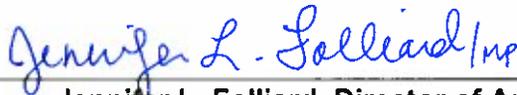


**Between The Rock and a Hard Place:
Former Landfill Becomes
Entertainment Center with
Unresolved Community Concerns
Beyond the County's Ability to Solve**

August 2021

**Milwaukee County Office of the Comptroller
Audit Services Division**

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To the Honorable Chairwoman
of the Board of Supervisors
of the County of Milwaukee

August 19, 2021

We have completed an audit, *Between The Rock and a Hard Place: Former Landfill Becomes Entertainment Center with Unresolved Community Concerns Beyond the County's Ability to Solve*. A response from the DAS-Economic Development Division is attached as **Exhibit 2**. A response from the Parks Department is attached as **Exhibit 3**. We greatly appreciated the cooperation extended by the DAS-ED, the Parks Department, and the Rock during the course of this audit.

We conducted a review of the three main agreements between the County and the Rock for the development of an entertainment center on parkland and land that was formerly a county landfill. In late 2017 and early 2018 the County entered into the following agreements with the Rock: A Development Agreement that included both community benefits goals and a noise and light addendum, a Contribution and Participation Agreement and a lease for the operation of the ski hill.

We found the County's monitoring of the agreements could be enhanced in regards to record retention, documentation and monitoring of the noise addendum and citizen complaints. We found there to be incomplete records regarding the Rock's achievement of its community benefits goals but the provided information indicated that it is unlikely the Rock would meet its participation goals. The Contribution and Participation Agreement is in its infancy but is projected to not expire until 2078 and will require continued monitoring by the County.

In addition, we again found that the County continues to have a problem with monitoring of its contracts which we believe requires a cultural change at the County to eliminate the lack of ownership of contract monitoring.

We made eleven recommendations that we believe will help the county address the issues raised in the report. Please refer this report to the Audit Committee.

Jennifer L. Folliard

JLF/mrp

Attachment

cc: Scott B. Manske, CPA, Milwaukee County Comptroller
Milwaukee County Board of Supervisors
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Aaron Hertzberg, Director, Department of Administrative Services
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Janelle Jensen, Legislative Services Division Manager, Office of the Milwaukee County Clerk
Emily Petersen, Research Analyst, Office of the Comptroller

Why We Did This Audit

We conducted a review of the three agreements executed between the County and the Rock in late 2017 and early 2018 at the former landfill located at South 76th Street and West Loomis Road to assess the compliance of the developer with the conditions contained in the agreements.

What We Recommend

ASD made 11 recommendations that, if implemented, will address the issues raised in the audit. Key items include:

- *DAS-ED should develop written policies and procedures to retain a complete set of all documents related to the closing of any County land sale.*
- *DAS-ED should work with CBDP and report back to the County Board within three months on the compliance of the Rock with the TBE goals within the Development Agreement.*
- *DAS-ED should request missing data regarding the apprenticeship program and evaluate the Rock's compliance with the goals in the Development Agreement.*
- *DAS-ED should confirm with the Rock the status of, and if necessary, the anticipated date the east monitor will return to functionality and work to establish a system to be alerted to any non-functioning monitor.*
- *DAS-ED should establish a scheduled check in for material noise violations by the Rock and provide an annual report to the County Board.*
- *DAS-ED should develop a system to log and track complaints about the Rock and report annually to the County Board.*
- *DAS-ED should work with the Comptroller to seek any outstanding funds to the LIC Fund or clarify schedule of payment.*
- *DAS-ED should work with the Comptroller to provide an annual report to the County Board on the status of financial items contained within the Contribution and Participation Agreement.*
- *Parks should execute a formal amendment to the lease agreement to clarify the allowable start time for events located at the ski hill.*
- *Parks should explore the creation of a centralized complaint system.*
- *The Department of Administrative Services:*
 - ❖ *When developing an updated AMOP for contracts ensure responsibility for monitoring of the contract is clear.*
 - ❖ *Clarify the role of service departments such as Risk Management, Office of Corporation Counsel, Office of the Comptroller and CBDP as providing assistance rather than direct contract monitoring.*
 - ❖ *Create a training program for contract monitoring.*
 - ❖ *Explore the establishment of a countywide software system to assist departments in their contract monitoring responsibilities.*



August 2021

Between The Rock and a Hard Place: Former Landfill Becomes Entertainment Center with Unresolved Community Concerns Beyond the County's Ability to Solve.



BACKGROUND

In late 2017 and early 2018 the County entered into three agreements with the Rock to allow for the development of an entertainment center on parkland and land that was formerly a County landfill. The County Board requested an audit to review the performance as it relates to its agreements with Milwaukee County including noise and lights issues and financial requirements.

OVERALL OBJECTIVE

Our overall objective was to review the three main agreements between the County and the Rock. Any agreement between the Rock and a municipality was not included.

WHAT WE FOUND

- The County entered into an Option to Purchase agreement that established a purchase price of \$840,000 less the annual cost to operate the methane collection system. Payment of no less than \$1 is deferred until 2039. Completed and projected amenities include a baseball stadium, retail/offices, apartments, an indoor sports training center, a medical service office, a hotel and restaurants with projected annual attendance of 1.3 million. A new methane control system was installed with an estimated cost of \$3.7 million.
- We requested from County parties but were not provided a number of documents required of both the Rock and Milwaukee County in the Option to Purchase Agreement.
- In 2018 a development agreement was executed which included a community benefits compliance plan and a noise and light addendum. TBE participation in professional service contracts is currently exceeding the goal of 17%, while participation on construction projects is at less than 5% versus the goal of 25%. Total construction costs of \$42.3 million have been expended with less than \$2 million being paid to TBE firms. The goal of 25% participation was projected to be almost \$11.0 million.
- According to records submitted, the Rock was on pace as of 2019 to exceed its 10% goal of hours on construction projects to be dedicated to apprenticeship and training hours. However, records provided to us in April of 2021 had no payroll data from 2020 or 2021 and the projects were still listed as open.
- The Development Agreement contains a Noise and Light Addendum. The installation of noise monitors were completed by the Rock. A tiered system of enforcement established the City of Franklin as the primary enforcer of adherence to the agreement by the Developer. The City of Franklin informed us the last date they had data from the east monitor was November 2020. According to the Rock, the monitor is functional.
- The County's role is limited to action if the City declines to take action after four material violations in a calendar year. To date, per the City of Franklin, only one material violation has occurred which contractually prohibits the County from acting. Continued calls for a comprehensive sound study of the Rock culminated in a provision in the 2021 Adopted Budget for the issuance of a Request for Proposals (RFP) for a sound study in 2021.
- On February 19, 2018 the County entered into a Contribution and Participation Agreement with the Rock. The agreement establishes clear obligations on behalf of the Rock and our review of annual reports by Sigma, the environmental consultant, did not find evidence of noncompliance on behalf of the Rock in terms of its obligations in the operation and management of the methane system. The agreement establishes the Rock is responsible for the ongoing day to day costs associated with the landfill but the County remains financially and administratively linked based upon the agreement.
- The agreement established a Landfill Infrastructure Capital Fund to be used to maintain, improve and periodically replace the methane mitigation system with estimated annual contributions of \$20,000 from the County and \$127,000 from the Rock. The agreement calls for an annual payment by February 1 from both entities. We found the payments were not made by February 1 in 2019, 2020 and 2021 except for the County's 2021 payment. At the time of our review there had been no withdrawals of funds.
- In 2018 the Rock and the County entered into a new lease for the operation of the Ski Hill.
- Throughout our review of recent audits we have reported on a continuing trend of a lack of monitoring and overall assignment of responsibility. We believe a cultural change is needed at the County to eliminate the lack of ownership of contract monitoring.



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Between The Rock and a Hard Place: Former Landfill Becomes Entertainment Center with Unresolved Community Concerns Beyond the County’s Ability to Solve

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Background

At the intersection of South 76th Street and West Loomis Road on the Southwest side of Milwaukee County, parkland was located next to a closed landfill which were both owned by Milwaukee County. The parkland is located primarily within the Village of Greendale while the former landfill is located within the City of Franklin. Commonly referred to as the Franklin Landfill, the landfill was closed in 1981. After the closure of the landfill it continued to generate landfill gas which prompted the County to install a landfill gas migration control system in the late 1990s. Since 1999, the County operated the gas migration system and monitored ground water and leachate levels to stay in compliance with Wisconsin Department of Natural Resources (DNR) requirements. The County contracted for the service of maintenance and testing of the landfill gas control systems. The DNR has the ultimate oversight over the management of the former landfill to ensure that protections are in place and that the methane gas collection infrastructure on site is adequately protecting public safety.

In 1983, Milwaukee County entered into a twenty-five year lease agreement for use of the parkland in Greendale with Midwest Development Corporation. The lease allowed for the building of a downhill ski facility which was named Crystal Ridge. On the adjacent area on the former landfill in Franklin, support facilities were built including a parking lot, storage buildings, ski chalet and restaurant. The remaining land was unused.

By 2009, the landfill capping process was complete and the Department of Parks, Recreation and Culture (Parks) determined that the only viable use for the former landfill was an outdoor recreational



The Rock Umbrella Bar – Photo by Audit Staff.

facility. Subsequent to that, the 2010 and the 2011 Adopted Budgets included language calling for the sale of the Crystal Ridge land. However, no interested buyer materialized according to the Parks Department due to the environmental liabilities associated with owning and operating on a former landfill site. In 2012, the Rock Sports Complex, LLC (Rock) approached Parks with a proposal to construct and operate, at no cost to the County, a multi-purpose recreational facility at Crystal Ridge. In its proposal, the athletic fields were to be located on the eastern and western unused portions of Crystal Ridge and the ski hill would continue to be located on park land. The supporting facilities would be spread throughout the

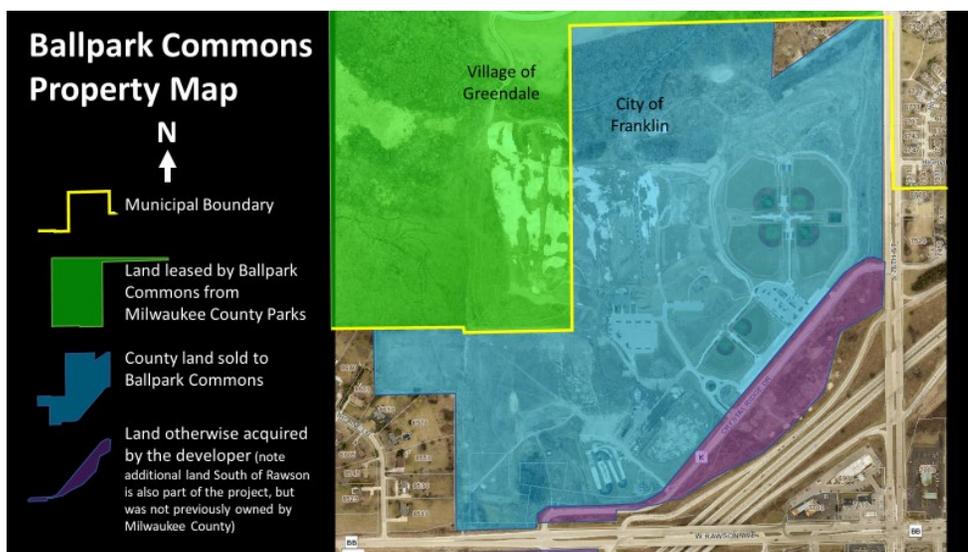
property to service the sports complex patrons. In July of 2012, the Parks Department was authorized to enter into an agreement with the Rock for a period of up to 25 years.

