

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 – Pam Weber

At Large Position 6 – Kevin Settle

At Large Position 7 – Philip H. Merry Jr.

**AGENDA**  
**Fort Smith Board of Directors**  
**Study Session**  
**February 25, 2014 ~ 12:00 Noon**  
**Fort Smith Public Library Community Room**  
**3201 Rogers Avenue**

**CALL TO ORDER**

1. Review renewal of City fleet and property insurance (*March 2014 – March 2015*)
2. Report on plan to acquire and finance the construction of softball tournament fields at Chaffee Crossing ~ *As discussed at the October 8, 2013 study session* ~
3. Review preliminary agenda for the March 4, 2014 regular meeting

**ADJOURN**



## Interoffice Memorandum

**TO:** Ray Gosack, City Administrator

**FROM:** Alie Bahsoon, Purchasing Manager 

**COPY TO:** Kara Bushkuhl, Director of Finance

**SUBJECT:** Auto & Property Insurance

**DATE:** February 18, 2014

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The City’s equipment, auto, and property insurance policies are up for renewal in March and I am providing the following information in anticipation of the board approving a resolution prior to the renewal date to approve the new policy with the new insurance rates.

Overall, our account continues to perform well and because of our stable and long-standing relationship with Travelers Insurance, they have agreed to offer a flat “rate” renewal on both the auto and property coverage (see attached email). Provided below is a recap of the City’s premiums since 2008 and attached is the premium renewal comparison for 2013/2014 and 2014/2015. You will notice a reduction in fleet coverage costs. Although our liability is up, the reduction is due to a decrease in our auto physical damage. Also, please note that our deductibles will remain the same.\* The slight decrease in equipment cost is due to the computers being covered under the property schedule.

<b>Policy Period</b>	<b>Auto</b>	<b>Property</b>	<b>Equipment</b>	<b>Total</b>
03-01-09 to 03-01-10	\$420,780	\$199,024	\$87,059	\$706,863
03-01-10 to 03-01-11	\$386,667	\$235,845	\$92,809	\$715,321
03-01-11 to 03-01-12	\$407,458	\$245,877	\$100,016	\$753,351
03-01-12 to 03-01-13	\$388,073	\$327,995	\$54,869	\$770,937
03-01-13 to 03-01-14	\$448,048	\$363,097	\$70,042	\$881,187
2014-2015 Anticipated	\$437,423	\$365,926	\$67,814	\$871,163

The main driver of the City’s account continues to be the property and this has been the area in which the largest losses have occurred in the past. Unfortunately, the weather pattern in this part of the country continues to deteriorate and we continue to see an increase in the number of storms which are exhibiting an increasing level of severity. Coupled with the increase in weather-related claims is the continued increase in building material and labor costs associated with rebuilding and repair of properties when damaged by these severe storms. Because of this trend, the insurance industry is now pricing for the potential loss going forward, and in an effort to control our premiums, our deductible for these types of losses have increased from \$25,000 to a \$50,000 due to our concentration of values conducive to large loss potential from weather-related events.

Although there are no apparent trends in this past year’s losses, we continue to have tremendous individual departmental successes. Mr. John Billingham, Senior Risk Control

Consultant and I have continued our efforts in meeting with various departments to emphasize safety and risk management programs and we are very close to formulating a Motor Vehicle Safety Policy to help reduce exposure and minimize potential losses. Department specific concerns will be addressed within the individual department's fleet administration requirements.

Travelers has advised that we need to identify persons with poor driving records in the city by obtaining motor vehicle records (MVRs) on all employed drivers. The MVR provides a history of the driver's driving record during at least the previous three years. This will enable to City to identify drivers who have marginal or poor driving records and can be counseled and addressed accordingly. We are currently in the process of implementing this recommendation and should have the MVR's completed by the end of the month.

We also plan on enhancing our vehicle maintenance program to ensure that all vehicles are properly inspected, serviced and repaired. This will assist in lowering operating costs, increase vehicle life span, trade-in value, and help prevent schedule interruptions. Additionally, we will conduct some road observations, to monitor and measure performance and compliance.

Please note that Mr. Tom Adams, Territory Manager of the Public Sector Services of Travelers will be present at the study session along with Tonya Wennberg, Account Manager with Brown Hiller Clark & Associates in the event any of the board members should have any questions about the upcoming renewal.

