

**COUNTY OF MILWAUKEE**  
INTEROFFICE COMMUNICATION

DATE : October 19, 2021

TO : Interested Parties

FROM : Scott B. Manske, Comptroller

SUBJECT : Follow-Up to File 21-760 Audit of the Rock Sports Complex

The Audit Committee of the Milwaukee County Board heard a report on the Audit of the Rock Sports Complex (File 21-760). Certain questions were asked regarding agreements with the Rock Sports Complex from 2012 to the present. A review was made of certain of these agreements between Milwaukee County and the Rock Sports Complex LLC. Our office worked with the Milwaukee County Parks Department and the OOC – Department of Audit to respond to questions raised during the committee discussion of File 21-760. The following is the results of that review.

**Report on certain aspects associated with the Sports Park Maintenance and Operations Service Agreement of Crystal Ridge landfill site with Rock Sports Complex LLC.**

In September 2012, Milwaukee County entered into a Sports Park Maintenance and Operations Service Agreement (Agreement) with the Rock Sports Complex LLC for the land commonly referred to as Crystal Ridge and comprising 140 acres in Franklin and Greendale. The Agreement was for the operation of a sports park at the site. The Rock Sports Complex LLC (“RSC”) developed the land in 2012 and 2013 to build the sports park. The Agreement ended in February 2018 when a new lease agreement was entered into in anticipation of the sale of land, located in Franklin, to Crystal Ridge. Certain financial aspects were included in this Agreement, in which the Parks Department was the representative of the County.

**Fixed County Revenue**

Agreement Section 1.32, 3.1, 6.2

The Agreement called for a payment of \$25,000 a year payable in the first month of each operating year, commencing on the first day of the last month of Operating Year 1. Therefore, the first payment would have been due in October 2013. The County received this payment. The payments for October 2014, 2015, and 2016 were excused based on a letter of agreement between the Milwaukee County Parks and RSC dated December 9, 2013. The County has examined its financial records for October 2017 but did not find a Fixed County Revenue payment for Year 6 of the Agreement. The County is requesting RSC to review its records to determine if it remitted a \$25,000 payment to the County or provide documentation if an alternative agreement was reached between RSC and the County regarding the payment.

<b>Fixed County Revenue associated with Lease Agreement Dated September 25, 2012</b>			
	Possible Revenue	Status	Revenue Received
2013	\$ 25,000	Received	\$ 25,000
2014	25,000	Forgiven	
2015	25,000	Forgiven	
2016	25,000	Forgiven	
2017	25,000	Open	
	<u>\$ 125,000</u>		<u>\$ 25,000</u>

### Contingent County Revenue

Lease Agreement Section 1.15, 6.3, 8.2.1

The Lease Agreement called for a payment of a percentage of net earnings before taxes generated by The Rock Sports Complex use of the Crystal Ridge property. Net earnings before taxes is not a defined term within the Agreement but is understood to mean revenues net of operating and administrative expenses before the calculation of any income taxes. For years 1-5, the Contingent County Revenue percentage was 5%. For years 6-15, the percentage was 8%. The County obtained financial reports from RSC for the years ended December 31, 2013, December 31, 2014, December 31, 2015, and December 31, 2016.

Per the Agreement, such financial statements and payment of the Contingent County Revenue was to be made to the County based on the Operating Year, which was October 1, to September 30<sup>th</sup>, the County utilized the calendar year financial statements of the Rock Sports Complex for purposes of calculating the Contingent County Revenue. In addition, such financial statements were to be prepared on a cash basis of accounting. Depreciation expense was included in the financial statements, which required the capitalization of building and improvements. For that reason, the County removed depreciation expense and added back capital improvements as an expense to the calculation.

The RSC reported net losses before income taxes for the years ended 2013, 2014, 2015, and 2016. The adjustments for depreciation and capital improvements still resulted in net losses before income taxes, therefore no Contingent County Revenue was owed to the County. Per the Lease Agreement, any losses incurred by the RSC are the responsibility of the RSC and cannot provide a credit to future years payment of Contingent County Revenue. The County has not obtained the RSC financial statements for the year ended December 31, 2017 and has requested those financial statements from RSC.

