



## Legislation Text

---

File #: 19-1184, Version: 1

---

**TO:** Mayor and Members of City Council

**THRU:** Douglas J. Hewett, City Manager ICMA-CM

**FROM:** Kristoff Bauer, Dep. City Manager ICMA-CM

**DATE:** January 6, 2019

**RE:**  
**Amendment to Use and Operating Agreement with Fayetteville Baseball Club Regarding the Capital Repair, Maintenance and Improvements Schedule (Exhibit E) and Request to Authorize Expenditures from the Capital Repair, Maintenance and Improvements Account**

**COUNCIL DISTRICT(S):**  
District 2

**Relationship To Strategic Plan:**  
Type here

**Executive Summary:**

The Use and Operating Agreement ("Agreement") references a Capital Repair, Maintenance and Improvements Schedule (Exhibit E) ("Schedule") that is to guide expenditures from the Capital Repair, Maintenance and Improvements Account ("Account") over the term of that Agreement. The Schedule, however, was not developed at the time that the Agreement was executed and is currently blank in the official copy of the Agreement. Council action is needed to authorize amending the Agreement to add a completed and agreed Schedule to the Agreement. Further, the Woodpeckers have requested and the Board of Advisors have recommended specific expenditures from the Account which the Council must consider and authorize should they deem appropriate to do so.

**Background:**

The City executed the Agreement with Fayetteville Baseball Club ("Operator"), a subsidiary of Houston Baseball Partners, in December of 2016 (Attached). The stadium had not even been designed at that time. The Agreement sets up a mechanism to identify and fund capital improvements to the stadium over the life of the Agreement. The foundation is a Schedule of potential capital repair and maintenance items referenced in the Agreement as Exhibit E. It was impossible to complete this schedule without the final design of the stadium and it is, therefore, blank.

The Agreement also set up a funding mechanism to support Capital Repair, Maintenance and

Improvements (“Capital Improvements”). The Agreement provides that the Operator will annually deposit \$1 for each ticket after the first 50,000 sold and half of the naming rights revenue into the Account. The Agreement goes on to state that should the average of these revenues, starting in year five, fall below 1% of the actual construction cost of the stadium then both parties will be required to contribute 50% of any shortfall to ensure a minimum revenue to the Account averaging 1% of the actual construction cost.

Finally, the Agreement calls for the establishment of a Board of Advisors (“Board”) to annually recommend to the City Council any expenditures from the Account for Capital Improvements consistent with the terms of the Agreement.

The City Council appointed the nine members of the Board on May 28, 2019. The Board met on December 12, 2019, to consider the proposed Schedule and two funding requests from the Woodpeckers. The draft minutes of the meeting are attached. The Board voted to recommend the Schedule attached and to authorize the installation of fans in the concourse area and the extension or replacement of the safety netting.

#### **Issues/Analysis:**

##### ***Capital Maintenance, Repair and Improvements Schedule (Exhibit E)***

The attached Schedule was developed by Mike Wooley of Venue Solutions Group (“VSG”) which is a firm that focuses on public assembly facilities. The preparation of maintenance plans for public assembly facilities is one of their specialties. The Schedule that they prepared is comprehensive and conservative (the attachment can be viewed by zooming in). The total cost of the plan (lower right) is shown to be almost \$44 million. Mr. Wooley shared that it is not unusual in his experience for the estimated cost of a 30 year schedule of this kind to approximate the total construction cost of the subject facility. He also stated that it is not reasonable to plan for all of the included costs to actually be incurred. The schedule is a tool for prioritization and planning.

Mr. Freier, CEO of Hardball Capital, the City’s consultant throughout this project who owns and operates three minor league baseball teams, describes the schedule as a baseline that assists in making potentially difficult budget decisions over time. He goes on to indicate that the funding mechanism included in the Agreement, which is based on similar agreements he has negotiated for his teams, was never intended to fund everything that might ever be wanted by the operator. It was intended to support reasonable capital maintenance and to mitigate the City’s risk of facing future capital demands from the operator.

