

Infrastructure Revised and Updated Audit Report

The City of Lawrence (City) engaged McDonald & Associates, Inc, (M&A) to audit the Rock Chalk Park (RCP) Infrastructure Project to determine:

1. Whether the Infrastructure construction work was delivered in accordance with the Development Agreement; and
2. Whether the City's expenditures for infrastructure (hard and soft costs) were in compliance with the Development Agreement.

Audit testing found evidence that the items of Infrastructure specified in the Development Agreement were constructed and delivered in compliance with that Agreement. Expenditures made by the City prior to audit commencement are less than the total funding to be made available under the terms of the Development Agreement and less than costs incurred by the Developer.

The audit process included examination on a test basis of the items specified and items delivered. The specifications are found in Exhibit I to the Development Agreement, City Project No. PW1315 prepared by Paul Werner Architects & approved on 4/3/13 by the Fire Marshall, City Engineer and Utilities Engineer, the City Department of Public Works inspection logs and reports, expenditure detail as well as contract and subcontract agreements. City personnel were interviewed as were the principle parties of the Development Agreement and service providers. The audit also included physical inspection. Information requested during the audit process was made available. However, some information was not readily available and additional requests were required. M&A appreciates the cooperation received from all parties involved including the City, Kansas University Endowment and Bliss Sports II.

The following analysis is provided to calculate the amount available for payment. It is based upon the Development Agreement dated July 10, 2013 by and between the City of Lawrence, Kansas, - RCP, LLC, - Bliss Sports and Bliss Sports II. Infrastructure payments made by the City of Lawrence are less than the authorized amount and less than the cost of the work.

Maximum of Development Agreement	\$22,500,000 ¹
Less:	
Total Recreation Center Construction	(10,500,000) ²
Purchase Price	(784,050) ²
Recreation Center Architect's Fee	(925,000) ³
Change Orders approved by Commission	161,654 ⁴
Assist Foundation Contribution	<u>1,000,000¹</u>
Balance Available for Infrastructure Improvements	\$11,452,604
Infrastructure Payments Made	<u>\$(10,359,633)</u>
Available for Payment	<u>\$1,092,971</u>

¹ Article XI and Article XII of the Development Agreement limit the city's infrastructure cost liability to \$22,500,000 plus any additional contribution from a source other than the City.

² The data was provided by the City of Lawrence and reported herein without audit testing or confirmation, because the audit scope did not include examination or testing of these items.

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³ The Recreation Center Architect's Fee is capped by the Development Agreement at the amount shown. The audit did not verify the amount because it is not included in the audit scope.

⁴ Changes to the infrastructure were not processed in a formal written change order. The City Auditor's January 8, 2014 memo concerning Interim Recommendations on changes to the work outlined this issue. As described in a Memo to the City Manager dated November 11, 2014 the City Commissioners approved \$161,654 in increases to the development agreement cap.

The following schedule presents the attested Infrastructure construction costs and shows the Development Agreement Cap less payments made by the City. See the following:

TOTAL ATTESTED COSTS	\$ 13,211,798
Construction Management Fee – 2.5% of \$11,350,317.65	\$ 283,758
TOTAL PROJECT COST (Exhibit A)	<u>\$ 13,495,556</u>

The City of Lawrence reduced payment of reimbursable costs by \$1,480,977 (Exhibit A) due to examination of physical quantities installed and certain specification non-compliance. In addition, the audit identified \$114,147 (Exhibit A) in costs as non-reimbursable. These exceptions less the total project costs of \$13,495,556 are \$11,900,432. Adjusted attested costs still exceed the Development Agreement Cap by \$447,828.

EXHIBIT A

Cost attestation was determined through examination of vendor/subcontractor affidavits. These verifications were provided on the City website. The following table shows the vendor detail for attested costs:

	Attested Cost
Kings Construction	\$ 9,104,318
DFC Company	\$ 1,403,716
Emprise Bank	\$ 713,064
Mid America Court Works	\$ 526,600
Qualite	\$ 325,000
Earnies Mechanical	\$ 305,530
Paul Werner Architects	\$ 250,000
Poisinelli (Legal Fees per Development Agreement)	\$ 212,536
Gould Evans	\$ 100,000
Alpha Omega Geotech	\$ 84,243
Landplan Engineering	\$ 76,956
Hoss & Brown	\$ 44,000
Black Hills Energy	\$ 39,750
Approved Paving	\$ 26,085
TOTAL ATTESTED COST	\$ 13,211,798
Construction Management Fee – 2.5% of \$11,350,317.65	\$ 283,758.00
TOTAL PROJECT COST	\$ 13,495,556

The following table, data obtained from KU Endowment spreadsheet dated December 19, 2014, shows amounts that the City of Lawrence claimed were not to specification. KU Endowment provided assurance that the City was in agreement:

Kings Construction	\$ 807,826
DFC Company	\$ 471,965
Earnies Mechanical	\$ 127,701
Mid-America Court Works, Qualite, Earnie's Mechanical	\$ 63,600
Approved Paving	\$ 9,885
TOTAL CITY ADJUSTMENTS	\$ 1,480,977