<b>Contingent County Revenue associated with Lease</b>			
	Possible Revenue	Status	Revenue Received
2013	No Estimate	Net Loss	\$ -
2014		Net Loss	\$ -
2015		Net Loss	\$ -
2016		Net Loss	\$ -
2017		Open	
	<u>\$ -</u>		<u>\$ -</u>

### Endowment Fund

#### Section 4.3, 21.1

The Agreement called for the establishment of an Endowment Fund to be funded by the RSC for purposes of capital repairs when and if needed for the leased property. The Endowment Fund was to have a minimum balance of \$50,000. In a letter dated December 9, 2013, the Endowment Fund balance minimum was placed on hold while RSC incurred expenses related to planting activities. Per that same letter, the Endowment Fund was to then be reestablished in 2017 operating year.

Per the Agreement, upon the Termination of the Agreement under section 21.1, the Endowment Fund was to be transferred back to the County. The Agreement was terminated as of February 18, 2018, and a new lease agreement was entered into between the County and RSC. Questions as to the status of the Endowment Fund upon termination, but then reentering into a lease agreement with the same party are open, since one lease stopped, and another began.

### Youth Programming Outreach

#### Lease Agreement Section 5.23

The Agreement provides that the Operator agrees to commit \$20,000 annually to develop and implement programming and scholarships to low-income minority and low-income children who reside in Milwaukee County. In our review of records, we were unable to note any in-kind contribution or payments for Youth Programming Outreach for the years 2013, 2014, and 2015. We have obtained copies of letters from the Boys and Girls Club of Milwaukee that such Youth Programming Outreach did occur in 2016 and 2017 at the \$20,000 level.

Youth Programming Outreach			
	Possible In-Kind/ Expenditure	Status	Expenditure Made
2013	\$ 20,000	No Information	\$ -
2014	20,000	No Information	-
2015	20,000	No Information	-
2016	20,000	Completed	20,000
2017	20,000	Completed	20,000
	<u>\$ 100,000</u>		<u>\$ 40,000</u>

### DBE Goals for Capital Improvements at the Crystal Ridge Lease Site

#### Agreement Section 5.25

Original Lease had the requirement to use reasonable efforts to meet Disadvantaged Business Enterprise goals for construction work on the leased property in section 5.25 on Disadvantaged Business Enterprise (DBE) Utilization.

Section 5.25 "Operator shall use reasonable efforts to cause its contractors to establish Disadvantaged Business Enterprise (DBE) participation goals, consistent with Milwaukee County DBE goals of 25% for construction and 17% for professional services, for the planning, development and construction of improvements and to use good faith efforts to achieve those goals."

It is unknown if the operator RSC established such goals in the capital improvements at the leased property site. There was no penalty included in the Lease Agreement if such goals were not met.

**Construction Management Fee to the County**

Agreement Section 4.2.2

The Lease Agreement included a provision that provided reimbursement to the County for Milwaukee County project manager costs during the construction, or capital improvement phase of the project for the sports complex.

Section 4.2.2 – “Prior to the start of any construction activities, including any subsequent alterations, renovations or improvements to the Property, Operator shall submit any, every and all detailed Sports Park Plans and Specifications, and any revisions thereto, to the County, to the Architecture and Engineering Division of the Milwaukee County Department of Administrative Services, and to the WDNR, together with the name of Operator’s proposed contractor(s) for review and approval, which approval shall not be unreasonably delayed or withheld. Operator shall reimburse County for the actual and out-of-pocket cost of a Milwaukee County Project Manager during construction phases of the project, including any subsequent construction, alterations or improvements, in an amount not to exceed TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00).”

Based on a review of County financial records and discussion with others, no billings were made for County project manager or architecture and engineering division services provided to the RSC project during the agreement term.

**Report on aspects associated with agreements related to the sale of Crystal Ridge land located in Franklin:**

The following are certain aspects included within the agreements associated with the sale of the Crystal Ridge land in 2018. These agreements include the Contribution and Participation Agreement related to maintaining the gas mitigation system associated with the former landfill site, known as Crystal Ridge, after the sale by Milwaukee County to BPC County Land LLC, the Option to Purchase Agreement for the Crystal Ridge site, and the Development Agreement for the Crystal Ridge site.