In early 2017 the former Director of Economic Development for Milwaukee County presented an informational report to the County Board that outlined the Rock’s proposed “Ballpark Commons” (BPC) development which would integrate a portion of the existing Rock Sports Complex into a mixed use sports and entertainment district. Ballpark Commons was to be centered on a minor league baseball stadium and outdoor sports complex. The proposed development went beyond what was included in the existing lease between Milwaukee County and the Rock. The County’s main concern was that Milwaukee County continued to be responsible for maintaining the methane gas collection infrastructure, upgrading and replacing the assets and reporting requirements of the DNR. The Director of Economic Development indicated that under the terms of the existing agreement, Milwaukee County would be exposed to additional risk if the proposed development would be completed under the existing agreement. The methane system in place at that time was designed to accommodate the existing use of the Rock but not the anticipated new development. In June of 2017, Department of Administrative Service – Economic Development Division (DAS-ED) requested and received approval to cancel the existing Sports Park Maintenance and Operations Services Agreement with the Rock pursuant to a new lease for the Ski Hill in the Village of Greendale. In late 2017 and early 2018, the County entered into the following agreements with the Rock:

- Option to Purchase Agreement
- Development Agreement
- Contribution and Participation Agreement
- Ski Hill Lease

Figure 1 shows a map of the municipal boundaries, the leased portion of the Rock and the land sold to the Rock.

Figure 1 – Map of the Rock Development



Source: Map provided by DAS-ED

North of Rawson:

- Hotel
- Office Retail- (Physical Therapy & Sports Medicine). Coffee shop
- Baseball Stadium for minor league team and University of Wisconsin - Milwaukee
- Midwest Orthopedic Specialty Hospital Performance Center
- LUXE Golf
- Brew Pub

Existing items prior to execution of the Franklin Development Agreement:

- Umbrella Bar
- Little League Fields
- Ski Hill

Figure 3 provides a map of the location of some of these entities.

Figure 3 – Map of Planned and Completed Development



Yellow = residential, Red = common areas/commercial mixed use, Gold = pool/senior living, Green = commercial mixed use

Source: Map provided by DAS-ED with Audit additions of Ski Hill, Umbrella Bar and Little League Fields.

As of April 2021, the Rock projected a total development of over 500,000 square feet at the location both north and south of Rawson. This amount excludes the Stadium and Senior Living Center along with two retail units with square footage pending. Table 1 shows the actual and projected construction timeline we received from the Rock in April of 2021.

**Table 1
Construction Timeline at the Rock**

<u>Use</u>	<u>Details</u>	<u>Project Start Dates</u>	<u>Project End Dates</u>	<u>Square Footage</u>	<u>Rawson Orientation</u>
Baseball Stadium	Stadium	8/1/2018	5/30/2019	NA	North
Retail/Office	Retail/Office	7/1/2018	5/31/2019	45,000	North
Senior Living	Senior Living	5/1/2019	4/30/2020	Not Provided	South
Apartments	Multi-family	1/1/2020	10/31/2020	50,000	South
Apartments	Multi-family	1/1/2020	11/31/2020	50,000	South
Apartments	Multi-family	1/1/2020	12/31/2020	50,000	South
Club House	Office Leasing/Club	1/1/2020	12/31/2020	3,000	South
Apartments	Multi-family	1/1/2020	2/28/2021	50,000	South
Apartments	Multi-family	1/1/2020	4/31/2021	50,000	South
Indoor Sports Training	Indoor Soccer Fields	1/1/2019	7/31/2021	86,110	North
Retail/Office	Medical Services Office	1/1/2019	7/31/2021	60,000	North
Golf Facility	Indoor Outdoor Golf				
	Driving Range	6/1/2021	5/31/2022	23,205	North
Retail/Restaurant	Taco/Tequila Restaurant	6/1/2021	5/31/2022	4,000	North
Retail/Restaurant	Pizza Restaurant	6/1/2021	5/31/2022	6,000	North
Hotel	95 Key Hotel	8/1/2021	7/31/2022	54,233	North
Multi-Purpose	Retail + Apartments	6/1/2022	7/31/2022	TBD	South
Retail/Restaurant	Brew Pub	4/1/2022	3/31/2023	5,000	North
Retail	Retail	6/1/2022	7/31/2023	TBD	South

Source: Audit Services Division created table based upon information provided by the Rock in April of 2020.

We received current and projected actual attendance data from the Rock in October of 2020. The list shows the use of the facility and the many entertainment options that are proposed or are already operational. Once the site is completely functional, the annual visitors are projected to rise from the current level of 302,485 to almost 1.3 million. Table 2 lists the current and projected annual attendance estimates by product at the Rock as of October 2020.

Table 2
2020 Current and Projected Annual Attendance Estimates
Provided by the Rock by Entity and Product

<u>Entity</u>	<u>Product</u>	<u>Current Attendance</u>	<u>Projected Attendance</u>
BPC Golf Entertainment, LLC	Luxe Golf		237,500
	Taco/Tequila		107,250
	Pizza Parlor		142,250
BPC Retail Offices, LLC	EXOS WI, LLC	1,040	6,120
	The Blend		110,704
	Wheel & Sprocket	9,100	9,100
	Foth & Van Dyke, Inc.	360	360
	WI Ortho Lazer Clinic, LLC		1,300
	ROC Ventures, LLC		320
Milwaukee Milkmen Baseball, LLC	Milwaukee Milkmen	46,200	150,100
	Milkmen Burger Co.		2,550
	Milky Way Drive In	11,283	12,000
ROC Ventures, LLC	Bullpen Co-Working	423	423
	Camps (Wave)	139	139
	Hill Has Eyes	18,588	18,588
	Umbrella Bar	56,389	56,389
	Rock League Baseball	130,748	130,748
	SC Wave	2,255	2,255
	Milwaukee Wave		
	PTA Baseball	500	500
	Rock Snow Park	25,000	25,000
	Velo Village Apartments		1,060
New Perspective Senior Living, LLC	New Perspective Senior Living	140	660
BPC South Hotel, LLC	Holiday Inn Express		45,552
Brew Pub	Brew Pub		21,900
Retail	Retail Space		24,960
Multipurpose	Retail/Apartments		25,260
Rock River Performance Center, LLC	Performance Village		135,000
Total Ball Park Commons Site Visitors		302,485	1,267,988

Source: Audit Services Division created table based upon information provided by the Rock.

The Rock offers a unique set of amenities that are not found in other areas of the County. The Rock is located in the southwest corner of Milwaukee County. We compared the racial distribution of the two municipalities that the Rock is located in, Franklin and Greendale, to that of Milwaukee County as a whole. Table 3 has data from the 2019 Census Bureau. The communities in which the Rock is located are less diverse than Milwaukee County.

Table 3
2019 Census Bureau Data of Race and Population

	<u>Franklin</u>	<u>Greendale</u>	<u>Milwaukee County</u>
Population	35,811	14,143	945,726
Black or African American alone	4.9%	1.8%	27.2%
American Indian and Alaska Native alone	0.4%	0.4%	1.0%
Asian alone	6.4%	6.9%	4.7%
Native Hawaiian and Other Pacific Islander alone	0.0%	0.0%	<0.1%
Two or More Races	2.9%	1.8%	2.8%
Hispanic or Latino	6.3%	4.1%	15.6%
White alone, not Hispanic or Latino	78.6%	82.9%	50.6%

Note: Census Bureau Data does not equal 100% due to reporting options.

Source: Audit Services Division created table based upon data from the U.S. Census Bureau.

The audit of the Rock was initiated in response to a request by the Milwaukee County Board of Supervisors. The resolution requested that the Audit Services Division review the Rock's performance as it relates to its agreements with Milwaukee County including noise and light issues, financial requirements and evaluate the impact if nearby development is not achieved to the extent possible.

We primarily analyzed the three main agreements that the County entered into with the Rock. Any separate agreements entered into by the Rock and a municipality were not included in our analysis as the County does not possess jurisdiction to direct a municipality in its affairs. In February of 2018 the County entered into three main agreements with the Rock which provide us with our three sections in this audit report. The first section reviews compliance with the Development Agreement which contained both the Option to Purchase Agreement and a Noise and Light Addendum. The second section reviews the compliance with the Contribution and Participation Agreement which deals primarily with the continued maintenance of the former landfill. The third section reviews compliance with the Ski Hill Lease between the Rock and the Parks Department. The final section discusses overall Countywide issues with contract monitoring.

Section 1: Our review of the Development Agreement shows a lack of record retention by County staff, a mixed result by the Developer in achieving community benefits goals and a lack of resolution of community concerns.

The County and the Rock entered into an Option to Purchase Agreement in 2017 and a Development Agreement in 2018.



Audit Staff photo of the Rock administrative office.

A Development Agreement was signed in 2018 placing Community Benefits goals upon the Rock as a condition of removing the encumbrance on the title.

The Development Agreement included a previously executed Option to Purchase and two key areas of ongoing compliance tracking including Community Benefits and Noise and Light requirements.

Milwaukee County entered into an Option to Purchase agreement in 2017 with the Rock for the Ballpark Commons development with an option fee of \$10,000 for the land in Franklin and allowing for a new lease with the Rock for the land in Greendale.

The option to purchase agreement was signed for the property in late 2017 with the purpose of granting the right to the Rock to acquire and develop the property, repair and replace landfill gas systems on the property and accommodate County improvements to the Oak Leaf Trail. Upon the execution of the option by the Rock, the County was obligated to sell the land to the Rock. Major items have been highlighted below. The Option Agreement identified the land in Greendale as not included in the sale but added language that the Rock shall be entitled to continue to use the Greendale land pursuant to the terms of a new lease. The Option Agreement also identified that the “Development Agreement” would define the Rock’s development obligations on the project including commitments to provide certain community benefits.

The Option to Purchase Agreement established a purchase price of \$840,000 less the annual cost to operate the methane collection system. If a payment is due it would be deferred until closure of TID# 5 which is currently estimated to be 2039.

All but \$1.00 of the \$840,000 purchase price is anticipated to be offset by annual landfill operating costs.

The Option Agreement establishes the purchase price as \$840,000 less the accumulated Landfill Operation costs paid during the term of Franklin TID #5. The landfill operating costs are to be defined by the separate Contribution and Participation Agreement which was executed in 2018. In addition, the \$10,000 option fee paid by the Rock is to be credited toward the final purchase price. Any final payment due is deferred until the closure of TID #5 which is currently estimated for 2039. The purchase price is also to be offset by the annual landfill operating costs and in no case shall the purchase price be less than \$1.00. Until the final payment is made, the County retains the right to review the accounting for the landfill operating costs and the purchase price offset.

DAS-ED provided documentation that the \$10,000 Option Fee was paid to Milwaukee County.

An option fee of \$10,000 was paid and according to the agreement will be deducted from the final price. The Economic Development Division provided documentation including a copy of the check that \$10,000 was received from the Rock as the option fee.

The County no longer owns the property, it is owned by Ballpark Commons and would only return to the County via a foreclosure and as the owner of last resort.

The County no longer owns the land and if it ended up in foreclosure, Milwaukee County would be the owner of last resort.

During the July 15, 2019 meeting of the Committee on Economic and Community Development, the Office of Corporation Counsel was asked if there was non-compliance with the agreements what would be

considered extreme enough for the County to re-acquire the land back from the Rock. According to the Office of Corporation Counsel, the County's retention of a reversionary interest in the property was impossible in this transaction, as is generally the case in development deals of this nature. In addition, the former Director of DAS-ED stated in a worst case scenario "if the property ended up in foreclosure, Milwaukee County would be the owner of last resort."

We requested, from County entities, but were not provided a complete set of due diligence and closing documents required of both the Rock and Milwaukee County in the Option Agreement. The agreement specifies the County as the depository of all due diligence materials.

A lack of record retention was found at the County when we requested required closing documents and due diligence items.

The Option to Purchase identifies a number of executed items that were required from Milwaukee County at closing including due diligence materials, tests, inspections, evaluations, surveys, maps, site plans, and communications between the County and WI-DNR, and property appraisals. We requested copies of these documents but were unable to obtain a complete set that were to be provided to the Rock by Milwaukee County.

The Office of Corporation Counsel stated that with respect to record keeping the responsibility lies with the department heads or their designees, per Chapter 56.29 of the Milwaukee County Code of Ordinances (MCCO). The agreement states that the County shall maintain the depository of all due diligence materials.

We found that DAS-ED does not currently have written policies and procedures for pre and post transactional monitoring nor record retention. DAS-ED had no centralized place to retain pre and post transactional

contractual and closing documents. Therefore we recommend:

1. *DAS-ED develop written policies and procedures to retain a complete set of all documents related to closing of any County land sale.*

In 2018 a development agreement was executed between the Rock and Milwaukee County which included a community benefits compliance plan and a noise and light addendum.