The audit examined legal service timesheets. The timesheets and corresponding cost detail identified services occurring prior to the creation of Bliss Sports II (soft costs were defined as those incurred under Bliss Sports II). In addition, the audit identified non-Development Agreement Bliss Sports II business activities. The following table shows amounts questioned through the audit process:

Legal Fees Outside Development Agreement Timing	\$ 79,611
Legal Fees Not Related to Development Agreement	\$ 24,368
Interest Outside Development Agreement Period	\$ 10,168
TOTAL AUDIT ADJUSTMENTS	\$ 114,147

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Exhibit B – Delivery of Infrastructure Work & Expenditure Compliance

DELIVERY OF INFRASTRUCTURE WORK				
Criteria	Condition	Cause	Effect	Recommendation
1. Article X - Final Acceptance of Infrastructure Improvements - "Upon the occurrence of Substantial Completion of the Infrastructure Improvements, RCP shall cause Bliss Sports II, pursuant to the Construction Contract, to submit to the City a Certificate of Completion . . . in the form attached [in] Exhibit J, and within thirty (30) days the City . . . will issue a certificate of acceptance for the Infrastructure Improvements . . . or state in a writing delivered to RCP and Bliss Sports II any alleged deficiency from the Infrastructure Improvement Plans. Any disagreement . . . concerning the deficiency will be resolved in accordance with Article XIV hereof."	The City Manager indicated that the City did not execute the Article X Final Acceptance. The city relied on a letter from the City Engineer indicating substantial completion and indicating punch list items needing completion.	The contract makes provisions concerning a specific process for accepting and turning over the final project. This City has issued a conditional acceptance via Commission meeting notes and official memorandum.	The method for accepting and turning over the project based upon the Development Agreement was not followed. Based on testing, the contract requirements (less any minor punch list items) were fulfilled.	Execute the Final Acceptance document as described in the agreement.
2. Section 9.02 Infrastructure Improvements Site Access. Bliss Sports II agrees to permit the City . . . access to inspect the construction . . . to ascertain and determine that the requirements of the City and the terms of this agreement have been met and that the infrastructure improvements are being constructed in accordance with the infrastructure improvements construction documents. . .	City Engineers and inspectors performed continuous reviews of the construction process. In addition, testing firms provided sample analysis showing concrete and other construction processes conformed to specifications.	Engineering log books, city measurements and testing reports were examined during the audit work. These reports were compared against planned quantities installed and date periods for work to ensure some City representative was watching the work and verifying some	Engineering reports identified areas where construction was not completed to specifications. In these instances, the City withheld reimbursement for the estimated cost of the work not meeting specifications. Measurements of concrete were done in surface area or length measurements. These required conversion	Along with audit exceptions and withheld amounts from the City—the cost Cap on project expenditures was exceeded. However, payments made by the City are less than the cost cap, thus the City could pay an additional amount.

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		aspect of specification.	to cubic yards and may cause a slight calculation variance.	
3. Section 9.03 Reports. In this section Bliss Sports and Bliss Sports II agrees to provide the City monthly progress reports promptly after completion. These reports are to include: project status, construction issues, and schedule compliance. Bliss Sports II is to provide a line item budget with percent completion, budget expended, material submittal information, concrete weight/batch tickets, and line items out of budget.	There were weekly and monthly meetings of the City, RCP and Bliss Sports II. Monthly status reports were formalized and weekly status reports were not. However, multiple testing firms validated completion of the work and compliance with specifications as well as daily City Engineering reports.	The City was provided testing reports from independent engineers.	City Engineering was able to make determinations concerning the quality of the work performed and whether or not the work was completed to satisfaction of city specifications.	None.
4. As-built Drawings	<p>As-built drawings were requested during the audit as these documents could be used to confirm delivery of specified items of Infrastructure. As-built drawings could not be supplied as none were prepared.</p> <p>Concrete delivery tickets were requested as an alternative means of testing put-in-place concrete. Concrete was selected as an item for testing as it was the largest single item of infrastructure cost.</p> <p>The City does not routinely retain and total delivery tickets as a method of affirming delivered quantities.</p> <p>This audit requested delivery</p>	<p>According to the City Manager and City Engineer, a decision was made to save money by not requiring as-built drawings of the infrastructure.</p> <p>Initially, only parts of the delivery tickets were provided for audit examination. Later, after the audit was believed complete, additional concrete delivery tickets were discovered.</p>	<p>Alternative means and methods were attempted to determine delivery of specified infrastructure items. This included site and quantity tests through physical observation. Specified items other than concrete were agreed with quantities observed.</p> <p>Testing specified concrete required the review of logs provided by The Public Works Department, measurements by city personnel and third party testing firm confirmation. The records provided by the Public Works Department and interviews with</p>	Consider obtaining as-built drawings (record drawings) so that the record of what was installed and the location of same can be more easily ascertained should there be a need for this information in the future.