Chris Cominse, Woodpeckers Director of Stadium Operations, reviewed the schedule and prioritized each potential expenditure (priorities 1-4 to the right of the table). The total of Priority 1 items is just under \$21 million. Mr. Cominse’s priority evaluation is based first on the safety for fans, players, and workers. This is consistent with the prioritization method recommended by Mr. Wooley of VSG.

**Board Recommendation:** After significant discussion, the Board unanimously recommended that the Council approve the proposed Schedule for inclusion in the Agreement and to guide their work in the future.

### ***Requested Expenditures from the Account***

The Woodpeckers initially requested that they be authorized to make four investments in the stadium at a total estimated cost of \$285,000. That request was reduced to two items with a total estimated cost of up to \$180,000 after working with the City to develop the Schedule. The two projects being requested are the installation of ceiling fans in the concourse area (\$30,000) and the extension of field netting all the way to the foul poles (up to \$150,000).

Field Netting Extension: The existing field netting extends to the outside edge of the dugouts. This is farther than was required by MiLB standards at the time the stadium was designed. The issue of how far to extend netting has evolved significantly over the last year. This was a key design discussion that attempted to balance two opposing interests; one, what was at that time a preference for seats that would allow the opportunity to catch a foul ball and an unobstructed view of the field, and, two, fan safety. The balance selected at that time was to extend the netting farther than what was required and farther than existed in most MiLB stadiums. Over the last year, however, due to some well publicized and truly unfortunate injuries caused by foul balls at the major league level, public sentiment has shifted the balance dramatically and almost every field in the majors and minors is in the process of extending field netting to enhance fan safety.

The cost estimate provided by the Woodpeckers would completely replace the field netting with a net that has improved visibility characteristics and would extend all the way to the outfield foul poles. The estimate of \$150,000 is significantly higher than costs experienced at other MiLB fields to extend field netting. This premium is believed to be due to the need to add anchoring points in the outfield and the unwillingness of the vendor who installed the existing netting to bid on extending that netting. This requires new vendors to replace the existing netting and support system in order to achieve a uniform system.

City purchasing has reached out to the vendor who installed the current netting and is attempting to get them to bid on extending the system that they installed. If successful, it is anticipated that this would result in significant savings.

It should be noted that replacing field netting is included in the Schedule in years 10, 20, and 30. This replacement in year 2 is not expected to revise that schedule.

Board Recommendation: The Board voted to recommend spending up to \$150,000 to extend the field netting.

Concourse Ceiling Fans: The Woodpeckers report that excessive heat and stuffiness in the concourse area is the dominate complaint received from fans during the team's first season. They also report that heat related injuries and illness were the number one cause of emergency service calls. They are recommending the installation of 10 large industrial ceiling fans in the concourse area at cost of \$30,000 to increase air movement and improve the safety and experience of those fans that don't have access to air conditioned areas.

Ceiling fans in the concourse area were initially included in the design of the stadium, but they were "value engineered" out during attempts to reduce the overall cost of the stadium. Staff hasn't been able to recover the notes on that change, but it is my recollection that this change was valued as a savings in excess of \$40,000. This indicates that the estimated cost to add these fans is certainly reasonable and could be a rare example of an addition after construction that results in a savings.

The addition of ceiling fans is not included in the Schedule as it is an improvement or addition instead of maintenance or repair of an existing system. If installed, the maintenance or replacement of these fans would need to be added to the Schedule.

**Board Recommendation:** The Board recommends authorizing \$30,000 from the Account to add 10 ceiling fans to the concourse area of the stadium.

**Budget Impact:**

The Woodpeckers report that their contribution to the City for the first year of operation, which will fund the Account, will be \$385,612. Council action will be required to authorize any expenditure from the Account.

**Options:**

Discussion

**Recommended Action:**

This is for Discussion. Should the Council express an interest in authorizing expenditures from the Account, then an action item will be placed on the Regular Agenda scheduled for January 13, 2020.

**Attachments:**

Stadium Operating Agreement

Excerpts from the Operating Agreement

Proposed Capital Maintenance, Repair and Improvements Schedule (Exhibit E)