The purpose of the Development Agreement executed between the Rock and Milwaukee County was to establish the process and describe the improvements that must be constructed or installed to maintain compliance with the sale. Included within the agreement as exhibits were the December 20, 2017 Option to Purchase agreement, a Noise and Light Addendum and a Community Benefits Compliance Plan. The final document is dated February 19, 2018.

A Community Benefits program was included in the Development Agreement. The agreement calls for participation on construction projects from apprenticeships and members of acceptable job training programs and Targeted Business Enterprises. In addition, Targeted Business Enterprises (TBE) participation on Professional Services Contracts is required.

The Rock agreed to Community Benefits goals with the Development Agreement and to execute a good faith effort to achieve those goals.

Community benefit goals for the Rock include ensuring Targeted Business Enterprises (TBE) have an equal opportunity to receive and participate in construction of the projects and the use of apprenticeship/training opportunities.

Goals in the agreement include:

- A good faith effort to achieve its goal of at least 10% of on-site construction hours to be completed by

apprentices or members of acceptable job training programs.

- A minimum of 25% TBE participation for hard construction costs.
- A minimum of 17% TBE participation for professional services costs.

The agreement required a \$10,000 compliance deposit from the Rock which was paid in April of 2021. The agreement identified two consequences within the Community Benefits Plan. First, failure to use good faith efforts to reach the goals in the agreement could result in the Developer forfeiting all or a portion of its deposit to the County and second, is being disqualified from participating in future County projects for a period of up to three years.

Chapter 42 of the Milwaukee County Ordinance governs the Targeted Business Enterprise (TBE) Program. Unlike the progress shown with Apprenticeship and training hours in meeting required goals, the TBE program is lagging in securing contracts for TBES.

The Development Agreement called for TBE participation of 25% on construction projects and 17% on professional services contracts.

The Development Agreement calls for a 25% participation of TBE firms on construction projects and a 17% participation of TBE firms on professional service contracts. The County's Community Business Development Partners (CBDP) is the centralized County entity responsible for the TBE program and working with departments to ensure compliance.

According to Milwaukee County Code of Ordinances Chapter 42.03, CBDP is responsible for reviewing and determining, if participation goals were achieved and if good faith efforts were achieved. The CBDP can withhold funds, and remove firms from further consideration of other contract opportunities if

The Development Agreement identified the list of items that must take place for a good faith effort to be granted.

warranted. Department Heads, Contract Administrators, and Elected Officials also have responsibilities to provide notifications to CBDP.

The Community Benefits Compliance Plan included in the Development Agreement includes a list of items that must take place for a good faith effort to be granted. The activities the Rock pledged to undertake to reach its TBE participation goal were:

- Utilize a public process to solicit bids.
- Publish notice of the opportunity to bid in local publications.
- Contact the minority chambers of commerce with the submittal information.
- Meet with Community Business Development Partners prior to issuing bid packets.
- Hold pre-bid meetings with TBE firms.

A letter dated July 8, 2019 was sent to the Economic Development Director from the Rock in response to an undated letter sent to the Rock which indicated that as of May 24, 2018, the Rock project was trending towards non-compliance of Community Benefit goals. In their response, the Rock detailed their actions to provide a good faith effort toward achieving their TBE goals. In the letter the Rock indicates that it utilized a public process to solicit bids, published notice of opportunity to bid in local publications, and dropped off full printed plans at all five minority chambers of commerce or contactor associations. Trade specific TBEs were sent an invitation to bid and there was a pre-bid meeting held. Included in the communication was financial data that showed the progress to date of achieving the TBE goals.

We obtained data from the CBDP as of February 2020. The CBDP office cautioned that the numbers may not be correct due to incomplete monthly payment audits,

more participation than what is accounted for, and additional projects not entered in their system. In an interview with CBDP, they stated at the end of the contract CBDP looks at the approved participation plan for the project and what was achieved, the firm either met the goal or they did not. CBDP works with the department to assist the project participation and it is the department that decides if there will be any penalties on a project.

In addition, the Director of CBDP stated this was a unique project as typically the County is paying the contractor for work when requiring the use of TBEs which enhances the ability to receive timely reports and consideration of withholding of payments if compliance is not reached. Since the County is not paying the Rock for the development, it limits the County's ability to monitor the progress of both the construction and the compliance with TBE goals.

TBE participation in professional service contracts is currently exceeding the required percentage in the Development Agreement.

TBE participation for professional services is currently 54% versus the required 17%.

Table 4 shows the data for the two professional services projects. While total actual expenses are \$3.3 million, the portion paid to a TBE firm was \$1.8 million or 54% which exceeds the required percentage of 17%. The data was as of April, 2021.

Table 4 displays the TBE data for Professional Services contracts.

**Table 4
Professional Services TBE Participation by Project and in Total**

<u>Professional Services</u>	<u>Master Site Work</u>	<u>Office Building</u>	<u>Total</u>
Projected Expenses	\$4,567,469	\$6,079,194	\$10,646,663
TBE Goal of 17%	\$776,470	\$1,033,463	\$1,809,933
Actual Expenses	\$3,106,079	\$273,021	\$3,379,100
Actual TBE Expenses	\$1,815,673	\$12,495	\$1,828,168
Percent Reported Expenses	58.46%	4.58%	54.10%
Variance to Goal	\$1,039,203	(\$1,020,968)	\$18,235

Source: Audit Services Division created table based upon data received from DAS-Community Business Development Partners.

TBE participation on construction projects is at less than 5% versus the 25% goal in the Development Agreement. Total construction costs of \$42.3 million have been expended with less than \$2 million being paid to TBE firms. The 25% participation goal was projected to be almost \$11.0 million.

TBE participation for construction projects is currently 4.7% versus the 25% goal. Actual expenses to date are \$42.3 million with \$2.0 million being paid to TBE firms. The Rock is currently \$9.0 million short of its TBE goal.

Table 5 shows the data by the four main projects: Master Site, Office Building, Outdoor Stadium and Support Building. According to the Economic Development Division, the four projects under the Rock contract are measured collectively when monitoring TBE participation goals. The projected estimates for the total construction costs were \$43.7 million which results in a projected 25% TBE participation amount of \$10.9 million. Actual expenses to date have totaled \$42.3 million with \$2.0 million being paid to TBE firms or 4.7%. There are estimated remaining expenses of \$2.3 million. The Rock is currently \$9.0 million short of its TBE goal.

Table 5 shows the TBE participation on construction projects.

<u>Construction</u>	<u>Master Site Work</u>	<u>Office Building</u>	<u>Outdoor Stadium</u>	<u>Support Building</u>	<u>Total</u>
Projected Expenses	\$24,682,251	\$6,018,817	\$7,553,928	\$5,500,000	\$43,754,996
Actual Expenses	\$22,425,228	\$6,018,817	\$7,898,667	\$5,929,493	\$42,272,205
Projected Expenses Remaining	\$2,257,023	\$0	\$0	\$0	\$2,257,023
TBE Goal of 25% of Projected Expenses	\$6,170,563	\$1,504,704	\$1,888,482	\$1,375,000	\$10,938,749
Actual TBE Expenses	\$38,895	\$1,427,145	\$26,340	\$493,028	\$1,985,408
Percent TBE of Reported Expenses	0.17%	23.71%	0.33%	8.31%	4.70%
Variance to Goal	(\$6,131,668)	(\$77,559)	\$(-1,862,142)	(\$881,972)	(\$8,953,342)

Source: Audit Services Division created table based upon data received from DAS-Community Business Development Partners.

The agreement also includes a required review by CBDP and DAS-Economic Development. In situations of noncompliance the County may retain all or a portion of the Rock's compliance deposit and/or prohibit the Rock from participating in future Milwaukee County contracting opportunities for a period of up to three years.

According to the construction timelines provided to us by the Rock, the identified projects with TBE goals were completed in 2019. However the projects have not been closed out in the TBE system. DAS-ED provided a letter dated May 20, 2021 they sent to the Rock requesting the Rock to report back on its plans to finalize reporting on the projects, identify any new projects which fall under the compliance goals, and provide a detailed explanation of good faith efforts undertaken to achieve compliance. The Rock does not appear to be on track to fulfill its community benefits goals, we therefore recommend:

2. *DAS-ED should work with Community Business Development Partners to:*

- a. *Determine whether the Rock has completed the construction projects with associated TBE goals.*
- b. *Determine whether the Rock has fulfilled its good faith effort required in the community benefits program.*
- c. *Begin the process to retain the community benefits deposit if necessary.*
- d. *Report back to the County Board in three months on the review process.*

According to records submitted to DAS-ED the Rock was on pace as of 2019 to exceed its 10% goal of hours on construction projects to be dedicated to apprenticeship and training hours. However, records provided to us in April of 2021 had no payroll data from 2020 or 2021 and the projects were still listed as open.

The Rock is on pace to exceed its goal for apprenticeship and training hours participation of 10%.

We received apprentice and training hour data based upon payroll from DAS-ED that recorded the information received from the Rock from February of 2018 to April 9, 2021. The report provided to us is used by the Director of DAS-ED to determine the progress of a project and the achievement of apprenticeship hours.

According to the Wisconsin Department of Public Instruction,

Apprenticeship is a structured system of training designed to prepare individuals for skilled occupations. It combines on-the-job learning under the supervision of experienced journey workers with related classroom instruction. It is sponsored by employers, employer associations, or labor/management groups that can hire and train in a working situation. The employment opportunity is the most basic requirement for an apprenticeship. Without a job there is no "on-the-job" learning, and such training represents about 90% of the program. Apprentices who successfully complete the prescribed number of training hours in an apprenticeship program become certified skilled workers.

The last updated data provided by the Rock was from December of 2019. The reports issued in 2021 do not list the projects as complete. The data provided showed that the Rock had reported 15,579 hours were worked by apprentices. Total journeymen hours were 125,477 which result in apprentice hours at 12.4% of total journeymen hours.

Table 6 contains the data we were provided for the four construction projects at the Rock.

<u>Apprentice and Job Training</u>	<u>Master Site Work</u>	<u>Office Building</u>	<u>Outdoor Stadium</u>	<u>Support Building</u>	<u>Total</u>
Projected Expenses	\$25,554,603	\$6,058,736	\$9,004,248	\$5,605,365	\$46,222,952
Total Hours Worked	69,295	28,559	12,674	30,529	141,057
Journeyman Hours	57,859	26,315	11,707	29,596	125,477
Apprenticeship/Training Hours	11,436	2,243	968	933	15,579
Hours as a % of Journeymen Hours	19.8%	8.5%	8.3%	3.2%	12.4%
Goal for Hours at 10%	5,786	2,632	1,171	2,960	12,548
Over/(Under) Goal	5,650	(389)	(203)	(2,027)	3,031

Source: Audit Services Division created table based upon data received from DAS-ED.

The Rock pledged to undertake certain activities, all of which were to be recorded in case the Rock anticipated that it would not achieve its participation goal. The agreement states that, unless otherwise approved by DAS-ED in writing, the Rock shall complete the following:

- Advertise in notices that the Rock is looking for County resident participation.
- All subcontractors shall meet with a pre-apprenticeship program that is recognized by the State of Wisconsin to identify hiring opportunities.
- Connect with local organizations such as Employ Milwaukee, Esperanza Unida, Milwaukee Urban

League and WRTP/Big Step to assist in locating resident workers.

According to the construction timelines provided to us by the Rock and contained in Table 1 of this report, the identified projects with apprenticeship and job training goals were completed in 2019, however the projects have not been closed out in the DAS-ED system. Due to projects remaining open and the lack of data for more than a year, we recommend:

- 3. DAS-ED immediately request the missing data from the Rock if the projects are not yet completed. DAS-ED should determine if the Rock is still in compliance with the goals contained within the Development Agreement and report back to the County Board within three months with its findings.*

We compared the hours and wages by racial category to that of Milwaukee County's population and found it did not align.

While not required under the contract, we found the racial and gender distribution of both wages and hours to not align with County population demographics.

