of September, 2014

Daily	Weekly	Monthly	Custom				
				Max	Avg	Min	Sum
Temperature							
Max Temperature				97 °F	84 °F	66 °F	
Mean Temperature				85 °F	75 °F	62 °F	
Min Temperature				75 °F	65 °F	52 °F	
Degree Days							
Heating Degree Days (base 65)				3	0	0	4
Cooling Degree Days (base 65)				20	10	0	296
Growing Degree Days (base 50)				36	25	12	736
Dew Point							
Dew Point				75 °F	64 °F	46 °F	
Precipitation							
Precipitation				1.70 in	0.25 in	0.00 in	6.90 in
Snowdepth				-	-	-	-
Wind							
Wind				41 mph	5 mph	0 mph	
Gust Wind				56 mph	26 mph	17 mph	
Sea Level Pressure							
Sea Level Pressure				30.33 in	30.04 in	29.72 in	

Monthly Weather History Graph





### Search for Another Location

Airport or City:

**Submit**

### Trip Planner

Search our weather history database for the weather conditions in past years. The results will help you decide how hot, cold, wet, or windy it might be!

Date:

### Astronomy

Sep. 07, 2014	Rise	Set
Actual Time	6:54 AM CDT	7:35 PM CDT
Civil Twilight	6:28 AM CDT	8:01 PM CDT

<u>Nautical Twilight</u>	5:58 AM CDT	8:31 PM CDT
<u>Astronomical Twilight</u>	5:27 AM CDT	9:02 PM CDT
Moon	6:34 PM CDT	5:10 AM CDT
<u>Length of Visible Light</u>	13h 33m	
<u>Length of Day</u>	12h 41m	

**Waxing Gibbous, 97% of the Moon is Illuminated**

Sep 7	Sep 8	Sep 15	Sep 24	Oct 1
Waxing Gibbous	Full	Last Quarter	New	First Quarter

Safari Power Saver  
Click to Start Flash Plug-in



Daily Weather History & Observations

2014	Temp. [°F]			Dew Point [°F]			Humidity [%]			Sea Level Press. (in)			Visibility (mi)		
	high	avg	low	high	avg	low	high	avg	low	high	avg	low	high	avg	low
Sep	94	85	75	72	70	67	82	64	46	29.98	29.89	29.82	10	10	10
	79	74	69	73	69	67	97	86	74	30.17	29.99	29.87	10	8	0
	92	81	69	73	71	67	97	75	52	30.03	29.97	29.90	10	10	7
	95	85	75	74	72	70	88	69	49	30.02	29.98	29.95	10	10	6
	96	84	72	73	71	66	93	67	40	30.11	30.04	29.96	10	10	2
	84	78	71	73	69	66	93	79	65	30.13	30.08	30.02	10	8	1
	84	76	68	67	64	61	84	68	51	30.14	30.08	29.99	10	10	10
	88	80	72	71	69	67	93	73	53	30.06	30.00	29.92	10	10	10
	93	83	72	72	70	69	87	68	49	29.99	29.90	29.78	10	10	8
	97	84	71	75	71	68	84	67	40	29.97	29.77	29.72	10	8	4

91	84	71	75	71	68	94	67	40	29.87	29.77	29.72	10	9	4
75	72	69	73	69	65	93	88	82	30.08	29.97	29.86	10	6	1
69	64	58	65	60	53	87	83	78	30.27	30.15	30.06	10	9	2
66	62	57	54	50	47	86	73	60	30.33	30.27	30.23	10	10	10
78	67	55	62	56	52	93	71	48	30.29	30.21	30.13	10	10	10
79	72	65	69	65	61	97	82	67	30.17	30.14	30.09	10	10	8
86	76	66	70	67	64	97	78	59	30.14	30.10	29.99	10	6	0
86	77	68	73	68	66	90	76	61	30.04	29.94	29.85	10	6	1
84	76	67	68	65	63	93	72	51	29.98	29.92	29.86	10	10	8
85	77	69	70	66	64	90	74	58	30.03	29.98	29.94	10	9	6
90	79	68	70	67	64	97	72	46	30.06	30.00	29.94	10	8	2
85	73	61	71	66	52	97	71	45	30.15	30.06	30.00	10	8	2
79	68	56	57	53	50	86	63	40	30.27	30.20	30.16	10	10	10
78	66	54	57	52	46	93	63	32	30.27	30.19	30.13	10	10	10
82	67	52	56	52	48	93	63	33	30.22	30.18	30.14	10	10	10
84	70	55	61	56	52	93	65	36	30.24	30.18	30.13	10	10	10
84	72	59	63	59	55	90	65	40	30.18	30.13	30.07	10	10	7
85	73	60	63	60	57	97	69	40	30.14	30.08	30.02	10	9	4
85	73	61	65	62	59	97	71	44	30.11	30.05	30.01	10	10	10
87	75	62	64	61	52	93	62	30	30.06	29.99	29.92	10	10	6
84	73	61	64	62	60	93	70	47	29.94	29.89	29.81	10	10	6

