



# COUNCIL DECISION REQUEST

SUBJECT: Arizona Diamondbacks Foundation Grant Award for Improvements to K-East and K-West Softball/Baseball Complex in Rumsey Park.

MEETING DATE: March 17, 2016

SUBMITTED BY: Cameron Davis  
Parks, Recreation & Tourism Director

SUBMITTAL TO AGENDA  
APPROVED BY TOWN MANAGER

AMOUNT BUDGETED: N/A

EXPENDITURE REQUIRED: N/A

  
\_\_\_\_\_

EXHIBITS (If Applicable, To Be Attached):

## POSSIBLE MOTION

I move to approve the MOU from the Arizona Diamondbacks Foundation and accept the award to the Town of Payson for the 2016 Diamondbacks Build A Field Program and its outlined improvements to the K-East and K-West Softball/Baseball Complex in Rumsey Park and to authorize the Town Manager to sign such MOU.

## SUMMARY OF THE BASIS FOR POSSIBLE MOTION:

Each year the Arizona Diamondbacks Foundation Build A Field Grant is awarded on the premise of helping to build or improve facilities that provide Youth Baseball and Outreach programs and strategic partnerships with key community partners and non-profit organizations.

Any 501(c)3 non-profit organization in Arizona is welcome to apply. The grants are reviewed by a committee of employees, the Executive Council, and season ticket holders who score the grants and make a recommendation to the Board.

Since 2000, the Arizona Diamondbacks Foundation has built or refurbished 34 baseball fields as part of the "Diamondbacks" Field Building Program, representing a charitable investment of more than \$10 million. In partnership with APS and a charitable gift from individual players, the program has allowed children from across the state to play baseball and softball at quality facilities. The fields generally feature new lights, an electronic scoreboard, new fencing and backstops, new irrigation and new grass and dirt.

The Town of Payson is the recipient of this Grant for 2016. The K-East and K-West Softball/Baseball Complex in Rumsey Park will be receiving the following upgrades: New Infield Material (Same as what they use at Chase Field), New Backstop Screens, 2 New Diamondbacks sponsored Scoreboards and other minor amenities.

## PROS:

- The award of this grant will help the Town of Payson achieve its goals of finishing this project as well as upgrading existing conditions of this facility.
- There is no upfront cost to the Town for these improvements.

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# COUNCIL DECISION REQUEST

**CONS:**

➤ None

**FUNDING:**

|       |         |            |          |            |
|-------|---------|------------|----------|------------|
| Acct: | Budget: | Available: | Expense: | Remaining: |
| Acct: | Budget: | Available: | Expense: | Remaining: |
| Acct: | Budget: | Available: | Expense: | Remaining: |

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

**FIELD BUILDING AGREEMENT**  
**Rumsey Park – Payson, Arizona**

This Field Building Agreement (“Agreement”) is entered into as of this \_\_\_ day of February, 2016, by and between Pimmex General Contracting, the general contractor (“Contractor”); Arizona Diamondbacks Foundation, Inc. (“ADF”); and the Town of Payson (“Town”). This Agreement memorializes the intent and agreement of the parties with respect to the refurbishment of two (2) existing baseball fields at Rumsey Park (the “Park”), located at 400 N. Mc Lane Rd., Payson, AZ (the “Project”).

**RECITALS**

A. ADF is a charitable organization that facilitates the donation of construction funds for the Project and arranges for Project construction. ADF’s role on the Project is limited strictly to facilitating donation of project monies and arranging for a general contractor and architect. ADF has no role in design or construction of the Project.

B. The Contractor has agreed to provide charitable in-kind donation of services, in the manner described herein.

C. The Town is the owner of the recreational land on which the Project will be constructed.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**AGREEMENT**

**1. SCOPE OF THE PROJECT**

The intent of the parties regarding the Project is for the refurbishment of two (2) existing baseball fields at the Park, in accordance with Exhibit A, utilizing charitable donations. ADF has agreed to arrange for and provide construction funds to Pimmex Contracting for the Project. After the Project has been accepted by the Town, the Project will be donated to the Town as Owner. ADFs’ role on the Project is limited strictly to facilitating donation of project monies and arranging for a general contractor.