Payroll records were provided by the Rock to demonstrate the amount of hours worked by apprentices. Demographic data was included in those reports. We compared the hours and wages by racial categories to that of Milwaukee County's overall population. We found that the distribution of earnings and hours did not align with the demographics of Milwaukee County. For example, while Milwaukee County's Black or African American population is just over 27%, earnings by members of this racial group were 2.4% while the Black or African American racial group accounted for 2.9% of the hours worked on the project.

Table 7 displays the data by racial group for both hours and earnings.

<u>Race</u>	<u>Earnings</u>	<u>Percent of Total Earnings</u>	<u>Hours</u>	<u>Percent of Total Hours</u>	<u>Milwaukee County Population %</u>
American Indian	\$32,180	0.8%	908	0.6%	1.0%
Black or African American	\$93,046	2.4%	4,114	2.9%	27.2%
Asian	\$2,536	0.1%	89	0.1%	4.7%
Hispanic	\$197,358	5.0%	13,312	9.4%	15.6%
White	\$3,434,314	86.8%	109,237	77.4%	50.6%
Two or More Races	N/A	N/A	N/A	N/A	2.8%
Other/Not Specified	\$198,809	5.0%	13,397	9.5%	
Total	\$3,958,242		141,057		

Note: Census Bureau Data does not equal 100% due to reporting options. There were no employees listed in the payroll data from the Two or More Races racial category. Numbers were rounded.

Source: Audit created table based upon data received by DAS-ED.

We compared the total employees who were reported on the payroll hours. There were 803 total employees included in the reports. Of those 69% were from the white racial group compared to the overall population which is just over 50% of the population for the County as a whole. Table 8 shows the breakdown of employees by racial category.

<u>Race</u>	<u>Count</u>	<u>Percent of Total</u>	<u>Milwaukee County Population Percent</u>
American Indian	9	1.1%	1.0%
Black or African American	41	5.1%	27.2%
Asian	3	0.4%	4.7%
Hispanic	92	11.5%	15.6%
White	557	69.4%	50.6%
Two or more Races	N/A	N/A	2.8%
Other/Not Specified	101	12.6%	
Total	803		

Note: Census Bureau Data does not equal 100% due to reporting options. There were no employees listed in the payroll data from the Two or More Races racial category. Numbers were rounded.

Source: Audit created table based upon data received from DAS-ED.

We compared the hours and wages by gender categories to that of Milwaukee County's overall population. We found that while Milwaukee County's population is just over 51% females, earnings by females were less than 1% of all earnings and hours. Of the 803 employees included on the payroll records, 12 were females.

Table 9 shows the payroll data by gender.

<u>Gender</u>	<u>Count</u>	<u>Percent of Total</u>	<u>Earnings</u>	<u>Percent of Total</u>	<u>Hours</u>	<u>Percent of Total</u>	<u>Milwaukee County Population Percent</u>
Male	791	98.5%	\$3,953,256	99.9%	140,846	99.9%	48.4%
Female	12	1.5%	\$4,986	0.1%	212	0.1%	51.6%
Total	803		\$3,958,242		141,057		

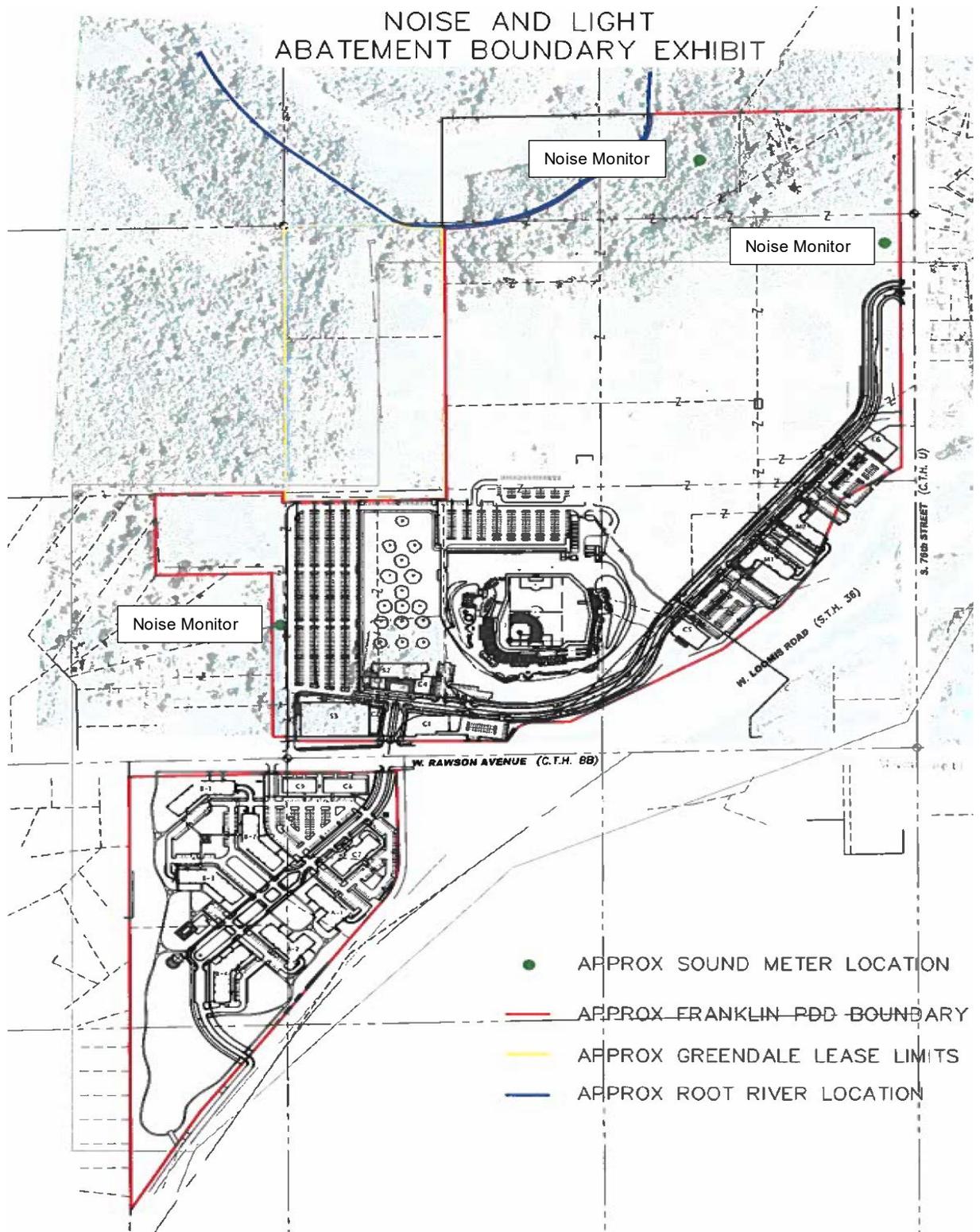
Source: Audit created table based upon data received from DAS-ED.

The requirements of the agreement regarding noise included the installation of noise monitors and a tiered system of enforcement which established the City of Franklin as the primary enforcer of adherence to the agreement by the Developer. The County's role is limited to action if the City declines to take enforcement action.

The Development Agreement included a noise and light addendum that called for the installation of three noise monitors to monitor the noise level at the Rock.

The Rock was also required to take noise mitigation steps defined in the development agreement. Three hard wired decibel monitoring devices were to be installed by November of 2018 but were installed in June 2019. The devices are intended to provide real-time and objective monitoring of noise. The agreement calls for continuous noise monitoring data to be maintained by the Rock for twelve months and provided, upon reasonable request to the County, City of Franklin or the Village of Greendale. Figure 4 provides a map of the location of the three noise monitors at the Rock.

Figure 4 Location of Noise Monitors at the Rock



Source: Figure was included in the Development Agreement.

The agreement defines a noise violation as material “if it represents a complaint filed with the operator or the City

The County acts on noise violations only if the City of Franklin declines to take enforcement action and there are four or more material violations within a calendar year.

The east noise monitor has not recorded data since November 30 of 2020 according to the City of Franklin.

of Franklin and is evidenced in the monitoring data logs by an exceedance (“Trigger Event”) that is not permitted and not corrected and remediated within 30 minutes of the Trigger Event.” The City of Franklin has the right to enforce payment of penalties. If the City declines to take enforcement action, the County under the terms of the agreement has the right to impose penalties on the Rock which shall not exceed \$1,000 for an individual violation and \$10,000 in aggregate for a calendar year.

The City of Franklin has two staff members who review and interpret the readings from the monitors. In an interview with the Planning Manager at the City of Franklin he stated that the review is not focused on how loud the reading is but, per the addendum, whether it lasts for 30 minutes. The City of Franklin receives complaints about how loud the noise is but for it to be a material violation the City looks to see the duration of the noise level to trigger a material violation.

The agreement calls for the provision of noise monitoring data and reports and a record of complaints. The Rock provided us with two complaints they had received via their website neither of which related to noise or light concerns. We requested and received sound data from two of the three monitors from the City of Franklin. We were informed by the City of Franklin that the last date that the City of Franklin had recorded data from the east monitor was November 30, 2020 and as of June 2021 was still not functioning. According to the Rock, the monitor is functional. We recommend:

- 4. DAS-ED should confirm with the Rock the status of the east monitor and, if necessary, the anticipated date the east monitor will return to functionality and work to establish a system to be alerted to any non-functioning monitor.*

To date according to municipal officials only one material violation has occurred which contractually prohibits the County from acting.

The agreement allows for Milwaukee County to enforce the noise ordinance once there has been four or more unapproved violations of Franklin's ordinance within a calendar year. According to the Office of Corporation Counsel, the County's roles are stated under the noise and light addendum. For example, if there were complaints filed, the County would verify with the City of Franklin and if they take no action and there are four noise violations within a certain time period, the County has the option to enforce the noise and light addendum.

In an interview with the Director of DAS-ED he indicated that he had periodically contacted both municipalities to inquire as to whether any violations had occurred but did not record or document these inquiries. In October of 2019 DAS-ED contacted via email the City of Franklin regarding noise violations and the City of Franklin had reported at that time they have investigated complaints at the property but found no violations of local ordinance since the date the monitors were installed. Also included was an email from the Franklin Chief of Police stating there have not been any material violations or citations. In May of 2020, DAS-ED again followed up via email to the City of Franklin but no documentation of a reply was provided.



Noise monitor – Photo by Audit Staff .

In an interview in August of 2020 with the Mayor of Franklin, he stated that Rock has not exceeded the dBA in the noise ordinance. A-weighted decibels, abbreviated dBA, or dBa, or dB (a), are an expression of the relative loudness of sounds in air as perceived by the human ear.

A material violation occurred on September 27, 2020.

However on March 25, 2021, the Director of DAS-ED informed the Audit Services Division that the Rock had a material violation on September 27, 2020. DAS-ED was informed when they inquired with the City of Franklin on February 17, 2021 as to whether there had been any violations. The City of Franklin informed the Economic Development Director that the violation occurred for more than 30 minutes, which then qualifies the occurrence as a material violation under the County’s agreements with the owner/developer. The Economic Development Director requested clarification on any penalties or fines against the developer by the City of Franklin. The City of Franklin said a notice was sent to the Rock. The City of Franklin “did not send a citation to appear in court because the fine would have amounted to a slap on the wrist.”

DAS-ED indicated this is the first material violation that they were aware of and have since created a tracking file as shown in Figure 5.

Figure 5 – DAS-ED Tracking Log

Ballpark Commons Noise Violations							
YEAR	Yearly Violation Count	Date of Occu	Contact	Informed	30+ minutes	Local Fine	Comments
2020	1	9/27/2020	Heath Eddy	2/17/2021	Yes	Notice (no citation)	Championship Game Celebration

Source: Figure provided by DAS-ED.



Noise monitor – Photo by Audit Staff.

Due to the amount of time that elapsed from the violation that occurred to the notification of it to DAS-ED and the lack of a systemic, documented record of all requests for violation information, we recommend:

5. *DAS-ED establish a scheduled check in for material violations at Franklin and Greendale, expand its current tracking log and provide an annual informational report to the County Board on any reported violations by the municipalities.*

There is no tracking of complaints received by the DAS-ED Director and no structure for County Board Supervisors or the County Executive to direct constituents to when inquiries are received.