R-20-14

AGREEMENT REGARDING CONSTRUCTION AND PURCHASE  
OF RIVER VALLEY SPORTS COMPLEX

This Agreement made and entered into this 4<sup>th</sup> day of March, 2014, by and between the City of Fort Smith, Arkansas, a municipal corporation, hereinafter identified as the "City," and River Valley Sports Complex, an Arkansas non-profit corporation, hereinafter identified as the "Seller." The City and the Seller are sometimes jointly referred to as the "Parties."

WHEREAS, the City is an owner of real property located in the Chaffee Crossing area of Fort Smith on which the City desires to develop a tournament quality eight (8) field Sports Complex sometimes hereinafter referred to as the "Facility" or, alternatively, the "Sports Complex;"

WHEREAS, the City is desirous of making the real property available for the construction thereon of the Sports Complex which, once constructed and approved, would be purchased by the City for a maximum price of \$1.6 million;

WHEREAS, the Seller desires to participate in the development of the Sports Complex and proposes that Seller is able to secure additional nonpublic funding and contributions which would permit the development of the Sports Complex;

WHEREAS, the Parties desire to enhance the Fort Smith economy by promoting tourism in Fort Smith and to provide recreational activities by entering into this Agreement;

NOW, THEREFORE, in exchange of the mutual covenants and agreements set forth herein, which covenants and agreements the Parties acknowledge to be good, valuable and sufficient consideration for the undertakings herein, the Parties agree as set forth herein.

1. Real Property. Commencing with the date of execution of this Agreement, the City agrees to make available to the Seller for the construction of the Sports Complex all of the 62.9

acre tract of City owned property located generally at the intersection of Taylor Avenue and Roberts Boulevard in the Chaffee Crossing area of the City. The 62.9 acres is described in the Special Warranty Deed attached as Exhibit "A". The Seller shall have the right to remove timber from that portion of the property identified on Exhibit "B" south of Little Vache Grasse Creek. The Seller shall have the right to grade that portion of the real property identified on Exhibit "B" as the site for the Sports Complex. The City shall retain ownership of the property and shall have the right to receive any benefits and enhancements in value derived from the activities of the Seller on the property. The Seller agrees to not allow or permit any materialman's lien or any other claim of right (of any type) against the real property to be filed, or, if filed, to exist for more than ten (10) days, by reason of or related in any manner to the Seller's activities on the property. Seller agrees to indemnify and hold harmless the City from any claim, lien, action or other claim of right against the real property, including the legal cost and other cost incurred in the defense against any such claim.

2. Design and Construction of Sports Complex. As more particularly described in paragraphs 3-5 below, Seller agrees to construct on the real property the Sports Complex proposed by the Seller to the City in the Seller's proposal dated February 25, 2014, a copy of which is attached as Exhibit "C" to this Agreement. Supplemental to the \$1.6 million to be paid by the City for the constructed facility, Seller shall secure and provide all funding and contributions required for the design and construction of the Sports Complex as described in the proposal and as is more specifically identified in paragraphs 3-5 below. Generally stated, the facility, to be known as the River Valley Sports Complex (subject to naming at the discretion of

the City), shall be developed as a tournament quality, eight (8) field Sports Complex designed in a two (2) quad configuration with restrooms, concession stands, parking and other amenities. The facility is to be so developed as to provide a high quality destination site in Fort Smith primarily for state, regional and national tournaments, including scholastic and collegiate fast pitch softball tournaments and baseball tournaments through age 12. The Seller shall be responsible for obtaining all required approvals and permits from governmental agencies; provide the City will waive City fees for permits and approvals required to be obtained from the City.

3. Standards of Construction. The Sports Complex shall be designed and constructed by the Seller so as to meet or exceed each of the individual and the collective standards set forth in the following:

- a. The proposal attached as Exhibit "C";
- b. The minimum standards for this project are the specifications/drawings of the City of Fort Smith contract for softball fields at Ben Geren Park;
- c. The two page listing of amenities and development standards attached as Exhibit "D" and captioned – River Valley Sports Complex Chaffee Crossing; and,
- d. The two page list of selected materials for the River Valley Sports Complex attached as Exhibit "E."

