



**Bryant City Council  
Special Meeting**  
October 6, 2014 - 6:00 PM  
Boswell Municipal Complex - City Hall Courtroom  
210 SW 3rd Street, Bryant, AR 72022

**AGENDA**

**CALL TO ORDER**

**PUBLIC COMMENTS**

- *Public Comments should be limited the three (3) minutes per speaker*

**Legal Department**

*Presenter: Michael Mosley, Municipal League Attorney*

1. Approval of the settlement agreement terms for Hall v. City of Bryant.
2. Direction from Council to include replacing fencing with floating fencing in the 2015 budget.

Documents: [FenceCostSummary.pdf](#), [FenceModificationExhibit.pdf](#),  
[FINALSETTLEMENTHall.pdf](#)

**ADJOURNMENT**

210 SW 3rd St.  
Bryant, AR 72022  
[\(501\)943-0999](tel:(501)943-0999)

**ENGINEER'S COST ESTIMATE SUMMARY**

Bishop Park Sports Complex  
Chain Link Fence Modifications

Description	MEANS ACCOUNT	Quantity	Unit	Materials		Labor		Equipment		TOTAL
				Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	
2-3/8" Bracing Band w/bolts		2920	EA	2.00	5840.00		0.00		0.00	5840.00
8' Tension Bar w/ pre-drilled holes		3335	LF	2.00	6670.00		0.00		0.00	6670.00
Chain Link Fence Fabric Modification		3335	LF		0.00	4.75	15841.25	0.25	833.75	16675.00
Replace Damaged Fence with New Hinging Chain Link		720	LF	9.15	6588.00	5.50	3960.00	0.40	288.00	10836.00
	Subtotals				19,098.00		19,801.25		1,121.75	40,021.00
	Subcontractors Overhead & Profit								20%	
	Total Cost (No Contingency)									48,025.20
	Contingency								15%	
	<b>TOTAL COST</b>									<b>55,228.98</b>
NOTES:										
1										



**IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS**

<b>RALPH HALL AND ANN HALL, et al</b>	)	
	)	
<b>Plaintiffs</b>	)	
	)	
<b>Vs.</b>	)	<b>Civil No. 2008 -1149 - 3</b>
	)	
	)	
<b>CITY OF BRYANT, ARKANSAS; et al</b>	)	
	)	
<b>Defendants</b>	)	

**SETTLEMENT AGREEMENT**

The Plaintiffs, hereinafter referred to as Releasing Party, Ralph Hall and Ann Hall, Joe Caple and Sandra Caple, John Kettles and Sherrie Kettles, Charles Taber and Rebecca Taber, Dana Byrd, and Linda Zehner, and the Defendant, City of Bryant, Arkansas, do hereby agree that all issues now pending or that may have been brought between the parties in the above entitled and numbered case shall be and are hereby compromised and settled, subject to the approval of the Circuit Court, upon the following terms and conditions:

The parties being released hereunder, City of Bryant, Arkansas and each of its respective servants, attorneys, principals, agents, employees, deputies, representatives, insurers, self insurers, risk management funds, predecessors, successors, assigns, affiliates, divisions, branches and/or departments, shall hereinafter be referred to, jointly and individually as "Released Party." This release does not apply to ETC Engineers or its employees, who were previously a party in this action.

1. The City of Bryant will, in accordance with standard engineering practice, excavate, construct and maintain a relief channel to be located in the Bishop Park Sports Complex in Bryant, Arkansas, that will provide the maximum amount of relief of floodwaters from

the main channel of Hurricane Creek. The relief channel will commence approximately at a point on the west bank of Hurricane Creek where the Creek makes a bend to the east, and running from that point in a southwestern direction directly between the softball fields and the soccer field, and ending at the north end of the large pond located in the south end of the Bishop Park Sports Complex (“the South Pond”). The relief channel will have dimensions of not less than twenty (20) feet in width and will be as deep as is possible without causing the pond that the channel runs into to flow backward into the channel, as determined by an engineering study and design by Brad Peterson of Crafton Tull in consultation with Plaintiffs’ consultant, Tom Black. The channel will have sloping sides to facilitate mowing, maintenance, safety and appearance. The design and construction of the channel will comply with the City’s ordinance 95-31. This provision is conditioned on the City obtaining the proper permits from any State or Federal Agency empowered to regulate such proposed construction. In the event that such permits are not granted by such an agency, the parties will negotiate an alternative proposal for drainage of floodwaters across the Bishop Park site within 30 days of the date of notification of denial of any necessary permit. If an alternative drainage plan cannot be achieved, this settlement may be declared terminated by the Plaintiffs.

