



MEMORANDUM

City of Fort Smith
Internal Audit

TO: Board of Directors
Carl Geffken, City Administrator

FROM: Tracey Shockley

DATE: September 28, 2017

SUBJECT: River Valley Sports Complex

Internal Audit (IA) received a special request by the Board of Directors to audit the River Valley Sports Complex (RVSC). The following is a summary of the background, work performed, findings and recommendations. Appendix sections A, B, C, and D.

Background:

On March 4, 2014, Lee Webb and Jake Files entered into an agreement with the City of Fort Smith for the construction of a tournament quality eight-field sports complex in the Chaffee Crossing area of Fort Smith called the River Valley Sports Complex (RVSC). Files and Webb also entered into a 10-year agreement with the City of Fort Smith to operate the venue once construction was complete.

River Valley Sports Complex (RVSC) was established with the Arkansas Secretary of State on February 26, 2014 by Lee Webb as the incorporator and, Webb and Jake Files as directors.

The agreement specified certain payments in each section milestone that were to be paid to RVSC from the City with a maximum total City payment amount of \$1.6 million. The agreement also identified June 10, 2015 as the date for substantial completion of the project. Furthermore, it stated that the complex was to be ready to use by the public July 1, 2015.

The following is a timeline of events:

- March 4, 2014 - Resolution No. R-20-14 the agreement was approved. [See Appendix A, Sections A.A.](#)
- July 15, 2014 - Resolution R-83-14, adoption to agreement, approved Webb and Files to provide a personal Financial Assurance agreement in lieu of a performance bond. [See Appendix A, Sections A.B.](#)
- May 19, 2015 - Resolution No. R-96-15 modified the performance payment schedule and established a new completion date of March 2016. [See Appendix A, Sections A.C.](#)
- April 19, 2016 - Resolution R-53-16 established a new substantial completion date of July 22, 2016 and ready for public use date of July 31, 2016. [See Appendix A, Sections A.D.](#)

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- January 2017 – Requested by Board of Directors to audit the RVSC. [See Appendix A, Sections A.E.](#)
- January 27, 2017 – Meeting held with Jake Files, DiAnna Gonzalez, and Carl Geffken. [See Appendix A, Sections A.F and Appendix D, Section D.Exhibit.1.](#)
- March 17, 2017 – Termination for cause for failure to perform its obligations under the agreement with Webb and Files. [See Appendix A, Sections A.G.](#)
- Internal Audit Department – outside agencies requested assistance from Internal Audit April – September 2017 regarding RVSC, Webb, Files, and Gonzalez. [See Appendix A, Sections A.H.](#)

Scope of Work:

A review of the agreements, documents, etc... identified the following significant items:

- Webb and Files were to follow the pricing policies of the City and all Arkansas state laws, and have a construction manager for the project because the project would not be bid as a single construction project, but in trades in order to take advantage of donated materials and in-kind services. [See Appendix B, Sections B.1.](#)
- The agreement provided that once the construction of the sports complex was completed, the property was to be released back to the City of Fort Smith and then leased for a period of ten (10) years to the RVSC. [See Appendix B, Sections B.2.](#)
- The agreement states “The Sports Complex shall be designed and constructed as to meet or exceed each of the individual and the collective standards set forth in Exhibit C, listing of amenities and development standards in Exhibit D, and the list of selected materials in Exhibit E” [See Appendix B, Sections B.3.](#)
- The statement of Financial Assurance contained a line item of \$1,200,000 of site work that was listed in the donated work column and identified as National Guard. Other than the National Guard item, there is no line item on the Financial Assurance statement that can be associated with a large dollar volume of dozer work. [See Appendix B, Sections B.4.](#)
- The building permit states, “ work shall be performed in accordance with the reviewed construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents. These changes shall be reviewed as stated in the current adopted code.” Based on IA’s review, the concession stands were changed significantly from the original plans as well as the materials and there is no evidence that the changes were submitted for approval despite the language in the building permit. [See Appendix B, Sections B.5.](#)
- The agreement provided that for any work performed by any worker or contractor, Webb and Files were required to “obtain assurance that all workers were covered by Workers’ Compensation insurance as required by the Arkansas law and that any contractor purchased and maintained during any work on the facility, liability insurance, with minimum amounts of \$1,000,000 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 did not have the required insurance or did not provide proof, Webb and Files were required to purchase and maintain liability coverage and workers’ compensation coverage to provide coverage for activities of the contractor or worker to the extent required. [See Appendix B, Sections B.6.](#)
- Webb and Files were required to 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. [See Appendix B, Sections B.7.](#)
- Webb and Files were required to warrant and guarantee all work was in accordance with the agreement, including exhibits to the agreement, and would not be defective. [See Appendix B, Sections B.8.](#)