**2. ROLES OF THE PARTIES.**

**A. THE CONTRACTOR.**

The Contractor is an independent contractor that will comply with all applicable laws, statutes, ordinances, rules and/or regulations governing its work. The Contractor shall be solely responsible for all means and methods of project work, construction and any and all similar tasks on the Project. The Contractor represents and warrants that it is qualified to perform the undertaking that is the subject of this Agreement. The Contractor shall retain exclusive supervision and control of the Project until final completion.

**B. THE ARIZONA DIAMONDBACKS FOUNDATION.**

ADF will facilitate the donation of construction funds for the Project and arranges for Project construction. ADF's role on the Project is limited strictly to facilitating donation of project monies and arranging for a general contractor and architect. ADF has no role in design or construction of the Project.

**C. THE TOWN.**

The Town is the Owner of the Park, and will be the donee of the Project upon completion ("Project Owner"). When the Project is substantially complete and accepted, the Town will assume ownership, maintenance, control and supervision of the Project and shall be responsible for maintaining and providing appropriate liability insurance or coverage through its self-insurance retention program.

**3. CONSTRUCTION ACTIVITIES AND RESPONSIBILITIES.**

**A. THE CONTRACTOR.**

Upon execution and approval of this Agreement, the Contractor will make the necessary arrangements to begin scheduling Project Construction. Construction is to commence on or after March 21, 2016, and be completed on or before June 15, 2016. Contractor shall provide the Town with a construction schedule and estimated completion date.

The Town hereby grants permission to the Contractor, its employees, agents and contractors, to enter upon a portion of the Park for purposes of ingress and egress and construction activities related to the construction of the Project for the benefit of the Town. The permission granted by this Agreement shall begin on March 1, 2016 (the "Effective Date") and continue in full force for one year, or until completion of the Project by the Contractor and acceptance of the Project by the Town.

The Contractor shall maintain a record set of plans at the job site, which plans shall be kept legible and current and shall show all changes or work added in a contrasting, reproducible color. The Contractor at completion of the work shall provide the Town with the original record drawing marked AS- BUILTS.

The Contractor agrees to keep the Park and all adjoining property free and clear of trash, debris and unauthorized materials and to restore the surface of the subject property to its original state, to the satisfaction of the Town, prior to Project completion. All tools, equipment, supplies and other personal property brought to the Park by the Contractor shall remain the property of Contractor and shall be removed by the Contractor at its sole expense upon completion of construction. The Contractor shall not store petroleum products, hazardous or toxic substances or flammable materials at the Park without the prior written consent of the Town.

**B. THE TOWN.**

The Town shall obtain all required zoning and use permits and approvals needed for the Project, including lighting, if required by Arizona law.

**4. NAMING OF PROJECT.**

ADF shall have the exclusive right to name the Project, including recognition of all parties donating money, labor and/or materials to the Project, and to install appropriate dedication/naming signs. Any such signs shall reasonably conform to applicable regulations, ordinances and laws. In the event that either the Town or ADF determines that the name of the Project is not in the best interest of the Town or ADF and/or any of its affiliates, subsidiaries, employees, representatives, sponsors, donors, charities and/or other similar entities or persons, such party may request a name change at the requesting party's expense. Such request shall be made and kept privileged and confidential to the extent permitted by Arizona law. A name change may be implemented only upon the express written consent of both the Town and ADF, which consent may not be unreasonably withheld, delayed or conditioned.

**5. USE, OPERATION AND MAINTENANCE OF THE PROJECT.**

The Town shall take appropriate measures to ensure that the Project is appropriately, adequately and permanently maintained for the benefit of persons served by the Town. The Town covenants and acknowledges that the primary purpose of the Project is youth baseball and warrants that it shall take appropriate measures to supervise, protect and maintain the Project for such purpose.