In the event of any conflict or ambiguity, the specifications/drawings of the City of Fort Smith contract for softball fields at Ben Geren Park and Exhibits "D" and "E" shall control over Exhibit "C." The language of this Agreement shall be primary and shall control over Exhibits.

4. Professional Work and Bonding. In lieu of the providing of a performance/payment bond, the City, by its Board of Directors, may, at its discretion, accept a combination of financial/insurance agreements providing financial security to the City that the agreed Sports Complex will be completed as provided herein and in the time period provided herein. The performance/payment bond or other City accepted financial security, shall remain in effect until one year after the date the final payment comes due.

5. Time. It is agreed that the Sports Complex will be fully developed and ready for use by July 1, 2015 pending completion of work by the Military in September of 2014. Seller agrees that the Sports Complex will be substantially completed by June 10, 2015. If the Sports Complex is substantially complete by said date, the Seller shall have twenty (20) consecutive work days thereafter to achieve final completion. If on June 10, 2015, the Sports Complex is not substantially complete, the City shall have the right, but not the obligation, to give notice to the Seller that substantial completion of the Sports Complex shall be achieved within thirty (30) calendar days of the date that such notice is given. If the City elects not to provide such notice, or, if substantial completion is not achieved within the noticed thirty (30) days, the City shall have the right to negotiate with the surety on any provided payment and performance bond or the financial representatives identified in any other financial security agreement provided by the City by Seller, regarding procedures for the completion of the Work. If substantial completion is obtained in any noticed thirty (30) day period, the Seller shall have twenty (20) working days thereafter to achieve final completion. When used in this paragraph, Substantial Completion refers to the time at which the work on the Sports Complex has progressed to the point where,

in the opinion of the City, the Work is sufficiently complete, in accordance with this Agreement, so that the Work can be utilized for the purposes for which it was intended--the Sports Complex.

6. Purchase and Advancements. The City agrees to pay to Seller the sum of \$1.6 million for the completed Sports Complex constructed on the City's property. Seller shall provide the City lien releases from contractors performing the work on the subject property prior to requesting advance payment amounts provided herein. The City agrees to make advance payment of portions of the purchase price of the Sports Complex constructed according to the following schedule:

a. Upon execution of the contract, the City shall make a payment to the Seller in the amount of \$100,000.

b. Upon submission to the City and approval by the City of engineering and architectural plans for the Sports Complex, the City shall make a payment to the Seller in the amount of \$100,000 to support functions provided by the Military.

c. Upon completion of agreed upon work by the Military for the site for the Complex, the City shall make a payment to the Seller in the amount of \$250,000.

d. Upon completion of playing surfaces on all fields, the City shall make a payment to the Seller in the amount of \$325,000.

e. Upon completion of installation of all fencing, the City shall make a payment to Seller in the amount of \$200,000.

f. Upon completion of all field lighting and site lighting, the City shall make a payment of Seller in the amount of \$200,000.

g. Upon completion of all buildings (including shade facilities), the City shall make a payment to Seller in the amount of \$250,000.

h. Upon completion of all parking lots, the City shall make a payment to Seller in the amount of \$100,000.

i. Upon completion and acceptance of the facility, the City shall make the final payment of \$75,000. The determination of substantial completion shall be made by the City in consultation with any engineering/architect providing professional services to the Seller. All decisions to be made by the City shall be made by the person designated by the City Administrator of the City, provided that final completion and acceptance of the facilities shall be a decision of the governing body of the City.

Advance payments by the City may be used by the Seller for professional design fees, permits and other governmental approvals, bond and issuance costs, construction costs, construction management costs and other construction expenses directly related to the construction of the Sports Complex.

#### 7. Insurance.

A. The Seller shall, before any Work is performed by any worker or contractor, obtain assurance that all workers are covered by Workers' Compensation insurance as required by Arkansas law and that the contractor has purchased and maintains, during any Work on the facility, liability insurance, with minimum amounts of \$1,000,000.00 per occurrence, providing general liability coverage including, without limitation, coverage of all vehicles and contract liability coverage. To the extent that any contractor or worker does not have available insurance

and does not provide proof of same to the Seller, the Seller shall purchase and maintain liability coverage and workers' compensation coverage to provide coverage for the activities of the contractor or worker to the extent required herein. The City shall be an additional insured on all insurance policies related to the construction of the Sports Complex.