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	tickets as an alternative method of confirming delivered quantities.		<p>employees of that department provided evidence that inspections were performed and the work was completed.</p> <p>Installed and delivered quantities differed between the records of the developer and City of Lawrence. The developer's records included quantities for rework, waste and items not accepted or included in the City's assessment.</p> <p>In addition, the project plans lacked quantity take-offs or specifications related to concrete provided in the parking lots.</p>	

EXPENDITURE COMPLIANCE				
Criteria	Condition	Cause	Effect	Recommendation
5. Based on Exhibit I and terms of the Development Agreement (section 11 and 12). The City negotiated prices for the infrastructure and agreed on quantities and costs	Quantities were compared against unit costs for some of the infrastructure items with comparable City projects.	Prices negotiated in the Development Agreement and Negotiated by the City were reasonable	Comparison against comparable unit price totals for similar material showed that the costs per specified quantity (whether percentage of total costs or installed cost of a specific commodity) appear normal or comparable to similar project costs.	None.
6. Article XI Infrastructure Payment Section 11.01 Payment of the Infrastructure Development. This section provides the formula the City uses to pay for Infrastructure Improvements. The total of \$24,500,000 less any amount not received from a donation of \$2,000,000 described in Section 12.02(b). The payments by the city are to be applied in the following order: 1) Recreation Center Construction Contract amount, all Recreation Center Construction Contract change orders, 2) the Recreation Center Architect's fee up to \$925,000 and 3) the Purchase Price (which is the purchase of 26.135 acres of land valued at \$30,000/acre or \$784,050), with the remainder available to pay for the Infrastructure Improvement.	The City provided \$22,500,000 and received a contribution from Assist Foundation of \$1,000,000. Therefore the total amount available for the project was \$23,500,000. The calculation of the amounts available to spend as compared to City expenditures is shown in the Executive Summary and will not be repeated here.	The contractor incurred more cost than was anticipated. In addition, the City questioned all or aspects of the presented construction costs and has not made full payment.	Not All appropriated funds have been dispersed. The contractor's expenditures are high enough that even the exceptions noted by the City and the audit do not affect the total owed by the City in the Development Agreement.	The City should consider paying an amount up to the total described in the Development Agreement plus additive change orders.
7. Section 11.02 Infrastructure Improvements Cost. Exhibit I is described as a . . . good faith estimate of costs and elements are valid and	Bliss Sports II accumulated costs and presented attestations of payments made, but could not provide a formal job cost ledger.	The Work began before all agreements were in place and Bliss Sports II did not	Bliss Sports II could not provide a job cost ledger. In order to evaluate all costs, the audit created an	Although there was no formal job cost, the backup provided was sufficient to support costs in excess of the

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should be included. This section requires Bliss Sports II to provide RCP and the City copies of books and records which validates costs incurred and payments made by Bliss Sports II. This section states, "Without limitation . . ." soft cost included are: interest in financing, loan origination, design and legal fees, compliance and other professional services attributable to preconstruction costs, Recreation Center Site permitting, Infrastructure Improvements and negotiation of the development and land purchase agreement and infrastructure construction contract.	However, Bliss Sports II provided cancelled checks, and subcontracts/service agreements.	provide a complete accounting for the project. To make up for the lack of accounting attestations were requested and received.	estimated job cost ledger for purposes of testing, which demonstrates that Bliss Sports II made payments in excess of the Development Agreement's infrastructure cap.	Development Agreement cap. To improve transparency and accountability, the City should require job cost accounting on future projects.
8. Development Agreement contract type. Section 12.02 says that the city will pay a maximum of \$22,500,000. However, Section 11.02 says that costs incurred (hard and soft) will be auditable.	The City of Lawrence interprets the agreement as cost reimbursable. However, RCP and Bliss Sports II see the contract as a lump sum agreement. Although the costs are auditable an audit was not a requirement assigned to RCP or the City.	Full agreement as to the contract type was not reached.	Contractual ambiguity leads to mixed expectations among parties. This could present needless or additional costs to the parties involved.	In the future, if transparency is desired throughout the construction process, specific audit language should be added to construction contracts to examine all records proving cost and installed quantities. In addition, steps should be taken to assure the contract is fully understood and that task assignment is addressed.
9. Based on contract law standards, construction contracts should be clear, unambiguous, unmistakable and conspicuous in order to be enforceable.	Alpha Omega Geotech performed inspection work and Gould Evans performed site plans, zoning and preconstruction up-front work for both the stadium and infrastructure projects without formal	Some preconstruction and testing services were performed under verbal authorization from the Developer.	Alpha Omega provided a division of costs between the stadium and infrastructure. This division appeared reasonable.	An adjustment to project cost is not recommended. Evidence was sufficient to indicate work in these areas was delivered. In addition, even removal of these

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	subcontracts.	There is no specific scope of work or costs applied between projects.	<p>The lack of agreements makes it difficult to determine if costs were properly applied between the stadium and infrastructure project.</p> <p>There was no evidence that Gould Evans worked on any other scope of work other than the city infrastructure project. Payments to Gould Evans were validated by cancelled check and a vendor attestation of costs.</p>	<p>expenses from project cost would not affect the remaining amounts owed on the project.</p> <p>On future projects assurance should be gained that all Work is contracted.</p>