Please let me know if you should have any questions.

## *\*Current Policy Deductibles*

### **Property**

- *\$25,000 per occurrence (with a \$50,000 wind/hail per occurrence deductible)*

### **Auto**

- *Combined Single Limit: \$100,000*
- *Uninsured Limit: \$100,000*
- *Underinsured Motorist: \$100,000*

### **Equipment**

- *Deductible is 1% with a \$1,000 Minimum / \$5,000 Maximum)*  
*Examples: Equipment item valued at \$100,000 the deductible would be \$1,000*  
*Equipment item valued at \$25,000 the deductible would be \$1,000*  
*Equipment item valued at \$200,000 the deductible would be \$2,000*

**From:** Adams,Thomas L [<mailto:TADAMS@travelers.com>]

**Sent:** Tuesday, February 11, 2014 10:46 AM

**To:** Scott Clark

**Cc:** Daya,Yasmin

**Subject:** RE: Insurance Renewals

Scott:

We are in agreement to offer a flat "rate" renewal on both the property and auto coverage. Renewal premiums will still increase somewhat but this will be due solely to increases in exposures and not rates. Yasmin should be sending out the formal renewal proposal later today.

I should be available to meet with you and the city council at the noon study session on February 25<sup>th</sup>. Thanks again for your efforts on this renewal.

**Tom Adams | Territory Manager | Public Sector Services**

Travelers

7465 W. 132<sup>nd</sup> Street

Overland Park, KS 66213-1138

W: 913.402.5460 F: 800.397.1467



# Renewal Premium Comparison

Named Insured    City of Fort Smith  
 Renewal Date     03/01/2014

Line	<u>2014/2015</u> Renewal Premium	<u>2013/2014</u> Prior Yr's Premium	Difference
<b>TRAVELERS:</b>			
Commercial Package			
Property	\$365,926	\$363,097	14/15 Prop Rate .1554
Equipment Breakdown	Included	Included	13/14 Prop Rate .1554
Computers / Radio Equipment	\$1,739	\$4,728	Computer coverage will be included in property effective 2014
Auto Liability	\$345,836	\$342,680	14/15 \$665 <b>Liability</b> Cost Per Unit
Auto Physical Damage	\$91,587	\$105,368	13/14 \$659 <b>Liability</b> Cost Per Unit
<b>UNITED FIRE GROUP:</b>			
Equipment	\$36,511	\$35,750	
Scheduled Equipment Leased or Rented Eqpt			14/15 Eqpt Rate .3135 13/14 Eqpt Rate .3111
Fine Arts	\$1,536	\$1,536	
			14/15 Fine Art Rate .48 13/14 Fine Art Rate .48
Misc. Property Floater (Signs, Mobile/Portable Radios, Ferris Wheel, Carousel etc.)	\$13,363	\$13,363	
			14/15 Misc. Rate .372 13/14 Misc. Rate .372
Radio/Television & Broadcasting Equipment	\$14,665	\$14,665	
			14/15 Radio Rate .2898 13/14 Radio Rate .2898
<b>GRAND TOTAL</b>	<b>\$871,163</b>	<b>\$881,187</b>	<b>\$10,024 Decrease</b>



## *MEMORANDUM*

February 21, 2014

**TO:** Mayor and Board of Directors

**FROM:** Ray Gosack, City Administrator

**SUBJECT:** River Valley Sports Complex at Chaffee Crossing

In October and January, the board reviewed the River Valley Sports Complex project proposed for construction on 62.9 acres of city-owned land at Chaffee Crossing. The project consists of 8 tournament-quality softball fields, restroom/concession buildings, and parking lots. The purpose of the project is to attract tournaments to Fort Smith which boost the city's tourism economy. The facilities may also be available for local league play.

### *PROJECT FINANCING PLAN*

At the October discussion, the board asked the project organizers to provide a comprehensive financing plan for construction of the facilities during the first quarter of 2014.

### *PROJECT DELIVERY METHOD*

At the January discussion, the board asked that we pursue a project delivery method whereby the city would purchase the completed facility from the project organizers for \$1.6 million.

The other project delivery method considered was for the city to act as general contractor. This would require the city to follow state-mandated procurement laws for selecting the architect/engineer and for awarding construction contracts.