B. The Seller shall purchase and maintain storm, fire and casualty insurance on the property and builder's risk insurance upon the Work at the site in the amount of the full replacement cost thereof. The insurance shall:

(1) Include the interest of the City which shall be listed as an insured or additional insured under the policy;

(2) Be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: storm, wind, hail, fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, and water damage (other than caused by flood);

(3) Include expenses incurred in the repair or replacement of any insured property (including but not to fees and charges of engineers and architects);

(4) Cover materials and equipment stored at the Site or at another location that was agreed to in writing by City prior to the materials or equipment being incorporated in the Work; and,

- (5) Allow for partial utilization of the Work by the City.

#### 8. Seller's General Warranty and Guarantee.

A. Seller warrants and guarantees to the City that all Work will be in accordance with this Agreement, including Exhibits, and will not be defective.

B. Seller's warranty and guarantee hereunder excludes defects or damage caused by:

(1) abuse, modification, or improper maintenance or operation by persons other than Seller, Contractors, Suppliers, or any other individual or entity whom Seller has caused or allowed to perform Work on the facility; or,

- (2) normal wear and tear under normal usage.

C. Seller's obligation to perform and complete the Work in accordance with this Agreement shall be absolute.

#### 9. Indemnification.

A. To the fullest extent permitted by Arkansas law, Seller shall indemnify and hold harmless the City, and the officers, directors, employees, agents, consultants, and subcontractors of the City from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professional and all court or dispute resolution costs) arising out of or relating to the performance of the Work, 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 Seller, any contractor, any supplier, or any individual or entity directly or indirectly employed by the Seller to perform any of the Work, or anyone for whose acts the Seller may be liable.

B. In any and all claims against the City or any of their respective consultants, agents, officers, directors, or employees by any employee (or the survivor or personal representative of such employee) of Seller, any contractor, any supplier, or any individual or entity directly or indirectly employed by the Seller to perform any of the Work, or anyone for whose acts the Seller may be liable, the indemnification obligation under Paragraph 9 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Seller or any contractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

10. Litigation. In the event of the filing of a legal challenge to this Agreement, the parties acknowledge they will jointly cooperate in the defense of the action. In the event any Court of jurisdiction stops work under the Agreement, the parties agree that the stopped work shall not create any right or obligation of either party to the other, provided that Seller's obligation to use any advance payment by the City pursuant to this Agreement shall continue in effect and shall survive any termination (judicial or otherwise) of this Agreement.

11. Suspended Work. At any time, with or without cause, the City may suspend the Work or any portion thereof for a period of not more than ninety (90) consecutive days by notice in writing to the Seller. The City shall issue notice which shall fix the date on which Work will

resume and provide same to Seller at least ten (10) calendar days before resumption of the Work.

12. City may terminate for cause.

A. The occurrence of any more of the following events will justify the City's termination for cause:

- (1) Seller's persistent failure to perform the Work in accordance with this Agreement, including, but not limited to, failure to supply sufficient skilled workers or suitable materials equipment or failure to complete the project by the time limit provided in paragraph 5 above;
- (2) Seller's disregard of laws or regulations of any public body having jurisdiction;
- (3) Seller's violation in any substantial way of any provisions of this Agreement.

B. If one or more of the events identified in paragraph A, above, occur, the City may, after giving Seller (and surety) seven (7) days written notice of its intent to terminate the contract:

- (1) Exclude Seller from the site and take possession of the Work and all Seller's tools, appliances, construction equipment, and machinery at the site and use the same to the full extent they could be used by Seller (without liability to Seller for trespass or conversion);
- (2) Incorporate in the Work all materials and equipment still at the site or stored at another location for use in the facility; and,
- (3) Complete the Work or not complete the Work as the City may deem expedient.

C. If the City proceeds, as provided in subparagraph B, with a decision to complete the Work, Seller shall not be entitled to receive any further payment until the Work is

completed. If the Work is completed using materials or tools available to the Seller so that the City incurs no additional cost, the City shall pay to the Seller any portion of the payments provided here in paragraph 6, which have not been previously paid, but which are agreed to be paid upon completion of the work. To the extent that the portion of the Work takes place by the City at a cost less than the amount of payments provided for in paragraph 6, the City shall pay to the Seller, on completion, the amount of the payments owed after deducting all costs by the City in completing the Work.