Specifically, the Town expressly covenants and agrees to repair, maintain and operate the Project in strict conformance with the Maintenance Guidelines attached as Exhibit B. ADF shall have reasonable access to the Project for purposes of determining the Town's compliance with its repair and maintenance obligations. If requested by ADF, the Town shall take such steps as are reasonably necessary to ensure the Project facilities are maintained adequately. This provision does not alter the Town's independent obligations to maintain, repair and operate the Project and keep it in a habitable, safe and substantially good condition.

**6. INSURANCE REQUIREMENTS**

The Contractor and its subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor or its agents, representatives, employees or subcontractors.

The insurance requirements herein (which are attached hereto as Exhibit C and incorporated herein by this reference) are minimum requirements for this MOU and in no way limit the indemnity covenants contained in this MOU. The Town in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this MOU by the Contractor or their respective agents, representatives, employees, or subcontractors. The Contractor is free to purchase such additional insurance as may be determined necessary.

The policy (or certificate of insurance evidencing the required insurance) shall be endorsed to include the following additional insured language: "The Town and the Arizona Diamondbacks Foundation shall be named as additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor (or Architect, as appropriate),

including completed operations". The policy shall contain a waiver of subrogation against the Town. The Contractor is responsible for payment of all policy deductibles. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

Each insurance policy required by the insurance provisions of this MOU shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the Town, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given.

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The Town in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor and the Architect from potential insurer insolvency.

The Contractor shall furnish the Town with certificates of insurance (ACORD form or equivalent approved by the Town) for all policies required by this MOU. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by the Town before work commences. Each insurance policy required by this MOU must be in effect at or prior to commencement of work under this MOU and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this MOU or to provide evidence of renewal is a material breach of contract.

Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor; however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate.

## **7. CONTRACTOR INDEMNITY OBLIGATIONS.**

The Contractor (hereinafter referred to as Indemnitor) agrees to indemnify and save harmless the Town and ADF, their respective officers, agents and employees, and any jurisdiction or agency issuing permits for any work included in the project, their officers, agents and employees (hereinafter referred to as Indemnitees) from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the performance of work done in fulfillment of the terms of this MOU or on account of any negligent or improper act, claim or amount arising or recovered under workers' compensation law or arising out of the failure of the Indemnitor to conform to applicable statutes, ordinances, regulation, law or court decree. It is agreed that the Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. In consideration of the award of this Project, the Indemnitor agree to waive all rights of subrogation against the Town and ADF, their respective officers, officials, agents and employees for losses arising from the work performed by the Contractor (as applicable) for the Town and ADF. The indemnification obligations set forth in this Section 7 shall survive termination or expiration of this MOU.

**8. TOWN INDEMNITY OBLIGATIONS.**

To the fullest extent permitted by law, the Town shall indemnify and hold harmless ADF and any and all of its affiliates, subcontractors, subsidiaries, employees, agents, representatives, sponsors, donors, charities, and/or any other similar entities and/or persons, from any and all claims, damages, causes of action, losses, expenses, demands, judgments or liabilities, including costs of defense and attorney's fees, arising directly or indirectly from any alleged safety violations or failure to comply with applicable safety laws, rules, regulations and/or ordinances regarding maintenance of the Project and/or the Town's role as the Project Owner. To the fullest extent permitted by law, the Town shall indemnify and hold harmless ADF and any and all of its affiliates, subsidiaries, employees, agents, representatives, sponsors, donors, charities, and/or any other similar entities and/or persons, from any and all claims, damages, causes of action, losses, expenses, demands, judgments or liabilities, including costs of defense and attorney's fees, directly or indirectly related to (1) the Project, not related to design and/or construction activities, (2) the Town's role as Project Owner, (3) use of the Project and/or (4) uninsured losses. These indemnification obligations shall apply to the extent that the claim, damage, cause of action, loss, demand, judgment and/or liability is caused in whole or in part by any negligent or improper act or omission of the Town or any of the Town's agents, employees, subcontractors, suppliers and/or materialmen. The indemnification obligations set forth in this Section 8 shall survive termination or expiration of this MOU.