The staff and city attorney have drafted a contract (attached) for the purchase of the completed facility from RVSC. The contract describes the project and identifies all of the features/amenities and construction standards. The contract includes a section describing how payments would be made to RVSC for the purchase of the facility.

### ***PERFORMANCE BONDING***

The project organizers have advised the mayor and staff that they can't provide a performance bond. A performance bond is a guarantee from an insurance company that assures satisfactory completion of the project for the contracted amount in the event the contractor fails to complete the project. A performance bond typically minimizes the city's risk of the project not being completed within the contracted amount.

In lieu of a performance bond, the city might want to ask the project organizers to provide other satisfactory proof of financial ability to deliver the expected project. This could take the form of donation commitments, letters-of-credit or other binding assurances from those assisting the project.

Use of a performance bond on this project, regardless of the delivery method, will be different than most other projects. This is because the actual value of the project is far greater than the anticipated contract amounts. For example, if the contracted work has a value of \$1 million but the contracted amount is \$500,000 (due to the donated materials and services), we would likely want the insurance company to provide a performance bond for \$1 million, not the contracted amount of \$500,000. If the contractor completed part of the work and then abandoned the job, the city would have a performance bond with a value sufficient to complete the remaining work.

### ***OPTIONS***

The options for continuing with this project are:

- 1) Contract with RVSC for the purchase of a completed

facility, without a performance bond. Other proofs of financial ability may be desirable.

- 2) The city acts as general contractor, hiring the engineer/architect and awarding the construction contracts. Performance bonds should be required for the actual value of the work, not necessarily the contracted amount. The city would have to comply with state and local procurement laws for selecting the engineer/ architect and contractors.

### ***SITE GRADING WORK***

A significant portion of the donated work is the site grading to be performed by the military in August 2014. The military has asked for site grading plans to be submitted by April so that the military may make its preparations to undertake the work. The needed engineering work must begin soon if the military's expectations are to be met.

### ***OPERATING AGREEMENT***

As the board considers an agreement to acquire the facility, the board should also seek assurances about the operation of the facility. The 2011 proposal from the RVSC was for that organization to operate the facility. Attached is a proposed operating agreement. Ideally, this agreement would be executed at the same time as the purchase agreement so that the city is assured of the facility's operation.

### ***SUMMARY***

The proposed project will provide a recreational amenity which will boost Fort Smith's tourism economy. As proposed by RVSC, the project will be built for a fraction of its real market value. However, there is risk to the city in the event the project financing plan isn't executed as presented. The project could end up with fewer facilities, lesser-quality facilities, or the city might be asked to provide additional funding to complete

the project as originally planned. In the end, the board should consider the benefit of a tournament-quality facility constructed for a cost savings well below its full value against the risks of the project delivery method.

A handwritten signature in black ink, consisting of a short horizontal line followed by the name "Ray" in a cursive script.

Attachments

cc: Jake Files and Lee Webb, River Valley Sports Complex

**AGREEMENT REGARDING CONSTRUCTION AND PURCHASE  
OF RIVER VALLEY SPORTS COMPLEX**

This Agreement made and entered into this \_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Fort Smith, Arkansas, a municipal corporation, hereinafter identified as the “City,” and \_\_\_\_\_, 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 \_\_\_\_\_(\_\_\_\_) acres of a 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 \_\_\_\_ acre tract is identified on the attached Exhibit "B." The Seller shall have the right to remove timber from that portion of the property identified on Exhibit "B." 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 \_\_\_\_\_, 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. Portions of the specifications/drawings from the City of Fort Smith contract for softball fields at Ben Geren Park attached as Exhibit “D” (19 sheets);
- c. The two page listing of amenities and development standards attached as Exhibit “E” 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 “F.”

In the event of any conflict or ambiguity, Exhibits “D,” “E,” and “F” shall control over Exhibit “C.” The language of this Agreement shall be primary and shall control over Exhibits.