D. Notwithstanding the foregoing, Seller's rights under this Agreement will not be terminated if Seller begins, within seven (7) days of receipt of notice of intent to terminate, to correct his failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of said notice.

E. To the extent the Seller has provided a performance bond or other financial security under the provisions of this agreement, the termination procedures of that bond or financial security, if any, shall supersede the provisions of paragraphs B and C above.

13. Seller may stop work or terminate. If through no act or fault of Seller, the Work is suspended for more than ninety (90) consecutive days by the City or if the City, for ninety (90) days, fails to pay Seller for any sum finally determined to be due under this Agreement, the Seller may, upon seven (7) days written notice to the City, and provided the City does not remedy such suspension or failure within that time, terminate the Seller's obligations under this Agreement.

14. Merger. All the negotiations regarding the Sports Complex between the parties prior to the execution of this Agreement have been merged into the provisions of this Agreement. No

change or amendment to the provisions of this Agreement may be made without the prior written approval of the parties. Construction industry concepts of change orders (either as to time or price) shall not be applicable to this Agreement.

15. Notice. Whenever any provision of this Agreement requires the giving of written notice, it shall be deemed to be given if:

(1) Delivered in person to the individual or a member of the entity to which notice is intended; or,

(2) Delivered or sent by certified mail, postage pre-paid, to the following addresses:

Address for Seller

River Valley Sports Complex  
Attn. Mr. Lee Webb  
11318 Highway 71  
Fort Smith, Arkansas 72916

Address for City

Mayor  
P.O. Box 1908  
Fort Smith, AR 72902-1908

16. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, will survive final payment, completion, and acceptance of the Sports Complex or termination or completion of this Agreement or termination of the services of the Seller.

17. This Agreement shall be governed by the law of the State of Arkansas. Any action filed by any party against another party shall be filed in the Circuit Court of Sebastian County, Fort Smith District, Arkansas.

18. Provisions of this Agreement shall not be assigned by either party to any other person or entity without the prior written approval of the other party to this Agreement.

IN WITNESS WHEREOF, this Agreement is executed as of the date first set forth above.

SELLER --

By: 

Attest: Melissa Aldridge

CITY OF FORT SMITH, ARKANSAS  
By:   
Mayor

Attest: Sherril Gard  
City Clerk

## EXHIBIT "A"

## REAL PROPERTY DESCRIPTION

Part of the Northwest Quarter of the Northwest Quarter, part of the Southwest Quarter of the Northwest Quarter, and part of the Northwest Quarter of the Southwest Quarter of Section 10, part of the Northeast Quarter of the Southeast Quarter, part of the Southeast Quarter of the Northeast Quarter, part of the Southwest Quarter of the Northeast Quarter, and part of the Northeast Quarter of the Northeast Quarter, of Section 9, Township 7 North, Range 31 West, Fort Smith, Sebastian County, Arkansas. Being more particularly described as follows:

Commencing at the Northwest Corner of said Northwest Quarter of the Northwest Quarter of Section 10; Thence along the West Line of said Northwest Quarter of the Northwest Quarter, S02°46'50"W, 292.66 feet; Thence S45°58'03"E, 121.64 feet to the Point of Beginning and an existing ½" rebar; Thence S77°19'54"E, 205.48 feet to a set ½" rebar with cap stamped MWC 1369; Thence S35°12'39"E, 198.00 feet to a set ½" rebar with cap stamped MWC 1369; Thence N54°47'21"E, 194.65 feet to the southerly right-of-way of Ward Avenue and a set ½" rebar with cap stamped MWC 1369; Thence along said right-of-way, S35°11'29"E, 290.44 feet to the military boundary and a set ½" rebar with cap stamped MWC 1369; Thence along said military boundary, S54°38'24"W, 49.28 feet to an existing brass cap stamped FC 452; Thence continuing along said military boundary, S19°53'56"W, 1811.42 feet to an existing brass cap stamped FC 452C; Thence continuing along said military boundary, S19°53'56"W, 345.37 feet to the northerly right-of-way of Roberts Boulevard and a set ½" rebar with cap stamped MWC 1369; Thence along said right-of-way and 116.99 feet along the arc of a curve to the right, said curve having a radius of 909.47 feet and being subtended by a chord having a bearing of N59°36'25"W and a distance of 116.91 feet to a set ½" rebar with cap stamped MWC 1369; Thence continuing along said right-of-way, N55°55'19"W, 1133.61 feet to a set ½" rebar with cap stamped MWC 1369; Thence continuing along said right-of-way, 246.47 feet along the arc of a curve to the right, said curve having a radius of 1401.77 feet and being subtended by a chord having a bearing of N50°53'05"W and a distance of 246.15 feet to a set ½" rebar with cap stamped MWC 1369; Thence continuing along said right-of-way, N45°50'51"W, 326.24 feet to a set ½" rebar with cap stamped MWC 1369; Thence continuing along said right-of-way, 47.10 feet along the arc of a curve to the right, said curve having a radius of 30.00 feet and being subtended by a chord having a bearing of N00°52'14"W and a distance of 42.41 feet to the easterly right-of-way of Taylor Avenue and a set ½" rebar with cap stamped MWC 1369; Thence along said easterly right-of-way, N44°06'22"E, 1158.69 feet; Thence leaving said right-of-way, S45°58'03"E, 265.71 feet to a set ½" rebar with cap stamped MWC 1369; Thence N44°01'57"E, 865.00 feet to the Point of Beginning. Containing 62.89 acres, more or less. Less and except minerals and mineral rights.