There is a complaint reporting system available on the ROC Ventures website. We requested and received in October of 2020, the complaint data from the Director of Events of ROC Ventures. He provided copies of the two complaints received in the year 2020. He also indicated that they were the only two complaints submitted via the online portal over the past two years. The agreement requires the Rock retain complaint data for two years.

In an interview with the Director of Economic Development he stressed that complaints are different from violations and that the County does not have the authority to act on noise complaints on site per the conditions in the Noise and Light Addendum. He stated that they direct constituents to file complaints to the entity with regulatory authority which in this case is the City of Franklin.

In addition, in June of 2020, the Director responded to an inquiry from the Chairwoman of the County Board indicating that the County Executive's Office would be the appropriate County entity to refer any citizen

complaints to as they have a staff member who handles constituent services for the County. DAS-ED does not have a formal system for tracking constituent complaints. According to DAS-ED they do respond to email, phone or in person inquiries related to the Rock.

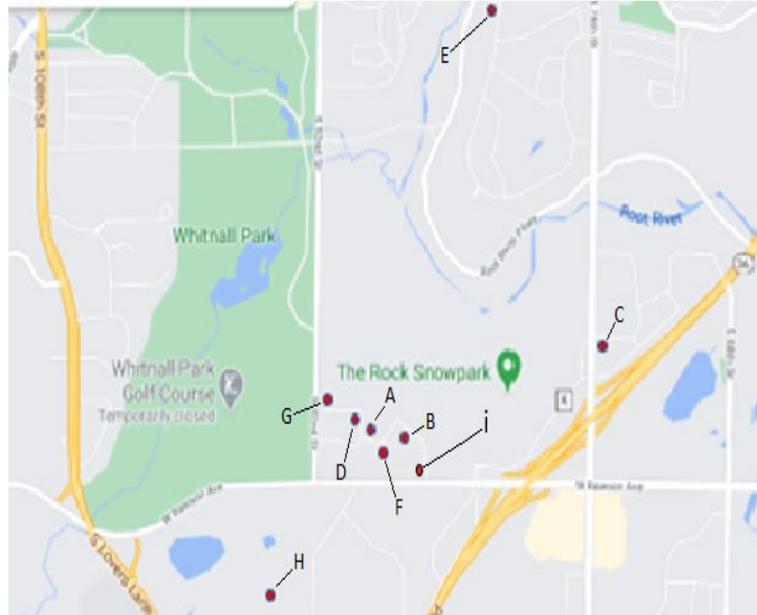
We conducted an interview with the current Constituent Services Director for the County Executive who indicated that they do not currently have a centralized complaint system, complaints are received by the office via a variety of methods including emails, phone calls, letters, fax, and a system called Sales Force. The staff member indicated they have not had a conversation with DAS-ED regarding the Rock. The office has been copied in emails sent to County Board Supervisors from constituents regarding the development at the Rock.

We compiled a list of the emailed complaints that were received by our office as of May 2021 and forwarded to us from other County offices. We found 12 individuals sent in 63 emails.

We have been contacted by 12 individuals regarding the Rock.

As of May 2021, we had received either directly or forwarded from another County entity, 63 complaints regarding the Rock. Those complaints were from 12 individuals in total with one individual being responsible for 34 emails alone. We have included a map showing the location of any complainant located within two miles of the Rock facility which accounts for 9 of the 12 individuals. Of the three not located on the map one individual resides 3.4 miles from the Rock and one resides over 16 miles away in Milwaukee. One individual's address could not be found. Figure 6 maps the locations of the individuals and the Rock.

Figure 6 – Map of Constituent Contacts and the Rock



Source: Audit created map based upon addresses of contacts.

The citizens who have been impacted by the sale of the land to the Rock and the development of the former County landfill deserve a system that allows for a proper recording of issues and resolution where possible. Currently, no one entity has taken responsibility for coordination of response to constituent concerns, therefore, we recommend:

6. *DAS-ED develop a formal documented system to log and track any complaints about the Rock received by the multiple entities at Milwaukee County with an annual report provided to the County Board and set up a system to regularly refer non-County complaints to the responsible entity.*

Milwaukee County does not have any jurisdiction over noise and light ordinances within a municipality except for what was included in the development agreement. Franklin and Greendale's maximum noise decibels allowed is similar to other Milwaukee County municipalities.



Baseball field – Photo by Audit Staff.

Article XI s.3(1) of the Wisconsin Constitution states that “Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village.”

A relevant example of the type of authority that a municipality has can be found within municipal ordinances regarding noise thresholds that are permitted within a municipality. We reviewed the sound levels allowed within each municipality in Milwaukee County and found that municipal ordinances establish a range of sound levels based upon the zoning of the areas and the source of the sound. At the time of our review, the maximum allowed sound levels ranged from sound level of 90 dBa in Greendale to 65 dBa in Greenfield and Milwaukee.

Since each municipality may establish its own noise decibel ordinance, the County has no jurisdiction to override the determination made by a municipality. In addition, according to the Village Manager of Greendale, sound that is created within one municipality but can be heard in an adjoining municipality is held to the standard of the municipality in which the sound originates.

Continued calls for a comprehensive sound study of the Rock culminated in a provision in the 2021 Adopted Budget for the issuance of a RFP for a sound study in 2021.

There is continuing confusion regarding the existence of a comprehensive sound study and the requirements of one. There is no language in the Development Agreement nor the Noise and Light Addendum that requires a sound study. However, there initially was a sound study required by the City of Franklin under its



Photo of the Milkmen Stadium provided by the Mayor of Greendale to the County Board in July of 2019.

Planned Development District No. 37 (The Rock Sports Complex/Ballpark Commons) (PDD). At the Franklin Common Council June 19, 2018 meeting Ordinance No. 2018-2333 was approved which amended PDD No. 37 to revise the comprehensive sound and light study requirements and require the Rock to implement the sound and light enhancements in the Development agreement with the County which was executed in February of 2018.

In July of 2020, the County adopted a resolution requesting that the Department of Parks, Recreation and Culture perform a comprehensive sound study at the Rock Sports Complex, including all entertainment activities, to ensure that the Rock is complying with the noise mitigation requirements. At the December 2020 Audit Committee meeting the Parks Department reported that while they sought to find an appropriate vendor to conduct the study they were unable to find one due to covid issues, unavailability and out of scope of work performed by their normal vendors. In addition, language included in the 2021 Adopted Budget negated the efforts of the Parks Department. The 2021 Adopted Budget includes the following provision:

The Department of Administrative Services – Procurement Division will release a Request for Proposals (RFP) for the purpose of hiring an expert to conduct a comprehensive sound study at The Rock Sports Complex to ensure that BPC County Land, LLC is complying with noise mitigation requirements set forth in File No. 17-598. Upon completion of the RFP, a recommendation will be provided to the Milwaukee County Board of Supervisors with cost estimates and potential funding options. An appropriation of \$50,000 is included in an allocated account within this non-departmental account to offset potential costs of conducting the comprehensive sound study.

The 2021 Adopted Budget for the County called for an RFP to conduct a sound study and provided \$50,000 to pay for its costs.

The RFP was issued in April 2021 with responses originally due May 10, 2021. The deadline was subsequently extended to May 17, 2021. The RFP states that the comprehensive sound study is to be completed within 12 months from the date of the execution of the contract. In order to execute the contract, the County Board will need to approve release of the funds from the allocated contingency account established with the adoption of the 2021 Budget.

The Development Agreement establishes numerous action items regarding light pollution to mitigate any concerns.

Noise and Light Requirements were included in the Development Agreement to mitigate impacts of the development on neighboring properties. The contract contains language that the Noise and Light Addendum “shall remain in full force and effect so long as the Project is located on the Property.”

While there may still be members of the local community who are concerned with the light spillage, we noted only two communications that made mention of the light issues, but it was not the main area of concern raised. In addition, existing lights on the baseball fields were inspected and approved by the City of Franklin for repositioning and 78 new light shields were installed in March of 2018. Installation of new lights on site are subject to local approval. The Mayor of Franklin stated the lighting standards were upheld with the shields and that there is no light spillage.

Section 2: The Contribution and Participation Agreement is in its early stages of execution with many areas of monitoring necessary in the oncoming years to ensure the County’s interests are protected.



Methane System – Photo by Audit Staff.

On February 19, 2018 the County entered into a Contribution and Participation Agreement with the Rock. This agreement requires the Rock to rebuild and perform on-going operation and maintenance of the methane monitoring and extraction system previously owned and operated by Milwaukee County on the former landfill site. The Wisconsin Department of Natural Resources (DNR) remains as the regulating agency with oversight of the property and annual monitoring reports previously provided to the DNR by Milwaukee County are now required of the Rock.

The agreement sought to create operating procedures for the long term financial and operational relationship between Milwaukee County and the Rock. This included the terms for the annual maintenance of the system and the financial participation of the parties in the trust account named the Landfill Infrastructure Capital (LIC) Fund. The LIC Fund and the agreement is slated to dissolve in February of 2078.

The agreement establishes clear obligations on behalf of the Rock and our review did not find evidence of noncompliance on behalf of the Rock in terms of its obligations in the operation and management of the methane system.

The Rock is responsible for compliance with all DNR regulations including receiving DNR approval for all work performed and the modification to the Landfill Closure Plan. The Rock is required to coordinate with the DNR to establish the limits of waste at the landfill and

receive DNR approval for the transfer of the landfill license.



Methane System – Photo by Audit Staff.

The Rock must conduct oversight and maintenance of the landfill and serves as the primary contact. The Rock must respond to and correct any alleged deficiencies. The agreement calls for the Rock to monitor, keep records and report to the DNR and others. Finally, the Rock must ensure that public access is safely maintained.

According to the Office of Corporation Counsel, the County will always have an environmental liability for the waste in the landfill that was in place prior to the landfill being sold. The Rock hired the Sigma Group, Inc. (Sigma) to conduct the landfill activities required. Sigma prepares reports that must be submitted annually to the DNR for review. We reviewed the 2018, 2019 and 2020 Sigma reports and we did not find any evidence of non-compliance by the Rock within these reports.

The agreement establishes the Rock is responsible for the ongoing day-to-day costs associated with the landfill but the County remains financially and administratively linked to the landfill based upon the agreement.

The Rock is responsible for the ongoing, day-to-day costs associated with the inspection, operation, maintenance, and restoration of the landfill consistent with the DNR approved closure plan. This specifically includes the cost of operating the methane collection system, leachate system, monitoring wells, landfill cap, groundwater monitoring and any future unforeseen expenses. Landfill operating costs were estimated at \$167,000 in Year 1 with an estimated cost increase of 2.5% every year.

The development agreement entered into between the County and the Rock established the purchase price to be offset by the annual landfill costs until the TID closes, estimated in 2039.

The annual amount spent by the Rock to maintain the landfill is used to offset the overall purchase price of the land. At no point shall the price be less than \$1.00. The offset is to continue, if necessary, until the TID closes in 2039.

Based upon the landfill cost estimates provided in the agreement, the cost of operating the landfill would fully offset the purchase price in 2023, however the first year costs of operating the landfill was \$48,856 or \$118,144 less than the estimate which results in the full offset occurring in 2024 instead. The costs were lower than estimated in 2019 due to a number of estimated costs being covered by construction costs rather than paid for by landfill operating costs. The purchase price will remain at \$1.00 from 2024 until the end of the TID. In addition, the deposit of \$10,000 paid to the County when the Rock exercised the Option to Purchase will be refunded if the landfill costs exceed the purchase price less the \$1.00.



Methane System – Photo by Audit Staff.

At the onset of our fieldwork, we found no County entity to be tracking the annual cost of operating the landfill which also resulted in a lack of a running total of what the purchase price would be. However, we were provided documentation in April of 2021, after the annual oversight committee meeting, with a current tracking of the purchase price offset.

Table 10 shows the annual estimated purchase price and landfill costs.