4. Professional Work and Bonding. All architecture, engineering and construction work performed or caused to be performed by the Seller with reference to the Sports Complex shall be performed by Arkansas licensed professionals in each professional field. The term “Work” when used herein shall refer to any and all actions and material which collectively result in the constructed facility. The Seller shall provide to the City a performance bond and a payment bond, or a combined payment-performance bond, with corporate surety authorized to do business

in the State of Arkansas and acceptable to the City, providing for the completion of the facility as required by this Agreement within the time period required by this Agreement in a total principal amount of \$\_\_\_\_ million and providing for the payment of all claims and demands regarding labor and material associated with the construction of the facility. 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 \_\_\_\_\_, 2015. Seller agrees that the Sports Complex will be substantially completed by \_\_\_\_\_ [day and month], 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 \_\_\_\_\_, 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. 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 and the providing to the City of the payment and performance bond [or other City accepted financial security] and proof of acquisition of hereinafter discussed builders risk insurance, the City shall make a payment to the Seller in the amount of \$80,000.00;

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 \$80,000.00;

c. Upon completion of finish grading of the site for the Sports Complex, the City shall make a payment to the Seller in the amount of \$256,000.00;

d. Upon completion of playing surfaces on all fields, the City shall make a payment to the Seller in the amount of \$256,000.00;

e. Upon completion of installation of all fencing and lighting, the City shall make a payment to Seller in the amount of \$256,000.00;

f. Upon completion of all buildings (including shade facilities), the City shall make a payment to Seller in the amount of \$256,000.00;

g. Upon completion of all parking lot and picnic areas, the City shall make a payment to Seller in the amount of \$256,000.00;

h. Upon substantial completion of the project, the City shall make a payment to the Seller in the amount of \$80,000.00, and the final payment of \$80,000.00 shall be paid upon final completion and acceptance of the facility by the City. 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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for City

Mayor

P.O. Box 1908  
Fort Smith, AR 72902

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: \_\_\_\_\_

CITY OF FORT SMITH, ARKANSAS

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

Attest: \_\_\_\_\_  
City Clerk

# DRAFT

## LEASE AGREEMENT

THIS AGREEMENT MADE AND ENTERED INTO this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Fort Smith, Arkansas, hereinafter "City" and River Valley Sports Complex, Inc., hereinafter "Organization."

### W I T N E S S E T H

WHEREAS, the City is the owner of the real property described in paragraph 1 of this Agreement having received ownership of the subject property from Fort Chaffee Redevelopment Authority for use as a "public park sports complex"; and,

WHEREAS, the parties desire that the subject property continue to be used primarily as a destination for fast pitch softball tournaments and for public youth athletic activities supervised by the Organization; and,

WHEREAS, the parties desire to place in writing the terms of their agreement regarding the lease of the described real properties and use of the described personal properties by the Organization; NOW, THEREFORE:

In exchange of the mutual terms and conditions set forth herein, which are acknowledged by the parties to be sufficient to support the obligations set forth herein, the parties agrees as follows:

1. Leased property. The City hereby leases to the Organization for an annual payment of \$10.00 due on or before January 31<sup>st</sup> of each year and the Organization hereby takes from the City, under the terms and conditions set forth herein, the hereinafter described tract of real property located in the Fort Smith District of the County of Sebastian, State of Arkansas, to wit:

Tract 1

**Legal Description (as described in attachment - FCRA Recreation Area Boundary Survey)**

2. The Organization is responsible for providing a concept plan for approval and submitting specifications and plans for approval to the City prior to any construction on the site. The drawings and specifications must be in full conformance with all City or Fort Smith Codes and Requirements for construction. All expenditures must be made and documented according to the City's Purchasing Policy and State of Arkansas law regulating purchasing and construction for municipalities. The Organization is responsible for day to day oversight of the project, and the City will inspect the work regularly to assure compliance with the approved plans. Requests for Reimbursement will only be made for expenses directly related to the approved specifications and plans. Requests for Reimbursement will be accompanied with supporting documentation showing that the purchasing policy has been followed. The Organization will provide a performance bond assuring the completion of the project as approved. No

tournaments or other use of the facility may occur until construction of the project is completed.