- IA noted a memo written in August 2013 by Daily and Woods to Webb and Files stating that the information provided by them on a recent construction bid for two softball fields provided insight into the cost of sports fields. That information suggested that the City's available funds for the project (\$1,600,000) would not be sufficient to design and construct the sports complex. See [Appendix B, Sections B.9.](#)
- IA noted a memo written to the Board in September 2013 by staff with concerns about the project site sitting idle, partially completed and funds/donations put at risk. The memo expressed that the RVSC financial plan projected expenses and revenues, but what if operations of facilities falls back to the City. Staff researched facilities Webb and Files put in business plan as examples, and only found one to break even. Additionally, most cities subsidize the complexes with taxes, are not self-supporting, and requires city funds to operate. The memo also pointed out that Webb and Files were significantly relying upon donations (stated but undocumented) to build the facility, operations plan that anticipates profits while similar facilities require financial assistance to operate, absence of marketing plan or other data substantiating the need for an additional tournament facility in our region. All of the other like facilities researched have one or more leagues using the facilities and in some cases, they operate the facility. No such league play was planned for the proposed facility. See [Appendix B, Sections B.10.](#)
- IA noted a memo by the prior City Administrator written in February 2014 with concerns and his uncertainty about the full value of the construction work. Also expressed were the consequences in the event the project was not funded as planned. The City would have to consider several options and those were that the City would have to provide additional City funding to complete the project as planned, attempt to secure other sources of funding to complete the project, abandon the partially – constructed project, or scale back the project. See [Appendix B, Sections B.11.](#)

To obtain documents necessary for the audit, IA sent a request to Webb and Files for all invoices, bank statements, receipts, IRS filings, copy of the 501(c)(3) IRS approval letter, and copies of all contracts with contractors/subcontractors. Also requested was a list of all donors and goods or services to the project, the amounts of outstanding invoices, and a list of all contractors/subcontractors still owed for services and the amounts owed.

Material Findings:

After reviewing all documents, analyzing the construction work performed, contacting a number of the contractors/subcontractors, and performing various other procedures, the following matters were identified:

- The architectural plans were not submitted and approved until March 2015, a year after the agreement with the City was signed and only allowing less than four months for the complex to be completed based on the original timeline. See [Appendix C, Sections C.1.](#)
- Multiple Engineers were used for architectural plans and were not paid in full for their services. See [Appendix C, Sections C.2.](#)
- No construction manager was designated to oversee the construction of the Sports Complex.
- It appears that work was performed on the property before any engineering/architectural plans were submitted to the City for approval. In April, May and June 2014, Grimes Dozer was paid a total of \$40,785 for clearing and pushing trees, as well as draining a beaver pond, other drainage work, and clearing trees for surveyor. See [Appendix C, Sections C.3.](#)
- Grimes Dozer invoiced RVSC for a total of \$335,212 in 2015 and for a total of \$93,845 in 2016. The invoiced services were for spreading and leveling dirt on field, pack and roll dirt on field, dig mud and drainage, push dirt, dig and move dirt, etc... See [Appendix C, Sections C.4.](#)