2. The City will install four (4) 24-inch culverts in the relief channel over which will be placed a concrete pathway connecting a soccer field south of the channel with a parking lot northwest of the channel. Those culverts shall be inspected no less often than weekly, and also immediately following the conclusion of any rain event.
3. The City of Bryant shall widen the spillway through which water is discharged from the South Pond to the maximum extent necessary to facilitate the discharge of the maximum

amount of water during times of flooding of the Bishop Park site as determined by engineering study performed by the City or its engineering consultant in consultation with Plaintiffs' consultant, Tom Black.

4. The City of Bryant shall remove the fencing fabric as indicated on **Exhibit 1** to this Release within thirty (30) days of the conclusion of the 2014 Fall Ball Season. The City shall thereafter, within the time period it decides is appropriate, replace that fencing fabric that was removed with "floating" fencing or fencing that is able to swing when hit with floodwaters.
5. The City will immediately commence development of a plan for the design and construction of ball field fences that are not anchored at ground level, and that will rise or "float" with rising floodwaters so as to not collect debris and impede the flow of water during flood events. The plan and design for the floating fences will be submitted to the City Council of the City with favorable recommendation by council for the City for approval within thirty (30) days from the date of the signing of this Agreement by all parties. If approved by the City Council, the floating fences shall be installed within the time period the City decides and, follow all applicable law and regulations when the City chooses the contractor to install the floating fence fabric. If the City Council shall fail to approve the plan for "floating" fencing, this agreement shall be declared null and void. If in the opinion of either party, acting in good faith, the floating fences do not perform as planned and designed, upon request of either party, the parties within thirty (30) days of such request agree to meet and attempt in good faith to renegotiate a plan for fencing that impedes the flow of floodwaters in the floodway at Bishop Park the least amount possible.

6. The batting cages constructed by the City in the floodway may remain in their current locations and configuration. However, when there is a forecast of a rain event as described in the next sentence below, the City shall raise the netting on the batting cages to the top of the poles from which the netting is hung and maintain the netting in such position until any flooding has subsided. A rain event requiring the batting cage nets to be raised occurs when there is a forecast by the National Weather Service of a rain event in the Hurricane Creek watershed of two (2) inches or more within a six (6) hour period or less, or three (3) inches or more within a twelve (12) hour period or less.
7. Additionally, the City agrees to have an employee or employees, or agent or agents, of the City inspect the “floating” fencing for obstructions after each rain event as described in the last sentence of paragraph six (6) above. The City agrees to remove any such obstructions as soon as is reasonably possible considering the weather.
8. The City shall be responsible for the cost of permitting, designing, constructing and maintaining all of the modifications to the Bishop Park Sports Complex set forth above. The City shall not be responsible for any costs or fees incurred by the Plaintiffs, including but not limited to, fees or costs incurred by the Plaintiffs by the utilization of an expert or consultant to review the plans noted in this agreement.
9. (A) Plaintiffs shall be provided copies of drafts of (i) all permit applications, (ii) construction drawings and designs, (iii) plans and (iv) permanent fences designated for replacement by floating fences described in the preceding paragraphs prior to their submission to the relevant agency or prior to approval by City officials, whichever is applicable.

(B) Plaintiffs will have ten (10) days from the date of receipt of such drafts identified in paragraph 6(A), to review and submit comments upon or objections to the City of Bryant regarding any of the proposed permit applications, construction drawings and designs or plans. If necessary, the City and the Plaintiffs shall have an additional ten (10) days to negotiate any disagreements between them regarding such applications, drawings, designs or plans. If, at the end of such period, the parties are unable to agree, either party may file a petition with the Court within the following ten (10) days to determine whether the proposed application, drawing, design or plan in dispute would negate or adversely impact the reduction of flow of floodwaters onto the properties of the Plaintiffs.

(C) The City will fully comply with the terms and provisions of its Ordinance No. 95-31 (entitled Flood Damage Prevention Ordinance), and all amendments thereto or successor ordinances regarding flood control.

10. The parties agree to request the Circuit Court to enter an Order approving and incorporating this Settlement Agreement and to retain jurisdiction of this case during the implementation of the work described in the preceding paragraphs in order to hear any disputes that may arise under the preceding paragraph, and to ensure the efficient and effective implementation of this settlement. The Court may also use its inherent powers to provide any additional enforcement of this Settlement Agreement. Upon the completion of the work to be performed hereunder, the parties may petition the Court for a final Order of Dismissal of this case. However, the parties agree that, after such dismissal, the provisions of this Agreement regarding maintenance of the modifications to Bishop Park provided herein (including the removal of fencing during storms as



provided above) may be enforced as a contract, and that any final Order of Dismissal may so provide.