**Table 10
Estimated and Actual Purchase Price and Landfill Costs**

<u>Year</u>	<u>Estimated Landfill Costs</u>	<u>Estimate Cumulative Purchase Price</u>	<u>Actual Landfill Costs</u>	<u>Actual Cumulative Purchase Price</u>
2018	\$0	\$840,000	\$0	\$840,000
2019	\$167,000	\$673,000	\$48,856	\$791,144
2020	\$171,175	\$501,825	\$226,942	\$564,203
2021	\$175,454	\$326,371		
2022	\$179,481	\$146,890		
2023	\$184,337	\$1		
2024 -	Average =	\$1		
2038	\$225,877			
Total	\$4,265,958			

Source: Audit Services Division created table based upon data contained in the Contribution and Participation Agreement.

The agreement established a Landfill Infrastructure Capital (LIC) Fund to be used to maintain, improve and periodically replace the system with estimated annual contributions of \$20,000 from the County and \$127,000 from the Rock.

Included in the agreement is the establishment of the Landfill Infrastructure Capital (LIC) Fund which is created to ensure that there is a dedicated funding source to maintain, improve and periodically replace the system. The agreement calls for the Rock to assess and collect funds from third parties who own parcels of land and or operate businesses that are within the Rock project area. The Rock is required to enter into contribution agreements with its members to establish their contribution amount.

A new methane collection system was installed beginning in 2016 with the County replacing a portion and the remainder by the Developer and has been in operation since October of 2018. The estimated replacement cost of the methane collection system

included in the agreement was \$3.7 million. The permanent methane control system includes 49 gas extraction wells, two condensate knockout drains, 15 condensate knockout sumps, 24 cleanouts, and 10 isolation valves.

The agreement calls for an annual payment by February 1 from both the Rock and the County. We found the payments were not made by February 1 in 2019, 2020 and 2021 except for the County's 2021 payment.

Annual payments starting in 2019 are due by February 1 to the LIC Fund. We found the County to have made three payments in total and the Rock two payments.

Section 4.4 states, "After the effective Date, the Parties shall make the following contributions to the LIC Fund on an annual basis, beginning on February 1, 2019, and every February 1 thereafter." The agreement was executed in February of 2018. The bank account for the LIC Fund was not created until June of 2019.

According to the terms of the agreement, the Rock will contribute to the LIC Fund the amount determined by the Oversight Committee which was estimated to be a cost of \$127,000 per year from 2019 to 2038. The cost estimate then rises to \$136,000 per year from 2039-2058 and \$186,000 per year from 2059-2078.

The County is required to contribute the base value of the property taxes collected within the TID district until the TID closes, estimated at \$20,000 per year. The County has made three payments into the LIC Fund. Once the TID closes the County contribution will be capped at 30% of taxes collected within that District to the extent that funds are required and in no event shall the County's annual contribution exceed 200% of the annual landfill lifecycle cost.

According to the schedule included in the agreement, the estimated balance as of year-end 2020 should have been approximately \$296,000. The bank balance as of December 31, 2020 showed a balance of \$143,179. The January 31, 2021 balance was \$283,179.

According to an online banking transaction report provided by the Rock in February of 2021, the LIC Fund account balance showed an ending bank balance of \$297,160. The balance includes three payments by the County and two payments by the Rock less bank service fees of approximately \$35 per month. The County issued payments of \$14,928 in May of 2019, \$14,567 in April of 2020 and \$14,022 in January of 2021.

As of February 28, 2021, we found the Rock has made payments into the fund equal to two years worth of payments at \$127,000 each or \$254,000 total with the last payment occurring in January of 2021. Payments by the Rock are derived from payments received by the Rock from entities operating on the Rock property. According to the Comptroller, due to the pandemic it was mutually agreed that the payment for 2021 would be delayed.

The bank account currently earns no interest. The projected balance in the fund based upon the estimates in the agreement called for an annual rate of return on investment of 1.5% so the depositing of the funds into a non-interest bearing account results in no interest revenue for two years. The agreement projected the interest to be approximately \$2,205 as of February 2020 and \$4,443 as of February 2021.

Table 11 contains the Estimated and Actual Funding for the LIC.

<u>Year</u>	<u>Estimated Rock Funds</u>	<u>Estimated County Funds</u>	<u>Total</u>	<u>1.5% Interest</u>	<u>Estimated Cumulative Reserve</u>	<u>Actual Reserve</u>	<u>Variance</u>
2/01/2019	\$127,000	\$20,000	\$147,000		\$147,000	\$0	(\$147,000)
2/01/2020	\$127,000	\$20,000	\$147,000	\$2,205	\$296,205	\$78,258	(\$217,947)
2/01/2021	\$127,000	\$20,000	\$147,000	\$4,443	\$447,648	\$297,160*	(\$150,488)

*Balance as of 2/28/2021

Source: Audit Services Division created table based upon data received from the Rock and the Office of the Comptroller and Information contained in the Contribution and Participation Agreement.

Based upon our calculations regarding the required contributions to the fund, we recommend:

7. *DAS-ED should work with the Office of the Comptroller to immediately seek any outstanding funds due to the LIC Fund or provide clarification in writing as to the required submittal date of the Rock payments to the LIC Fund.*

The agreement establishes the LIC Fund governance and the prioritized use of the funds. At the time of our review contributions to the fund had occurred but there had been no withdrawals of funds.

The Agreement does establish the following guidelines for governance of the fund. The parties shall create a committee with shall oversee the administration and investment of the LIC funds. The Oversight committee has the following requirements:

1. A representative of the Rock and a representative of the Office of the Comptroller shall each have a seat on the committee.
2. The committee shall elect a chairperson to conduct the regular business of the committee.
3. The committee shall on at least an annual basis set a projected budget for costs including Landfill Operating Costs.

4. The committee shall approve Landfill Capital Project costs.
5. The committee shall determine the amounts of the annual contribution to be made to the LIC Fund.
6. The committee shall report to the Rock and the County the actual landfill costs incurred and the status of the Purchase Price offset no later than February 1 of each year.
7. The committee shall establish an investment policy.

The agreement establishes the order for use of the fund as:

1. Replacement or improvement of the Methane Control System.
2. Other Landfill Infrastructure Improvements.
3. Landfill Operating Costs limited by contractual language.
4. Costs to pay the Rock's share of any deductible and premium to renew the Environmental Legal Liability policy (with the County's consent).
5. Any new regulatory requirement or capital improvement required by the DNR or any other governmental agency with jurisdiction over the landfill (with the County's consent).
6. Any capital improvement that the Site consultant in its reasonable discretion deems to be necessary (with the County's consent).

The Oversight Committee has met three times with the most recent meeting on April 29, 2021. The Office of the Comptroller attended the meetings as the County's representative.

Which County entity has oversight of the Contribution and Participation Agreement appears to be unresolved.

Due to the multiple financial requirements in the document, DAS-ED stated in an interview that it is the

There is not one County entity who is the responsible party for the monitoring of the Contribution and Participation Agreement.

Comptroller's responsibility to manage the contract. In an interview with the Comptroller and his staff, it was indicated that his office was responsible for the items within the agreement that were financial in nature but not the agreement in its entirety.

At the start of our field work, the Oversight Committee had met one time and had numerous issues to resolve. We interviewed the Comptroller and staff from the Comptroller's office in early 2020 regarding many of the requirements contained within the agreement. Since that time, two additional Oversight Committee meetings were held and progress has been made on fulfillment of many of the requirements. In addition, we were provided a copy of a memo issued by the Comptroller to interested parties of the Oversight Committee on April 29, 2021 which detailed a number of outstanding items that were under review by the Comptroller. Some of the items were also noted for their need for the Oversight Committee to review and resolve.

Due to the complicated nature of the agreement and the projected end date of 2078 and associated record retention, we recommend:

8. *DAS-ED should work with the Office of the Comptroller to provide an annual informational report on the status of the financial items contained within the Contribution and Participation agreement to the County Board within three months of the annual oversight committee meeting.*

Section 3: The Ski Hill lease has seen minor issues that need resolving but primarily functions per the terms of the agreement.



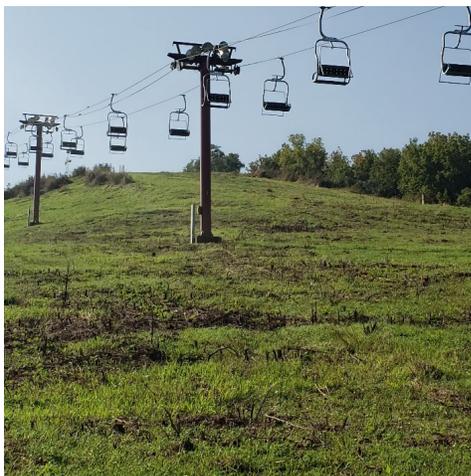
Ski Hill – Photo by Audit Staff.

Adjacent to the Rock property is the former Crystal Ridge Ski Hill which is located in the Village of Greendale. The Ski Hill was formerly managed under a Sports Park Maintenance and Operations Services Agreement between the Rock and Milwaukee County since September of 2012. On February 19, 2018 the Rock and Milwaukee County entered into a new lease for the operation of the Ski Hill.

The new lease has an initial term of 20 years with automatic successive 20 year extensions so long as the Rock is responsible for the landfill infrastructure of the adjacent landfill. It allows the Rock to use the premises for the purposes of mountain biking, cross country and downhill skiing, snowboarding and tubing, outdoor haunted hikes, a zip line and related outdoor recreational activities. It calls for County Board approval for any additional recreational purpose not listed in the agreement.

The Ski Hill’s operating hours are in line with other Wisconsin ski hills as required in the lease.

The hours specified within the agreement are that the facility be operated with hours that are consistent with similar recreational sports parks at similar locations in Wisconsin. We researched local ski hills including: Cascade, Little Switzerland and Sunburst along with four local haunted houses and found the hours of the Rock to be consistent with similar entities as required under the lease.



Ski Hill – Photo by Audit Staff.

The Rock was issued nine citations in 2019 by the Village of Greendale for violations of the Greendale special permit for the Hill Has Eyes event which takes place in part on leased land.

The Hill Has Eyes events received nine citations in 2019 for operating after hours in Greendale.

The Rock operates a haunted house called The Hill Has Eyes, which begins on land owned by the Rock in Franklin but has portions of the event that are on the leased land in the Village of Greendale. We found that in 2019 the Rock was issued nine citations by the Village of Greendale for violations of the special permits issued for the events. The special permits issued by the Village of Greendale stated a closing time for the event of 11 p.m. The Rock was found to have violated that on nine occasions in October of 2019 and was fined \$1,321 per incident. The Rock paid in full its citations of \$11,889 in September of 2020. We did not find any citations from the Village of Greendale in 2018 or 2020.

The Parks Department does not have a centralized system to track complaints received by their department.

Similar to the development agreement, the lease agreement requires the Rock to be in compliance with the Noise and Light Addendum. According to Parks, they do respond to email, phone or in person inquiries related to the Rock. However, Parks also indicated they do not currently have a centralized system to track complaints that may be received by the parks in person, via the website, email or phone. The Contracts Manager at Parks indicated that its office does open record requests and has been maintaining correspondence (i.e. emails) of contract complaints that are received.

In our audit titled, *Parks' Agreements Provide Enhanced Opportunities to Residents and Major Revenues are Received but more Attention to Details is Required* we recommended that the Parks Department Conduct an

annual customer survey on services provided by outside vendors to determine satisfaction with services offered and seek guidance on other services the community desires to see added to County Parks and maintain a log of complaints. This item remains open from the audit. Parks provided a status update in May of 2021 that stated,

It was determined by Parks that Parks does not have enough staffing to conduct vendor specific surveys. Parks will include a contract provision emphasizing customer services and will require outside for-profit vendors to prominently display a sign that states they are a Proud Parks Partner with contact information for Parks. The public will be able to reach out to ParksContracts@milwaukeeCountywi.gov with feedback that will be logged by the Contract Manager. This is a new process and it will be evaluated over the next six months to determine effectiveness.

Due to the continued concern regarding the logging and tracking of complaints, we recommend:

9. *Parks explore the creation of a centralized complaint system to log any complaints received from the public regarding parks services including location, date, and issue reporting by the public and resolution of the complaint.*

Required annual reports submitted by the Rock show continued and increased use of the Ski Hill amenities.