Exhibit "B"

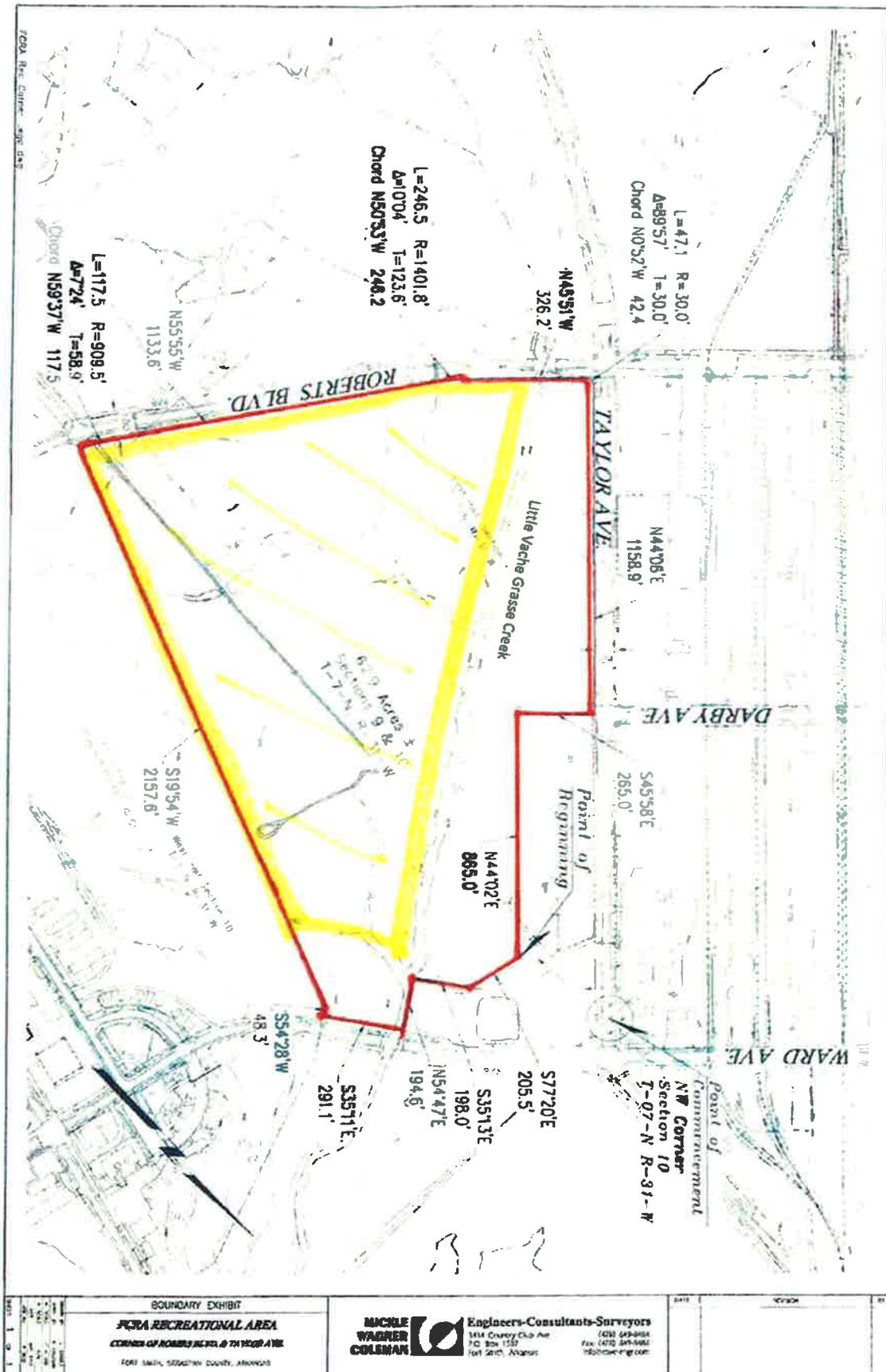


Exhibit "C"