**Landfill Infrastructure Fund:**

Contribution and Participation Agreement Section 4.4

As of 2/28/2021 the balance in the Landfill Infrastructure fund was \$297,160.36. The County has made its 2019, 2020, and 2021 contributions to the fund. The total amount of the County contributions was \$43,517.65. The Ball Park Commons Association (Association) has made its 2019 and 2020 contributions to BPC County Land LLC, who placed the funds into a bank account. Our office is following up on the status of the 2021 contribution. We tied the dollars to the BPC County Land LLC bank statement. The difference between the payments and the bank statement are bank fees of \$357.29.

Landfill Infrastructure Fund Balance/Contributions						
	Ball Park Commons Association			Milwaukee County		
	Agreement	Actual	Variance	Estimate (per Agreement)	Actual	Variance
2019	\$127,000.00	\$127,000.00	\$0.00	\$20,000.00	\$14,928.23	(\$5,071.77)
2020	\$127,000.00	\$127,000.00	\$0.00	\$20,000.00	\$14,566.96	(\$5,433.04)
2021	\$127,000.00	\$0.00		\$20,000.00	\$14,022.46	(\$5,977.54)
<b>Total to Date</b>		<b>\$254,000.00</b>			<b>\$43,517.65</b>	
<b>Balance as of 2/28/2021 (includes service fees)</b>		<b>\$297,160.36</b>				

**Purchase Price Offset:**

Contribution and Participation Agreement Section 3.3 (b)

The sale price was negotiated as \$840,000. The Option Agreement and the Contribution and Participation Agreement provided an offset to the sale price for the Buyer: BPC County Land LLC. The offset would be equal to the gas mitigation operating costs incurred by the Buyer during the life of the Tax Incremental District (TID), which is anticipated to end in 2036. Operating costs were estimated at \$167,000 per year.

The costs incurred directly by the BPC County Land LLC (Buyer) for the years 2018, 2019 and 2020 are shown below. For 2018 there were no costs incurred by the Buyer. For 2019, there were minimal costs incurred by the Buyer. The reason for limited costs in these two years, is because the gas mitigation system was reconstructed during this time period, and any operating costs were paid as part of the TID capital project. 2020 operating costs for the gas mitigation system were \$226,941.67

Calculation of Purchase Price Offset in Accordance with Option to Purchase Agreement			
<b>Purchase Price</b>			<b>\$ 840,000.00</b>
Purchase Price Offset (Credit for Landfill Operating Costs Paid by Developer)			
Year			
2018			
2019			(\$48,855.52)
2020			(\$226,941.67)
2021			
2022			
2023			
2024			
2025			
2026			
2027			
<b>Remaining Purchase Price</b>			<b>\$ 564,202.81</b>
Notes:			
Purchase Price is \$840,000 net of Landfill Operating Costs paid by the developer.			
Purchase Price deferred until the TID expires			
Purchase Price will be no less than \$1.00			

**Option to Purchase Option Fee**

Source: Option to Purchase Agreement

Option Fee of \$10,000

For and in consideration of the sum of Ten Thousand Dollars (\$10,000.00) (“Option Fee”) tendered herewith, Milwaukee County (the County) does hereby grant unto BPC County Land LLC, ... an exclusive option to purchase.

Payment is being held by Milwaukee County Economic Development.

**Compliance Deposit**

Source: Development Agreement

BPC County Land LLC (Developer) shall submit a Compliance Deposit prior to the commencement of construction in the amount of Ten Thousand Dollars (\$10,000.00) ("Deposit") to insure compliance with subparagraphs 2.6 and 2.7 above. Section 2.6 is TBE Participation Goals and Section 2.7 is Workforce Goals – Apprenticeship and Training Opportunities.

Payment of \$10,000 for Compliance is being held by the Milwaukee County Economic Development office.



Scott B. Manske  
Comptroller