**7. TERMINATION.**

This MOU may be terminated by ADF, at its option, if the Town fails to fulfill its obligations hereunder. In the event of any such termination, at ADF's request (and at the Town's expense), the Town shall remove all signage that affiliates the ADF and/or the Arizona Diamondbacks' Major League Baseball Team or its officers, employees, consultants or player(s) with the Project (as well as any other signage installed pursuant to Section 4 hereof, if requested by ADF).

**8. MISCELLANEOUS.**

The parties to this MOU understand that each party entered into this MOU in reliance on the agreement of each of the other parties to perform its obligations hereunder. This MOU is binding and enforceable with respect to the subject matter hereof, and may be modified or amended only by a writing signed by all parties. This MOU shall be governed by and construed in accordance with Arizona law, and shall be subject to the provisions of Arizona Revised Statute § 38-511.

**ARIZONA DIAMONDBACKS  
FOUNDATION, INC.**

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**PIMMEX CONTRACTING**

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

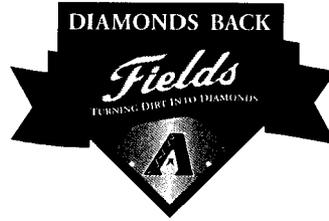
**TOWN OF PAYSON**

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT A**



**ARIZONA DIAMONDBACK FOUNDATION**  
**“DIAMONDS BACK” FIELD PROGRAM**

**Scope of work:**

- Field Accessories:
  - Wind screening
- Scoreboard
  - Two double-sided illuminated scoreboards
- Landscaping
  - Ball field Material
    - Warning Track Material – approximately 5,750sf (2” depth)
    - Infield Mix – approximately 50-60 tons.
- Electrical
  - Conduit, wire and junction box to future scoreboard location.
  - Conduit and Junction boxes to all light locations.
- Other items including portable pitcher’s mound and portable home run fencing  
TBD

## **EXHIBIT B**

### **Maintenance Guidelines** **Rumsey Park**

The Arizona Diamondbacks Foundation (“ADF”) is proud to provide these fields for youth baseball. To ensure that the facility is continually and permanently maintained in a first class condition, ADF has outlined these maintenance guidelines for owners/users of this facility. As reflected on the guidelines, the Town of Payson (“Town”) agrees to the following maintenance obligations subject to fiscal and legal authority of its governing board.

#### **Scoreboard:**

The Town will provide electricity for purposes of scoreboard operation and other electrical needs, installed by the Contractor.

The Town will immediately clean or repaint any graffiti or other surface damage caused by vandalism.

The Town will check scoreboard prior to each baseball season for proper operation. Burned out scoreboard bulbs should be replaced prior to each season, including digits, indicators and backlit bulbs. Scoreboard manufacturer will provide some additional bulbs upon completion of project.

The Town will be responsible for repairs to the scoreboard. The Town will report any malfunction of the scoreboard immediately to manufacturer/dealer.

The Town will inspect and repair or replace immediately any locks, boxes or other items to protect scoreboard controls.

#### **Fencing/Backstop:**

The Town will inspect and repair all fencing and backstop, as needed. Foul poles are to remain intact and straight.

The Town must install, clean, repair or replace plastic guard rail and shade screens and tarps in case of any damage. In the event the replacement becomes a cost burden to the Town, the Town may request approval from ADF to discontinue use of one or all of these elements.

#### **Shade tarps:**

The Town will clean and maintain shade tarps, pads and screens on fencing. Tears and holes (other than wind holes) are to be repaired immediately.

**EXHIBIT C**

**Insurance Requirements**  
**Rumsey Park Field Building Project**