River Valley Sports Complex  
Projected Costs on 8 field complex

	Per Field	Total (x8)	Real/Estimated Donated	Total Value	Estimated Real Cost
Property (62.9 acres) valued at \$17,500/acre	\$ 137,594	\$ 1,100,750	\$ 943,500	\$ 1,100,750	\$ -
Engineering, MEP, Design	\$ 7,500	\$ 60,000	\$ 60,000	\$ 420,000	\$ 60,000
National Guard Sitework	\$ 150,000	\$ 1,200,000	\$ 1,200,000	\$ 1,200,000	\$ -
Top Soil (4" depth) placed and laser graded	\$ 11,250	\$ 90,000		\$ 90,000	\$ 90,000
Solid Sodding	\$ 5,945	\$ 47,560		\$ 47,560	\$ 47,560
Skinned infield & warning track/ placed and graded	\$ 19,500	\$ 156,000		\$ 156,000	\$ 156,000
Turf conditioner 24 tons	\$ 3,400	\$ 27,200		\$ 27,200	\$ 27,200
Fencing (backstop, foul line, dugout, outfield)	\$ 24,000	\$ 192,000		\$ 192,000	\$ 192,000
Lighting (50/30fc)	\$ 65,000	\$ 520,000		\$ 520,000	\$ 520,000
Dugouts (roof, seating, concrete)	\$ 10,000	\$ 80,000		\$ 80,000	\$ 80,000
Bleachers and pad	\$ 13,000	\$ 104,000		\$ 104,000	\$ 104,000
Irrigation	\$ 9,000	\$ 72,000		\$ 72,000	\$ 72,000
Scoreboards	\$ 5,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ -
Concession & rest rooms (2 identical bldgs @ \$200,000/ea)	\$ 50,000	\$ 400,000	\$ 150,000	\$ 250,000	\$ 250,000
Utilities	\$ 3,125	\$ 25,000		\$ 25,000	\$ 25,000
<b>Total Line</b>	<b>\$ 514,314</b>	<b>\$ 4,114,510</b>		<b>\$ 4,324,510</b>	<b>\$ 1,623,760</b>

\*This is an estimate of the totals with land and donated Guard labor to show a reasonable expectation. We anticipate other additional donations as well to get us into the \$1.6 Million total being provided by the city. We have other donations anticipated that are not reflected here as well. These are solid numbers based on research and pricing but no negotiation as of yet.

The scoreboards we are anticipating selling as part of a sponsorship package (that is why there is no real cost projected).

As a footnote, we do anticipate a parking lot cost as well but are in negotiations on material cost with supplier to get a better price.

Parking lots	\$ 31,250	\$ 250,000	\$ -	\$ 250,000	\$ 250,000
--------------	-----------	------------	------	------------	------------

## **River Valley Sports Complex Chaffee Crossing**

All Federal, State, City, and FCRA requirements codes and laws must be met.

### Softball fields:

1. Eight (8) fields in a two (2) quad arrangement, concession/restroom building per quad
2. All fields are to have a minimum outfield distance of 225' measured from home plate
3. Grading (laser graded required to exact specification), 1.25% slope, all fields to slope evenly from the backstop to the outfield at 1.25%
4. Infield material and conditioner
  - a. Clay material to specification
  - b. Turface Pro League Infield Conditioner or approved alternate
5. Bermuda sod or artificial turf
6. Irrigation
7. Lighting
  - a. 50 foot candles infield (reference ASA lighting standards)
  - b. 30 foot candles, outfield
  - c. Maintenance contract with lighting contractor
8. Under drain system
9. Score board, one per field
10. Line Fencing
  - a. 4 inch corner posts and 2 ½ inch line posts, all schedule 40; spacing not to exceed 10 feet on center
  - b. Mow strip (optional)
  - c. Foul pole marker
  - d. 9 gauge fence fabric, 6 feet high, knuckled selvage
11. Dugouts
  - a. Enclosed back and sides with brick, rock, or split face block façade
  - b. Provide equipment bag storage
  - c. 9 gauge fence fabric
  - d. 3 inch, schedule 40 posts, spacing not to exceed 10 feet on center
  - e. Roof design load: minimum live load of 20 p.s.f. and wind load of 90 mph
12. Backstops
  - a. 4 inch, schedule 40 posts, spacing not to exceed 10 feet on center
  - b. 6 gauge fence fabric
  - c. Brick, rock, or split face block at base of backstop similar to Conway