Within 90 days after the conclusion of each annual commencement anniversary date the Rock is required to submit a written report to the County listing descriptions of the activities provided at the Ski Hill within the preceding year, the approximate number of participants served by each of the activities and if applicable, the focus and types of any new activities planned for the upcoming year. In an interview with the Parks Department, we were provided copies of email

Attendance at the Snow Park increased to a high of over 62,000 during the 2020-2021 season.

requests from the Parks Department to the Rock in August of 2019 seeking the annual report from the Rock. In February of 2020, the Parks Department reported receiving the 2019 annual report. In March of 2021, Parks received the report for 2020. Table 12 shows the annual attendance for the past three seasons.

Table 12
Attendance at the Snow Park

<u>Activity Type</u>	<u>Annual Attendees</u>		
	<u>2018-2019</u>	<u>2019-2020</u>	<u>2020-2021</u>
Ski/Snowboard	10,255	9,433	13,274
Snow Tubing	19,439	21,529	44,999
Weddings and Events	2,500	2,500	3,750
Total	32,194	33,462	62,023

Source: Audit created table based upon data provided by the Rock.

The lease calls for the parties of the lease to meet annually. We found that the Parks Department met with the operator hired by the Rock to operate the Ski Hill rather than with the Rock who was the signatory on the agreement. It appears from the notes from the meeting that there was not a significant impact to the outcome of the meeting by the absence of the representatives of the Rock.

We were provided a copy of the subcontractor lease between the Rock and the operator of the Ski Hill by the Rock and provided it to the Parks Department.

We requested a copy of the subcontractor lease from the Parks Department who did not have a copy on file. We were provided a copy from the Rock and provided Parks with a copy for their records as their requests to obtain a copy from the Rock had not yet been fulfilled.

The lease agreement calls for reasonable efforts for any construction contractors to establish TBE goals consistence with Milwaukee County's TBE goals of 25% for construction and 17% for professional services.

During the period of our review, there were no construction projects that would have triggered the TBE goals.

Issues with requirements in the agreement, while minor, were found.



Park Trail – Photo by Audit Staff.

Under the agreement the Rock is responsible for any and all utilities consumed by the Rock. Utilities listed in the agreement include: electricity, gas, telephone, internet, water and sewer. We found that the County has paid the bill for phone services that was duplicative of a Rock line as the Rock was required by the agreement to establish. Our review of the County's financial system indicated Parks continued to pay for a landfill alarm phone line to AT&T at Crystal Ridge after the execution date of the Agreement and after the alarm line was replaced by the Rock in February 2018. The charges totaled \$147. In addition we found that the website for the Snow Park does not contain a Parks emblem as required under the terms of the lease.

In our audit titled, *Parks' Agreements Provide Enhanced Opportunities to Residents and Major Revenues are Received but more Attention to Details is Required* we recommended that the Parks Department establish within six months a formal written policy and procedures manual for the handling of outside agreements and develop a tracking mechanism to ensure all agreements are known and being monitored. The documented system should be clear about assignments, responsibilities and communication.

In May of 2021, the Parks Department provided the following status update:

Parks is continuing to work with IMSD to purchase contract management software and hopes to have it implemented by the 3rd quarter of 2021. A Contract Management Assistant will be hired within the next month and will assist with implementing the procedures to improve contract compliance. The policy and procedure will be updated to reflect changes in processes based on implementation of the software and the addition of the Contract Management Assistant.

Audit Services Division will continue to follow up with the Parks Department and report back to the County Board.

Section 4: The County continues to have a problem with monitoring of its contracts which requires additional training and guidance to eliminate recurring issues.

When reviewing the three agreements we found examples of contract monitoring items that reflect similar issues we have found in prior audits.

Typographical Error

We found a typographical error in the ski hill lease regarding the hours of operation. The signed lease with the Rock states, "The hours of operation of the Ski Hill shall **now** (emphasis added) allow any event to begin later than 9:00 p.m. on any night." In a follow up email with the Parks Department we confirmed that the language in the lease was meant to state "not" instead of "now."

In our audit titled, *Parks' Agreements Provide Enhanced Opportunities to Residents and Major Revenues are Received but more Attention to Details is Required* we recommended that the Parks Department establish a policy and procedures to execute amendments to agreements or letters of agreement when establishing practices both not cited in agreements or in variance to what is established in the agreement. In response to our recommendation, the Parks Department provided us in May of 2020 with a policy and procedures to implement this recommendation, therefore, we recommend:

- 10. Parks follow their policy and procedure and execute a formal amendment to the lease agreement to correct the typographical error regarding the allowable start times of events located at the ski hill.*

Compliance Deposit

During our review of the Development Agreement we found that the required \$10,000 compliance deposit for the Community Benefits program was received in April of 2021. We encountered confusion at DAS-ED regarding the receipt of the funds during the start of our fieldwork with some assertion that the \$10,000 option fee had been transferred to become the compliance deposit. In March of 2021 DAS-ED notified our office that after consultation with the Comptroller, they had requested a payment of \$10,000 from the Rock to fulfill the Compliance Deposit of the Community Benefits portion of the Development Agreement which was received in April of 2021.

Recording of MOA

The Development Agreement requires that a "Memorandum of Agreement" be recorded with the Register of Deeds and the property title encumbered until successful completion of the Project and submittal of the required Community Benefits Reporting. The required Community Benefits reporting should demonstrate compliance with the TBE and the Residential Hiring goals, as certified by the Economic Development Director on behalf of the County. We requested a copy of the recorded "Memo of Agreement" from the Register of Deeds who could not locate any encumbrance on the title. According to the Office of Corporation Counsel the "Memo of Agreement" may be recorded at any time and noted that it is typically the buyer who record the ownership change as the new owner of the property.

These prior items that demonstrate issues with contract monitoring continues a trend we have reported on in our prior audits. We believe this indicates a cultural change is needed at the County.

We continue to find a lack of contract monitoring in nearly every audit we conduct at the County.

In this audit and in our prior audits there is typically some range of issues related to contract retention and monitoring of compliance. We have found that there is typically an issue because there is not one person who takes ownership of a contract and ensures that all conditions are being monitored. We often find we have conditions inserted into a contract that one employee states another employee is responsible for and vice versa. There are also items inserted into contracts to protect the County or in the County's interest that no one at the County works to ensure are enforced.

A lack of a revised contracts procedure in the County's Administrative Manual of Operating Procedures (AMOP) which we recently discussed in our audit, *Former ROD's Willful Disregard for County Policies and Procedures and Cooperative Vendors Facilitated Development of a "Pot of Gold" for Improper Use of County Funds*, hinders staff's ability to effectively execute and monitor County contracts. The Department of Administrative Services provides AMOPs and policies that guide the operation of Milwaukee County government, in compliance with federal, state, and local law. It is a resource for staff, citizens and those who work with County government.

In addition, the lack of clear designation of responsibility continues to result in a lack of the County ensuring that it is properly protected with the proper insurance. We found this in prior audits and again during the scope of this work. For example, we found issues with

certificates of insurance (COI) under both the Contribution and Participation Agreement and the lease agreement. We have found that the departments believe DAS-Risk monitors insurance while DAS-Risk believes the department monitors it.

Since 2017 we have released the following audits that identified issues with contracts and contract monitoring:

Monitoring to ensure the County is properly insured continues to be an issue.

- *Former ROD's Willful Disregard for County Policies and Procedures and Cooperative Vendors Facilitated Development of a "Pot of Gold" for Improper Use of County Funds*
- *Parks' Agreements Provide Enhanced Opportunities to Residents and Major Revenues are Received but more Attention to Details is Required*
- *Milwaukee County Autopsies have Increased 7.8% Since 2013, Autopsies for Referral Counties Increased 111.7%. A Lack of Contracts for Most of the Referral Counties is a Concern*
- *Hales Corners Park has Benefited from the Support of its Friends Group; however, a Formal Agreement with the Organization is needed to Achieve Adherence to Chapter 13 of the Milwaukee County Ordinances*
- *The Domes should evaluate its current admission practices, increase its monitoring of contracts and establish stronger controls, policies and procedures in order to position itself for success in the future*
- *Improved Staffing Levels from Armor, Assignment of a Contract Manager with Clinical Expertise along with Contract Revisions Would Improve Inmate Medical Services*
- *Minimum Wage Ordinance Memo*

Other countywide contract issues we have found in our recent audit work include:

- The execution of revenue contracts which lack the proper signatures and review.

- Provision of services without a revenue contract in place.
- Changes to contract terms agreed to verbally without documentation.
- A lack of spot checking of compliance with items required of contractors.
- Relationships between County and non-County entities without an executed agreement in place.

Currently there is not a class offered in the County's online training system on contract management.

According to the Contract Manager for Parks, in person training on contracts was offered in 2019, however, the County currently uses an online system to deploy multiple trainings to staff. Auditors conducted a word search and found that only one training course contained the word contract. That course covers the different approval processes for Contracts, Requisitions, Purchase Orders, Invoices, Sourcing Events and Awards. There is not currently a class offered in contract management.

There is not presently a countywide contract management software system in place to assist County personnel in the monitoring of contracts. The County is currently implementing a new ERP system which has a contract management module that is not yet fully deployed.

The County needs to establish a responsible party for each contract that is executed who is charged with the monitoring of the contract. The monitoring itself may be the action of reaching out to a centralized service department at the County for assistance in monitoring but that responsibility needs to lie somewhere. In addition, the issuance of updated guidelines to provide departments with a path to proper contract execution and monitoring is currently lacking along with adequate training.

Therefore we recommend that:

11. *The Department of Administrative Services*

- a. *When developing an updated AMOP for contracts ensure that the AMOP specifies that departments are responsible for the monitoring of all aspects of a contract and should identify who within a department is the responsible party.*
- b. *Clarify the role of service departments such as Risk Management, Office of Corporation Counsel, Office of the Comptroller and CBDP as providing assistance as needed rather than directly responsible for monitoring of contract requirements.*
- c. *Create a training program to be provided to all department heads and contract managers on an annual basis as to their responsibility in monitoring of contracts.*
- d. *Explore the establishment of a countywide software system to assist departments in their contract monitoring responsibilities.*

Audit Scope

The objectives were to perform an audit of BPC County Land, LLC, (The Rock) as it pertains to the entity's performance under the agreements with Milwaukee County, The Rock's adherence to Village of Greendale and City of Franklin noise and light ordinances on all the properties, describe any modifications to Village and City noise and light ordinances since the Development Agreement was signed, and adherence to past and present noise and light ordinances since the Development Agreement took effect, adherence to financial requirements under the Development Agreement, Lease Agreement, and the Contribution and Participation Agreement with The Rock; and to the extent practicable, an assessment of the potential impact, if any, to the agreements if nearby development is not achieved.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

- Reviewed relevant regulations, policies, and administrative procedures, budgets, resolutions, and County Board and Committee minutes, and County Legislative Information Center data pertaining to contractual obligations between Milwaukee County and BPC County Land, LLC and The Rock Sports Complex, LLC;
- Reviewed the contractual agreements relevant to the audit between Milwaukee County and BPC County Land LLC and The Rock Sports Complex, LLC including the Development Agreement with Option to Purchase and noise and light addendum, the Contribution and Participation Agreement, and the Lease Agreement;
- Reviewed relevant contractual documents for compliance including financial data, insurance certificates, closing documents, the landfill infrastructure capital fund, TIF/TID, bank statement, maps of on-going development, licenses for events, and TBE monitoring/workforce reports and goals, etc.;
- Reviewed applicable County Ordinances and Administrative Manual sections, State Statutes, and Administrative Code, and Federal regulations and rules sections to ensure compliance with federal, state and local laws;
- Interviewed and corresponded with DAS-ED, DPRC, and other County departmental staff, and relevant staff from City of Franklin and Village of Greendale to obtain a clear understanding of how operations were performed and availability of information;

- Conducted a tour of The Rock with the Milwaukee County Parks staff to view the development at the various sites;
- Conducted multiple observation tours during events at The Rock/Ballpark Commons at the site and in surrounding neighborhoods, in the City of Franklin and the Village of Greendale, to get a better understanding of the noise and light concerns expressed by the residents;
- Reviewed emails containing complaints from citizens pertaining to the events and activities at the Ballpark Commons and the Rock Snow Park.