3. The Organization shall use the leased property solely for the purpose of conducting the Organization's scheduled tournaments and youth programs with primary emphasis on girls fast pitch softball tournaments, softball leagues and clinics, and baseball tournaments, leagues, and clinics. The Organization shall have the right to schedule the use of the athletic fields on the subject property. The public may schedule use of the facility through the organization after agreeing to terms of use and paying any fees for use of the facility subject to the park rules and regulations developed by the Organization and approved by the City of Fort Smith. The Organization shall have exclusive use of the property as approved by the City of Fort Smith. The Organization shall submit an annual overview of planned programming by January 31 each year and a monthly detailed schedule of its planned uses to the City's director of parks and recreation. The list shall be submitted by the 20<sup>th</sup> of the month proceeding the month of the schedule. The Organization may schedule use of the property at all times. The City reserves the right to schedule and utilize the leased property, including structures and other facilities, for park uses at all times not scheduled by the Organization. The Organization shall have the right to control use of personal property and equipment owned by the Organization and stored in the structures located on the leased property. All improvements and structures on the leased property shall become a part of the leased property. All personal property and equipment of the Organization shall remain the personal property of the Organization and shall be removed from the leased property within seven (7) days of any cancellation of this Lease.

4. The City shall maintain fire, storm and other casualty insurance on the improvements located on the leased premises. Any such insurance policy shall designate the City and the Organization as the insured's under the policy "as their interests may appear." All insurance proceeds shall be utilized to repair or replace damaged improvements, unless a different use for the proceeds is designated, in the City's sole discretion, by the City Administrator.

5. The Organization shall indemnify and hold the City harmless from all claims, liens, actions, and judgments, including reasonable legal fees and costs incurred with reference thereto, arising from the activities of the Organization under this Lease Agreement. The organization shall maintain a minimum general liability policy covering the facility of one million dollars (\$1,000,000).

6. The leased property shall be subject to the park rules of the City of Fort Smith codified in Article III of Chapter 18 of the Fort Smith Code. The City reserves the right to adopt and implement additional park rules and regulations at any time during the term of this lease.

7. The Organization shall have the right to charge admissions fees, team participation fees, tournament fees, event fees, and other fees that have been approved by the City of Fort Smith. Proceeds from all fees shall be used by the Organization for maintenance of and improvements to River Valley Sports Complex. The Organization shall have the right to solicit corporate and private support for the operation of the sports complex. By January 31<sup>st</sup> of each year, the

Organization shall provide the City with a detailed written annual financial report and facility use report for the preceding calendar year. Such report shall include a detailed accounting of all revenues received and expenditures. The report will include an accounting of the economic impact of each tournament including the number of room nights booked in local hotels from out-of-town teams for each tournament. By the 20<sup>th</sup> of the each month of operation, the organization will provide a statement of tournaments and activities held and economic impact.

8. The Organization shall maintain the entire 62.9 acre leased property and the improvements in good condition so as to return same to the City at the end of the leased term in good condition. The Organization's maintenance obligation includes maintaining the ball fields in a manner consistent with tournament quality facilities; clean and maintain the restrooms, concessions stand, and other buildings; mow and trim the grass on all of the property; keep the litter picked up, and trash cans emptied; and maintain all other aspects of the facility. Specifically, it shall be the obligation of the Organization to maintain the leased premises in conformance with all relevant codes and ordinances of the City, including the Clean-up of Lands Ordinance and applicable Health Codes. Regular inspection of facilities will be made by Organization and City.

9. The Organization shall have the right to construct additional improvements or to remodel or rehabilitate the current improvements after first obtaining the written approval of the City Administrator, obtained after review by the Director of Parks and Recreation. All such construction activities shall be in conformance with all applicable codes and regulations.

10. It is acknowledged by the Organization that all employees, agents and volunteers of the Organization are not employees or agents of the City.

11. The Organization shall allow participation in its recreational, park activities on a non-discriminatory basis. The Organization shall not permit discrimination based on race, national origin, religion, disability or gender. The provisions of this paragraph shall not prevent the Organization from establishing recreational activities according to the ages of the participants in the activities.

12. This Agreement shall have a term of ten (10) years beginning September 1, 2013 and ending December 31, 2023. All subsequent terms will begin January 1.

13. Any notice required or permitted to be given pursuant to this Lease Agreement shall be provided to the other property at the addresses indicated:

City of Fort Smith  
Office of City Administrator  
P.O. Box 1908  
Fort Smith, Arkansas 72902

River Valley Sports Complex

Attn: Mr. Lee Webb  
??????  
Fort Smith, Arkansas 7290

14. Either party to this Agreement may provide notice to the other at the addresses indicated in paragraph 13 above, that the party deems the other party to the Agreement to be in violation of the Agreement.