- Grimes Dozer invoiced by the hour and by equipment. It is Internal Audit’s understanding that most large construction projects are bid by the cubic yard, by project, or acreage. [See Appendix C, Sections C.5.](#)
- Further review of invoices submitted by Grimes indicates that Grimes charged for services before they were actually performed. Furthermore, additional research identified a number of days that were billed for services when the City of Fort Smith received between a half-inch up to almost four inches of rain. On some of those rain days, the winds were up to 56 mph. [See Appendix C, Sections C.6.](#)
- After reviewing the RVSC bank account information it appears that no other funds were deposited into the RVSC account outside of the City’s payments for specific milestones or refunds for returns on items purchased. A majority of those deposited funds, \$469,842, were paid to Grimes Dozer. [See Appendix C, Sections C.7.](#)
- It appears that certain goods and services were represented as to be obtained at a discounted, donated, or at cost prices. In specific instances, goods and services were not obtained from the specific business identified in the original agreement/plan submitted to the City or, in the case of donated goods, were not in all cases obtained by donation. For example, Ivy Owen, Executive Director Fort Chaffee Redevelopment Authority, provided a donation letter that stated that all shale needed by RVSC would be provided at no cost. However, the invoices provided to Internal Audit in response to the data request indicated that shale was purchased by RVSC for over \$7,000 from Don Shoemake. In addition, Mr. Owen was contacted by Internal Audit and he stated that neither Lee Webb nor Jake Files ever contacted him for shale after he provided the donation letter. See also the comments above about National Guard dozer work. [See Appendix C, Sections C.8.](#)
- Based on information from an outside engineer and other construction builders, a number of materials used on the project were not materials consistent with the business plan and did not comply with all related construction codes. Additionally, some of the RVSC structures appear to have been built in a sub-standard manner and will likely cost the City additional monies to replace or bring those structures up to construction code. For example, some water PVC pipes were trenched, however, when using this type of pipe, concrete blocking is required when there are angle changes and it does not appear this was done. There appears to be no evidence of any sanitary sewer work or completion of backfill work. In addition, some of the bricks and masonry work done on the concession stands appear to be sub-standard work. Some bricks are crumbling, cracks exist in the slab and due to the trusses being extended beyond the original design, and the external pillars are bowing.
- DiAnna Gonzalez was paid for concession stand masonry work, however according to outside engineers the masonry work and materials used are of poor quality workmanship and poor visual quality, or not done to the developers plan and considered a major concern. [See Appendix C, Sections C.9.](#)
- After speaking with B&A Electric, it appears that Grimes Dozer charged RVSC for using a backhoe to dig electrical holes for the concession stand on one of the Grimes Dozer invoices. B&A stated Grimes helped unload the poles; however, B&A dug the holes. [See Appendix C, Sections C.10.](#)
- One specific transaction was the focus of a substantial amount of work by IA. In late December 2016, the City received a request for funds to pay for a water line. The amount of the request was \$26,945 and the contractor was DiAnna Gonzalez. The funds were paid by the City on 12/29/16 by wire to the account specified by Gonzalez. [See Appendix C, Sections C.11.](#)
- A utility locate request was submitted by DiAnna Gonzalez on 1/5/17 for work to begin 1/9/17. However, as stated above, Ms. Gonzalez received \$26,945 on 12/29/16 to lay the water lines. To

date, this project has not been completed and Ms. Gonzalez still has not fulfilled the water line contractual agreement. [See Appendix C, Sections C.11.](#)

- To date, as requested by the City, Ms. Gonzalez has not returned any of the monies advanced to her. [See Appendix C, Sections C.11.](#)
- The Deputy City Administrator was advised by the Finance Department, prior to the transfer to Gonzalez bank account of the \$26,945, their concerns regarding making an advance on this work. However, the decision was ultimately made to wire the funds to her account despite these concerns. [See Appendix C, Sections C.11.](#)
- Information obtained by IA included three bids for the water line project referred to above, including the bid by Gonzalez. The two other contractors were contacted by IA regarding their quotes and both stated they did not submit a quote for the water line work. [See Appendix C, Sections C.12.](#)
- After the discussion with these contractors, IA requested and obtained a meeting with Files and Gonzalez. During the meeting, in response to IA questions and with the City Administrator present, Files admitted that he prepared and submitted all three quotes for the water line work. Subsequent to this disclosure, he asked if he could get legitimate bids and resubmit them. [See Appendix C, Sections C.13.](#)
- It was noted by IA that Gonzalez had charges on submitted invoices that were charged by other contractors. [See Appendix C, Sections C.14.](#)
- The dealings between Files and Gonzalez have been separately reported in local newspapers, including what happened to the money wired to Gonzalez by the City on December 29, 2016.
- Two other individuals identified as contractors in the RVSC information were contacted regarding the framing of the concession stands. IA contacted these individuals. Both stated they were employees who worked for Jake Files at FFH Construction and Files sent them over to work at the Sports Complex. Upon return to FFH, they both turned their time into Files and later received a check from RVSC. IA asked about the invoices that were submitted in their names and they both stated they did not prepare and submit any invoices, nor did they know how much was charged. IA informed them of the amounts charged, and they stated that they would not have charged the amounts listed on the invoices, that the amounts were too high. [See Appendix C, Sections C.15.](#)
- For multiple contractors who worked at the Sports Complex, there is no evidence that the contractors had required insurance or the documents available indicated that they did not have the correct amount of coverage required as stated in the agreement. [See Appendix C, Sections C.16.](#)
- Webb and Files did not obtain the required storm, fire, and casualty insurance on the property or builder's risk insurance upon the work at the site in the amount of the full replacement cost for all years. [See Appendix C, Sections C.16.](#)
- Researching in the City computer system, which is used for maintaining contractors who have City licenses, indicated that not all contractors/subcontractors had the required City licenses. [See Appendix C, Sections C.16.](#)
- Utility locate request were submitted by Harris Company for lower hill bank grading 7/20/16 and 1/25/17, however no contracts, invoices, or evidence of work could be located. Additionally, when an attempt was made to contact the person who made the request, the person avoided the phone calls, and did not return calls from the IA Department. [See Appendix C, Sections C.16.](#)
- The clay/dirt for the fields should have a percentage of silt, clay and other organic material. However, according to an outside engineer it appears the material used to cover the field would be unacceptable. This is mainly due to the large rocks found throughout the field. Additionally, the fields were not leveled correctly and are too high. The rain will drain down to and possibly into the concession stands. [See Appendix C, Sections C.17.](#)
- Based upon information from outside engineers, while the fields appear to be ready for use, there is still significant excavation and grading work that remains. Additionally, the previously