11. Upon the entry of an Order approving this fully-signed Settlement Agreement, the Plaintiffs do hereby release and relinquish any and all claims and demands that they have asserted or that they could have asserted against the Defendant, City of Bryant, Arkansas, based upon the design, planning and construction of the Bishop Park Sports Complex and conditions that exist thereon to the date of this Settlement Agreement. The Plaintiffs also agree that they will not pursue any objections that they have heretofore asserted to and against the proposed Letter of Map Revision submitted to FEMA by the City of Bryant regarding the work done to-date at Bishop Park or the work to be done as contemplated by this agreement at Bishop Park. In exchange for the above consideration, the receipt, sufficiency and adequacy of which is hereby expressly acknowledged, Releasing Party does hereby irrevocably and unconditionally release, acquit, remise, and forever discharge Released Party from any and all rights, promises, obligations, liens, claims, demands, liabilities, actions and causes of actions of whatever kind and character including appeals, in law or equity, in contract, tort or other, both known and unknown, disclosed and undisclosed, actual and consequential, specific and general, however denominated, including but not limited to those arising out of or in any way connected with the events and incidents that are the subject of, have been the subject of, or could have been the subject of *Hall et al. v. City of Bryant et al.*, Saline County Circuit Court, Case No. 2008 1149-3, for any past or present claim, relief or cause of action, no matter how denominated, income from any source, declaratory or injunctive relief, compensatory, liquidated or punitive damages, wages, money, remuneration, or thing of

value whatsoever, by the Releasing Party against the Released Party, including, without limitation, any allegations, causes of action, claims and/or matters caused by, arising out of, related to or in any way connected with the employment, association, affiliation, agency, contract, or contact of whatever character or nature of Releasing Party with Released Party, and/or arising under, relating to or covered by any federal, state or local ordinance, law, statute, act, custom, usage, rule or regulation and including, without limitation, any claim or cause of action which was, or could have been stated in *Hall et al. v. City of Bryant et al.*, Saline County Circuit Court, Case No. 2008 1149-3.

12. It is the express intent of Releasing Party to enter into this full and final settlement and compromise of any and all claims against Released Party, whatsoever, arising out of events occurring prior to execution of this Release. Releasing Party agrees to file a motion to dismiss with prejudice with the Court, and further, that *Hall et al. v. City of Bryant et al.*, Saline County Circuit Court, Case No. 2008 1149-3 be dismissed with prejudice, following the conclusion of the City's obligations noted herein. In the event that the above referenced cause of action is not dismissed with prejudice by the Court, this entire agreement shall be null and void and all consideration shall be returned.
13. It is understood, agreed and stipulated between the parties hereto that the consideration described herein is in complete and full accord, satisfaction and discharge of any and all doubtful or disputed claims, whatsoever, of which all said claims are expressly denied by Released Party.
14. The Releasing Party stipulates and agrees not to initiate, join in, continue and/or institute any legal proceedings or process based on the within described claims or causes of action

before any administrative, judicial, or any other forum against the Released Party, whatsoever.

15. Released Party does not, by virtue of this Agreement, admit liability to anyone or any entity as a result of any incident, act or omission described in or cognizable by the aforementioned claims or causes of action, and specifically denies same. This Agreement is entered into for the sole purpose of economic settlement and compromise. It is stipulated and agreed this Agreement and the negotiations of the parties resulting in this Agreement shall not constitute admissible evidence of any matter for any purpose whatsoever, other than for the sole purpose of a claim of a breach of this Agreement
16. This Agreement is not an admission by Released Party of any unlawful acts against Releasing Party or any other person whatsoever. Released Party denies any violation of any act, statute or law whatsoever. Released Party denies and disclaims any liability to Releasing Party or any other person whatsoever.
17. Releasing Party warrants and represents: (1) that they are fully competent and entitled to give this complete release and discharge; (2) there are no prior assignments or transfers of any portion of or interest in any of their claims or causes of action; (3) there are no liens or claims of lien or assignments in law or equity or otherwise of or against the claims or causes of action of the Releasing Party herein; and (4) Releasing Party is fully aware of all facts and rights and applicable law with regard to their claims and/or causes of action and are represented by counsel of their choice with respect to his claims and/or causes of action, and has had the full opportunity to review and approve the content and execution of this Agreement with their counsel.

18. Should any part of this General Release and Settlement Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this General Release and Settlement Agreement.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands to this Settlement Agreement on the dates set forth opposite their names.

**PLAINTIFFS:**

_____	Date: September ____, 2014
Ralph Hall	
_____	Date: September ____, 2014
Ann Hall	
_____	Date: September ____, 2014
Joe Caple	
_____	Date: September ____, 2014
Sandra Caple	
_____	Date: September ____, 2014
John Kettles	
_____	Date: September ____, 2014
Sherrie Kettles	
_____	Dated: September ____, 2014
Charles Taber	

\_\_\_\_\_  
Rebecca Tabor

Dated: September \_\_\_\_, 2014

\_\_\_\_\_  
Dana Byrd

Dated: September \_\_\_\_, 2014

\_\_\_\_\_  
Linda Zehner

Dated: September \_\_\_\_, 2014

**CITY OF BRYANT, ARKANSAS**

By: \_\_\_\_\_  
Jill Dabbs, Mayor

Dated: September \_\_\_\_, 2014.