(a) The notice shall specify the nature of the alleged violation and the corresponding provision in this Agreement. Within seven (7) days, the other party shall respond in writing regarding the allegations of violation of the Agreement. If the alleged violations have been cured, the response shall so note. If after the exchange of notice of violation and response, either party considers the issue to not be resolved, that party shall notify the other of the date, time and place of a meeting (to be held within the City of Fort Smith and not sooner than seven (7) days from the date of said notice of meeting and not more than fourteen (14) days subsequent to the date of said notice of meeting) at which representatives of the parties shall discuss the alleged violation and the response thereto.

(b) Irrespective of the foregoing, in the event the City determines than any condition on the leased premises constitutes an immediate health hazard to the members of the public, the City shall have the right to immediately take action to correct said condition. In that situation, the City shall notify the representative of the Organization identified in paragraph 13 above, by email, telephone, or other method designed to provide the most expedient notice to the Organization. If the Organization does not subsequently agree to pay the expense of such curative action, the City has the right under this Agreement to petition a court of competent jurisdiction to declare the rights of the parties and, if it is declared that the expense was the obligation of the Organization under this Agreement, the Organization shall immediately pay the expense to the City after exhausting judicial remedies regarding that issue. Any failure of the Organization to comply with the provisions of this paragraph shall be a basis for the City, in its sole discretion to terminate this Lease Agreement on seven (7) days notice of termination.

(c) In the event the meeting of the parties pursuant to the procedures in subparagraph (a) above does not resolve the alleged violation, either party may pursue any available judicial remedy. Upon final determination that the other party is in violation of this Agreement, either party shall have the right to terminate this Agreement on seven (7) days notice to the other.

THIS AGREEMENT EXECUTED as of the date first set forth above by the Mayor and the City Clerk of the City of Fort Smith pursuant to Resolution No. \_\_\_\_\_ of the Fort Smith Board of Directors and the President and Secretary of the Organization pursuant to resolution adopted by the Board of Directors of the Organization.

15 Termination:

In the event the meeting of the parties pursuant to the procedures in section 14 above does not resolve the alleged violation, the City reserves the right to terminate the Agreement after ten (10) days written notice to SCAA. Said ten (10) day notice period shall run from receipt of the notice by RVSC evidenced by a signed receipt of certified mailing or by hand delivery by the City to an officer of RVSC. Either party may pursue any available judicial remedy.

CITY OF FORT SMITH, ARKANSAS

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

ATTESTED:

\_\_\_\_\_  
City Clerk

RIVER VALLEY SPORTS COMPLEX

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

ATTESTED:

\_\_\_\_\_  
Secretary

ACKNOWLEDGMENT

STATE OF ARKANSAS        )  
  )SS  
COUNTY OF SEBASTIAN    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me personally appeared Sandy Sanders, personally known to me to be the individual who executed the within and foregoing instrument, and he acknowledged that he signed the same as the duly authorized agent of the City of Fort Smith, and that the same is the free and voluntary act and deed of the City of Fort Smith, for the uses and purposes therein mentioned.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF ARKANSAS        )  
  )SS  
COUNTY OF SEBASTIAN    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me personally appeared \_\_\_\_\_, personally known to me to be the President of the Fort Smith Church Baseball Organization, Inc. and he signed the above and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



## Memo:

February 21, 2014

To: Ray Gosack, City Administrator  
From: Mike Alsup, Director of Parks and Recreation  
Re: River Valley Sports Complex, report from sponsors

A proposal to build a fast pitch softball sports complex with a focus on hosting tournaments throughout the year was brought to the City over two and a half years ago by sponsors Jake Files and Lee Webb. The complex has been called River Valley Sports Complex (RVSC). The proposal is to build the complex at Chaffee Crossing with funding from the City combined with donations and in-kind materials and services raised by RVSC. RVSC is scheduled to report on the donations and in-kind services at the February 25 Board of Directors Study Session.

Sports complexes across the nation, when built and maintained at a high level, have proven to contribute to the quality of life and be a stimulus to local economies through sports tourism. Rock Hill, South Carolina's Cherry Park has contributed to their economy for many years. Last year thirty-five (35) tournaments were hosted at this five (5) field complex of 300' fields designed for tournaments of all types through men's championship tournaments. Southaven, Mississippi's Snowden Grove Baseball Park has nineteen (19) tournaments already scheduled for the 2014 season. Tulsa, Oklahoma's Carl Smith Sports Complex has fourteen (14) tournaments scheduled to date for this year; last year's calendar of tournaments was full with most weekend's scheduled March through October. Not all of these facilities are successful, but those that are built, maintained, and managed at a high level can be significant contributors to the local and regional economy.