installed topsoil will need to be replaced because of surface erosion and growth of weeds. See [Appendix C, Sections C.17](#).

- The fencing has sections that appear to be damaged or spliced together and will need to be replaced. See [Appendix C, Sections C.17](#).
- Webb and Files purchased from the government salvaged concrete storm drainage pipes. However, the pipes appear to have significant damage caused by usage (previous installation), removal, handling and transporting, therefore, the pipes are in unacceptable condition. See [Appendix C, Sections C.17](#).
- Webb and Files requested payment for the concession stands by stating they were in “the dry”. However, the concession stands do not have doors or windows which allows the interior to be exposed to different weather elements and would not be considered in “the dry”. See [Appendix C, Sections C.17](#).
- Grimes charged \$25 per hour for excavation/breaker work and then charged for an additional 150 gallons of fuel. An outside engineer stated that the gallons of fuel charged appeared to be excessive for the hours of work billed. In addition, there is no explanation as to why the fuel would be charged for in addition to the hourly rate for the work. See [Appendix C, Sections C.17](#).
- Based upon the review of the documents and discussions, Webb and Files did not obtain three bids as required by open competitive bidding, with notice pursuant to AR State law, of all trade contracts.

Recommendations:

Internal Audit has the following recommendations relating to any future projects of this nature:

1. The City Board of Directors should always follow City policies and procedures. Additionally, the employee’s research and advice who are responsible for City operations and transactions should have more weighted value. If the Board of Directors decide to waive the advice, suggestions, and compliance with existing policies and procedures, they should put into place ample safe guards to mitigate risk as discussed below.
2. The City should always insist on a performance and payment bond for all construction projects. If necessary, the bonds can be paid for out of any City funds provided for the project. The inability or unwillingness of another party to obtain a performance and payment bond is an indication of a substantial risk to the project.
3. A specific City employee who is knowledgeable about construction should be assigned to monitor the progress on the construction and make regular reports to an appropriate City official.
4. Work performed should be verified by the City employee monitoring the project or, preferably, by an outside design professional (i.e. engineer, architect, etc...) prior to paying any project billings from City funds.
5. The City should require that all contractors provide proof of insurance to the City.
6. The project manager should provide at least monthly to the City Administrator and to the Board of Directors reports with update information on the project, including status of various components of the project and cost incurred and paid.
7. Any additions or changes to the project, materials, designs, etc...to the original approvals of the project should be provided immediately to the City Administrator and to the Board of Directors.
8. IA should be notified of all major construction/projects in order to do a cursory review and/or point in time audit.
9. Contracts, agreements, etc... should have language that the City of Fort Smith’s Internal Audit Department has access at any time to review/audit their records for this specific project.

10. The City ensures that the contractor is abiding by the City of Fort Smith's and AR State law regarding purchasing and competitive bidding process.
11. The Director over the project/construction should have an employee with the expertise sign off that the milestone has been met. For example, an employee who is an electrician should verify that the lights and electrical work is correct and complete. If the work has been completed according to the milestone, the Director can approve the payment.
12. All set of approved plans should be maintained on site and readily available at any time.

The IA Department was not provided with all requested documents, invoices, receipts, etc... Additionally, this report may not have identified all exceptions noted during the audit, only the material deficiencies at this time. It is likely that additional work or the availability of all documents to IA would result in the identification of other significant issues, including possible violations of law. However, since federal law enforcement agencies are now involved in investigating the project, there would appear to be little or no benefit from IA expending additional time on this project.