### Concessions stand, restroom facility, one per quad

1. Appearance like Fire Station 11, military, or approved style
2. Brick or rock recommended, split face block considered, must meet FCRA standards
3. Water closets, minimum 6 women's per quad, more preferred
4. Restroom finishes to be recommended
5. Minimum of a warming kitchen in each quad
6. Air conditioned
7. Tournament staging room
8. Umpires' room
9. City to approve building design and appearance

## **Parking**

- 1. 500 paved spaces, minimum**
- 2. Bus and camper parking**
- 3. Paved parking**
- 4. Overflow parking**

## **Amenities:**

- 1. Shade structures**
- 2. Bleachers (seating for 100 per field, 50 per side), shaded**
- 3. Scorer's table and shade**
- 4. Playground**
- 5. Batting Cages**
- 6. Warm up area**
- 7. Picnic area**
- 8. Concrete sidewalks and plaza area**
- 9. Drinking fountains**
- 10. Benches**
- 11. Trash containers, recycling containers**
- 12. Landscaping (entry, parking lot, within complex)**
- 13. Maintenance building**

## Exhibit "E"

Page 1 of 2

## RIVER VALLEY SPORTS COMPLEX

## List of Selected Services

1. Water Line – C-900, PC-235
  - 10" – 2000 LF
  - 8" – 500 LF
  - 6" – 1100 LF
2. Fire Hydrants – 4
3. Gate Valves – 6" and 8" – 8 Total
4. Ductile Iron (MJ) Fittings – 1500 Lbs
5. Washed Rock – ¾" to #4 – 1100 Tons
6. Sewer Line – Solid Wall PVC, SDR35
  - 8" – 1000 LF
  - 6" – 800 LF
7. Asphalt – AHTD Type 3 – 4000 Tons
8. Base Course – AHTD Class 7 – 8800 Tons
9. Concrete – 3000 PSI, AE – 2200 CY  
(Sidewalks, Drives, Curb & Gutter)
10. Reinforced Concrete Storm Drain Pipe – Class III
  - 36" – 250 LF
  - 24" – 1000 LF
  - 18" – 400 LF
11. Concrete Flared End Section – 18"-36" – 14 Total
12. Bermuda Sod – 60,000 SY
13. Chain Link Fencing – 9 Gage – 8' Tall – 9800 LF
14. Fence Posts –
  - 11' x 2 7/8" OD, Sch 40, ASTM F-1043 – 950 Posts
  - 30' x 6 5/8" OD, Sch 40, ASTM F-1083 – Grade 50 – 72 Posts
15. Scoreboard – 8' x 5', LED – 8 Total
16. Bleachers – 4 Row x 27 Seat, Aluminum – 16 Total
17. Infield Turf – 150 Tons
18. Field Irrigation –
  - Solenoid Valves – 70 Total
  - Rotors – 150 Total
  - Spray Heads – 130 Total
  - PVC-Pipe, Sch 40 2" to 3" – 4000 LF
  - 1" to 2 ½" – 16,000 LF

## RIVER VALLEY SPORTS COMPLEX

### List of Selected Materials

1. **Trenching & Backfilling –**
  - Water Lines – 3600 LF
  - Sewer Lines – 1800 LF
  - Storm Drains – 1650 LF
  - Irrigation Lines – 20,000 LF
2. **Lay & Compact Asphalt – 4000 Tons**
3. **Place & Compact Base Course – 8800 Tons**
4. **Concrete – Place & Finish Flatwork – 18,500 SY**
  - Place & Finish Curb & Gutter – 6500 LF
5. **Place Sod – 60,000 SY**
6. **Install Fence Posts – 8' Fence – 950 Ea**
  - 25' Fence – 72 Ea
7. **Install Irrigation System – 8 Fields**
8. **Laser Grade & Install Infield Turf – 7200 SY**
9. **Clearing & Grubbing – 35 Acres**
10. **Rock Excavation for Drainage – 5,000 CY**

f:\doc\m\river valley sports complex – materials-selected services list (2-16-13