The cost to build tournament quality facilities can be \$800,000 to \$1 million per field. Conway, Arkansas built softball and baseball complexes that are considered the standard for high quality in the state. The five (5) field softball complex cost \$6 million and the nine (9) field baseball complex cost \$8 million. The new six (6) field sports complex in Rogers, Arkansas that opened a year ago was in the \$7 million range. A representative of Jacob's Engineering, the firm that designed the Ben Geren fields we are currently building, said this is the cost range they see when building high quality fields.

An in-house survey of sports complexes around the nation was conducted by our department. Seven (7) of the complexes were privately owned and ten (10) were city owned. The number of tournaments hosted in one year ranged from eight (8) to fifty-four (54). The economic impact will vary for each park due to the number of tournaments, number of teams participating, distance teams travel, and length of tournaments. Redding, California's Big League Sports Park, operated by a sports facility consulting company, estimated an impact of \$15 million for their first year with projections of over \$20 million by their fifth year of operation.

It is critical that the facility be built and maintained to the highest standards to attract tournaments and to become known as a premier sports facility in our region. Repeat tournaments and participating teams are critical to long term operation and success. Conway's City of Colleges Park softball complex sets the standard that RVSC should seek to meet as a tournament quality facility.

RVSC's business plan states that facilities of this type can be operated at a profit. It has been requested that an operations agreement like the Church League agreement be provided for RVSC. This would place the responsibility of paying for utilities on the City with all other expenditures being covered by RVSC. The initial assumption is that tournaments could be hosted on half of the weekends in the eight (8) month season with substantial increase in number of tournaments over the following two (2) years. The RVSC proposal could be a significant contributor to the local and regional economy and quality of life.

attachments

## Sports Complex Survey

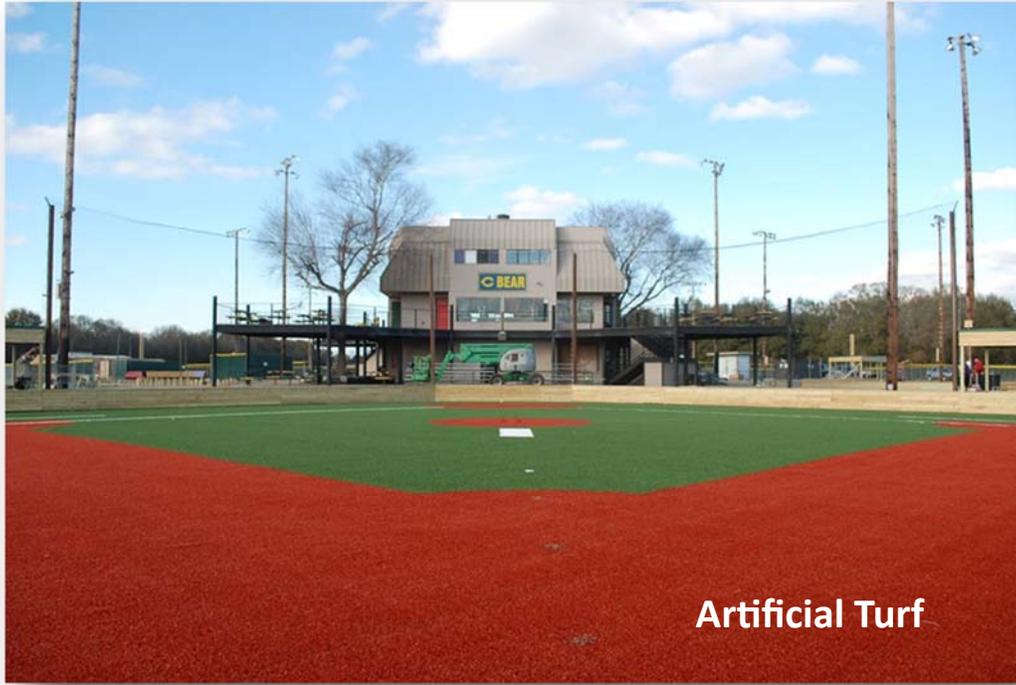
Field	Location	City Owned	Years	Fields	# Tour	Built
Greenville Girls Softball Assn	Greenville, OH	No	13	4	9	2001
Huber Ranch	Seguin, TX	No	3	5	43 (2013)	2011
Rivershore Sports Complex	Hebron, KY	No	27	6	35	1987
The Plex	Oklahoma City, OK			12	21 (2013)	
Triple Creek	McKinney, TX	No	11	7		2003
Boomer Sport Complex	Oklahoma City, OK	No	28	8	40	1986
C.I.T. Baseball & Softball Assn	Cartiers Valley, PA	No	14	5		2000
Rainbow Field	Modesto, CA	No		6	13 (2014)	
Del City Ball Park	Del City, OK			12		
Carl Smith Sports Complex	Tulsa, OK	Yes			14 (2014)	
Savage Softball Complex	Tulsa, OK	Yes/Utilities	14	13	20	2000
City of Colleges	Conway, AR	Yes	4	5	20	2010
Conway Station Park	Conway, AR	Yes	3	9		2011
Cherry Park	Rock Hill, SC	Yes		5	35 (2013)	
Snowden Grove Baseball Complex	Southaven, MS	Yes	15	17	19 (2014)	1999
Greenbrook Park	Southaven, MS	Yes	14	8	8 (2014)	2000
Pelican Park	Carencro, LA	Yes	City Bought in 1995	4	54 (2014)	1983
Rogers Regional Sports Park	Rogers, AR	Yes	1	6	23 (2014)	2013
Big League Dreams Sports Park	Redding, CA	Yes	10	3	37 (2014)	2004