Audit Services Division

Milwaukee County
Department of Administrative Services
Economic Development Division
633 W. Wisconsin Ave, Suite 903,
Milwaukee, WI 53203
(414) 278-4905

Date: August 18, 2021
To: Jennifer Folliard, Director of Audits
From: Aaron Hertzberg, Director, Department of Administrative Services
Subject: "Between The Rock and a Hard Place: Former Landfill Becomes Entertainment Center with Unresolved Community Concerns Beyond the County's Ability to Solve." Audit report response

Below are responses to the Audit Services Division's eleven recommendations to address the issues raised in the audit of contracts management related to The Rock Sports Complex.

1. *DAS--ED develop written policies and procedures to retain a complete set of all documents related to closing of any County land sale.*

Milwaukee County Economic Development, and in particular our Contracts Manager, is in the process of developing policies and procedures around an overall system for retaining, managing, organizing, and tracking all documents related to County land sales. The initial stage of this process is creating a detailed spreadsheet of all contracts and contract-related documents around each of the department’s current projects, including contract requirements, restrictions, timelines, and deadlines for each project, which the Contract Manager plans to have completed within the by the end of this year. The next stage after creation of this spreadsheet is exploring options to organize and monitor contracts on an ongoing basis going forward.

Contract management software systems have been explored, both within Economic Development and in conjunction with other County departments, but a system has not yet been found and approved that would provide the contract maintenance and tracking required at a reasonable cost. Economic Development will continue to work with other County departments in finding an adequate system for long-term contract management. We plan to continue to search for such a solution going forward.

2. *DAS-ED should work with Community Business Development Partners to:*
 - a. *Determine whether the Rock has completed the construction projects with associated TBE goals.*
 - b. *Determine whether the Rock has fulfilled its good faith effort required in the community benefits program.*
 - c. *Begin the process to retain the community benefits deposit if necessary.*
 - d. *Report back to the County Board in three months on the review process.*

Milwaukee County Economic Development sent a letter to the Rock Developer dated May 20, 2021, as noted in the updated audit report, to encourage them to fulfill reporting obligations related to the Development Agreement. The preference is for the Developer to complete reporting on past projects, and submit any reporting needed for any new projects, before the County comes to a conclusion about their compliance with development agreement goals.

However, the Developer has proven noncommunicative and has not yet submitted any further reporting on past, current, or future projects. In addition, current reporting suggests the Developer is unlikely to reach the Development Agreement’s TBE goals overall. If the Developer does not submit further reporting, Economic Development is prepared to work with Community Business Development Partners to document, as needed, Developer’s failure to fulfill development agreement goals on their projects. Without further documentation or

progress, County will seek to retain the Developer's compliance deposit. We will discuss with Community Benefits Development Partners what the process is for documenting retention of the deposit. Milwaukee County Economic Development will plan to report to the County Board on any developments, related to further reporting and/or County's plans to retain the compliance deposit, in the next 3 months (by December 2021).

3. *DAS-ED immediately request the missing data from the Rock if the projects are not yet completed. DAS-ED should determine if the Rock is still in compliance with the goals contained within the Development Agreement and report back to the County Board within three months with its findings.*

Milwaukee County Economic Development has requested information related to completed and ongoing or future projects that are subject to community benefits and TBE reporting requirements, in prior communication, including a letter sent to the Rock Developer sent May 20, 2021. In the same letter, we requested submittal of reporting information to close out the completed projects in our systems, as well as information to allow reporting on any new projects since reporting was last submitted. Developer is currently out of compliance due to the lack of timely reporting, but it is uncertain whether their TBE subcontracting and community benefits goals would be within reach or not if reporting was up to date. We would prefer to complete any such reporting in our systems before making further determinations related to whether Developer will end the project(s) in compliance with Development Agreement goals, though past reporting suggests they may not be able to achieve those goals even if reporting is completed.

Milwaukee County intends to use the full extent of available consequence, as outlined in the development agreement, to respond to Developer's lack of reporting (and inability to make significant progress towards mutually agreed upon goals), including County retaining the Developer's compliance deposit, and refusing to do business with the Developer on any future projects, both of which we are prepared to do if further reporting is not submitted and/or if further reporting shows a failure to achieve community benefits or TBE goals.

Milwaukee County Economic Development will plan to report to the County Board on any further developments in the next 3 months (by the December board meeting).

4. *DAS-ED should confirm with the Rock the status of the east monitor and, if necessary, the anticipated date the east monitor will return to functionality and work to establish a system to be alerted to any nonfunctioning monitor.*

Milwaukee County Economic Development has reached out, both informally (by email sent 8/17/21) and formally (via a letter being sent 8/18/21) to the Rock Developer to request an update on the status of the east monitor, as well as request a notification system or process for the Developer to notify the County of any similar issues in the future.

5. *DAS-ED establish a scheduled check in for material violations at Franklin and Greendale, expand its current tracking log and provide an annual informational report to the County Board on any reported violations by the municipalities.*

Milwaukee County Economic Development currently contacts the City of Franklin regarding noise complaints and violations on a semi-annual basis, and maintains a record of material violations. Please note that enforcement is only available by the County if more than four material violations occur within a given year. To date, Milwaukee County is only aware of one such violation.

Milwaukee County will work with the City of Franklin and the City of Greendale to get more information on how they handle and track noise and light complaints generally, and material violations specifically. We will ensure they have a process in place to notify the County of any material violations, either immediately or on a scheduled basis.

The Economic Development Contracts Manager will set up a tracking log, to be shared by the Economic Development team, to track any material violations, as well as any other issues reported by police, and any complaints that reach our department directly from citizens, even when they don't rise to the level of a material violation. We will also set up a standard procedure for addressing and documenting any such complaints within our department, including how and when to refer or escalate complaints to the relevant authority at each City's police department.

Economic Development will plan on reporting on any material violations reported by the City of Franklin, as well as our internal log of citizen complaints, to the County Board on an annual basis.

6. *DAS-ED develop a formal documented system to log and track any complaints about the Rock received by the multiple entities at Milwaukee County with an annual report provided to the County Board and set up a system to regularly refer non-County complaints to the responsible entity.*

See response to recommendation 5.

7. *DAS-ED should work with the Office of the Comptroller to immediately seek any outstanding funds due to the LIC Fund or provide clarification in writing as to the required submittal date of the Rock payments to the LIC Fund.*

Milwaukee County Economic Development will reach out to the Office of the Comptroller to confirm what outstanding funds are currently due related to the LIC Fund. We will also work with the Office of the Comptroller

to clarify roles between Economic Development and the Office of the Comptroller around future payments. We will reach out to the Rock Developer to communicate expectations and deadlines for future expected payments.

8. *DAS-ED should work with the Office of the Comptroller to provide an annual informational report on the status of the financial items contained within the Contribution and Participation agreement to the County Board within three months of the annual oversight committee meeting.*

Milwaukee County Economic Development will reach out to the Office of the Comptroller to review the status of financial items in the Contribution and Participation Agreement, and seek to clarify the Office of the Comptroller's responsibilities related to the oversight committee and monitoring of financial items in the Agreement going forward.

Economic Development will work with the Office of the Comptroller to provide an annual informational report to the County Board on the status of the Contribution and Participation Agreement within three months of each annual oversight committee meeting.

9. *Parks explore the creation of a centralized complaint system to log any complaints received from the public regarding parks services including location, date, and issue reporting by the public and resolution of the complaint.*

Please see Milwaukee County Parks response.

10. *Parks follow their policy and procedure and execute a formal amendment to the lease agreement to correct the typographical error regarding clarify the allowable start times of events located at the ski hill.*

Please see Milwaukee County Parks response.

11. *The Department of Administrative Services:*

- a. *When developing an updated AMOP for contracts ensure that the AMOP specifies that departments are responsible for the monitoring of all aspects of a contract and should identify who within a department is the responsible party.*
- b. *Clarify the role of service departments such as Risk Management, Office of Corporation Counsel, Office of the Comptroller and CDBP as providing assistance as needed rather than directly responsible for monitoring of contract requirements.*
- c. *Create a training program to be provided to all department heads and contract managers on an annual basis as to their responsibility in monitoring of contracts.*

- d. *Explore the establishment of a countywide software system to assist departments in their contract monitoring responsibilities.*

Milwaukee County Department of Administrative Services will work on creating further policies and procedures around contracts management throughout the department, including specific AMOPs and assignment of responsibilities to specific roles in each department. Milwaukee County Economic Development will institute a practice of finalizing a responsibility and tracking chart following the completion of land transactions and development agreements. The chart will help track timelines and denote responsibilities and contacts for actions. This will better position Contract Managers to track and follow up on required actions.

DAS recognizes the need for further contract management training for practitioners throughout the Milwaukee County. DAS will work with relevant departments to pursue training opportunities and create venues for best practice sharing and support among contract managers.



Audit Services Division

Milwaukee County Parks
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(414) 257-PARK

Date: August 18, 2021
To: Jennifer Folliard, Director of Audits
From: Guy Smith, CPRP, Executive Director, Milwaukee County Parks
Subject: "Between The Rock and a Hard Place: Former Landfill Becomes Entertainment Center with Unresolved Community Concerns Beyond the County's Ability to Solve." Audit report response

This letter is in response to the audit report pertaining to the Ballpark Commons development as requested by the County Board of Supervisors in July of 2019. At the time of the request, the approval of the Ballpark Commons development and all associated agreements was less than 2 years old and the project was in an early stage of development. Milwaukee County Parks remains committed to overseeing those aspects of this project that are within its control and also wants it to be successful so that there is an improved recreational amenity, less financial burden for Milwaukee County, and the methane gas migration collection system has a more certain future for funding and maintenance. One unfortunate byproduct of the Ballpark Commons project has been the outsized influence of a handful of individuals who protested the project from the beginning who have transferred their protest to any other project that Parks seeks to accomplish in this area such as rebuilding roads or operating our trail system. Parks needs to continue to provide services in this area and the complaints that have been generated from some constituents are beginning to impair our ability to do so. Parks must also balance the feedback from individuals with other sometimes opposing constituencies and while receiving and responding to complaints is a necessary part of providing good customer service, we must also use judgement in assessing these complaints and make decisions that positively impact the most people.

Below are responses to the Audit Services Division's two recommendations for operational improvements that are under the jurisdiction of Milwaukee County Parks.

- *Parks should execute a formal amendment to the lease agreement to clarify the allowable start time for events located at the ski hill.*

It is mentioned in the audit report that “The Ski Hill’s operating hours are in line with other Wisconsin ski hills as required in the lease.” At issue is a typographical error in the Lease agreement which uses the word “now” instead of “not”. This is a scrivener’s error that will be corrected.

- *Parks should explore the creation of a centralized complaint system.*

It is mentioned in the audit report that in response to a similar recommendation in another audit “It was determined by Parks that Parks does not have enough staffing to conduct vendor specific surveys.” This is also true of Parks’ capacity to centrally monitor feedback from the public, whether the nature of that feedback is a complaint, is informational, or is some other general communication. Parks has implemented a comment option for customers of our vendors that was advised through that other audit as well. In collaboration with Milwaukee County Department of Transportation, Parks has created an online issues tracker - <https://t.co/V6zVrWfz2N>

It is also referenced in the audit that “As of May 2021, we had received either directly or forwarded from another County entity, 63 complaints regarding the Rock. Those complaints were from 12 individuals in total with one individual being responsible for 34 emails alone.” While we can strive to respond to every communication from the public, we must also use judgement and at some point Parks must assess the reasonableness of these complaints. It may be unreasonable to expect any entity to respond to 34 complaints from one individual regardless of whether there is a system of centralizing these complaints in place. What is certain is that the Parks Department is under-resourced in all aspects including in the ability to consistently monitor and respond to the public’s feedback. Staff must prioritize their response and balance their day-to-day responsibilities with being responsive to the public, and good customer service is a cultural standard that is embraced by the Parks Department.