## City of Colleges Conway, AR



# Pelican Park Carencro, LA



# Rogers Regional Sports Park Rogers, AR





## Huber Ranch Seguin, TX



# Carl Smith Sports Complex Tulsa, OK



# Greenville Girls Softball Association, Inc. Greenville, OH





February 17, 2014

TO: Members of the Board of Directors  
Members of the Historic District Commission

RE: Appointments:

Joan Singleton of the Historic District Commission has resigned her position Monday, February 17, 2014. In accordance with Ordinance No. 2926 applications for this prospective vacancy are now being received. Applicants must be residents and registered voters in the City of Fort Smith.

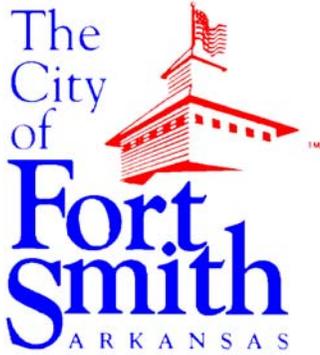
Please submit applications to the city administrator's office no later than the close of business on March 12th, 2014. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to [www.fortsmithar.gov](http://www.fortsmithar.gov) and click on boards and commissions.

Sincerely,

A handwritten signature in blue ink that reads "Ray Gosack".

Ray Gosack  
City Administrator

623 Garrison Avenue  
P.O. Box 1908  
Fort Smith, Arkansas 72902  
(479) 785-2801  
Administrative Offices FAX (479) 784-2430



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 – Pam Weber

At Large Position 6 – Kevin Settle

At Large Position 7 – Philip H. Merry Jr.

## **AGENDA ~ Summary**

**Fort Smith Board of Directors**

**Study Session**

**February 25, 2014 ~ 12:00 Noon**

**Fort Smith Public Library Community Room  
3201 Rogers Avenue**

### **CALL TO ORDER**

All present (Mayor Sanders presiding)

1. Review renewal of City fleet and property insurance (*March 2014 – March 2015*)  
Settle / Catsavis placed a resolution on the March 4, 2014 regular meeting agenda.
2. Report on plan to acquire and finance the construction of softball tournament fields at Chaffee Crossing ~ *As discussed at the October 8, 2013 study session ~ Merry / Weber placed a resolution on the 'consent agenda' of the March 4, 2014 regular meeting to authorize agreements for the construction & purchase, with presented amendments, and a lease agreement for operation of the subject fields with the River Valley Sports Complex.*
3. Review preliminary agenda for the March 4, 2014 regular meeting

### **ADJOURN**

1:11 p.m.