

**COUNTY OF MILWAUKEE
INTER-OFFICE COMMUNICATION**

DATE: November 8, 2023

TO: Marcelia Nicholson, Chairwoman, County Board of Supervisors

FROM: Scott B. Manske, Comptroller, Office of the Comptroller
Celia Benton, DAS – Economic Development Division

SUBJECT: Annual Informational Report - Financial Items Contained within the Contribution and Participation Agreement with the BPC (“Ballpark Commons”) County Land LLC

REQUEST

The Department of Administrative Services and the Office of the Comptroller are providing an annual informational report on the status of the financial items contained within the Contribution and Participation Agreement with the BPC (“Ballpark Commons”) County Land LLC.

Landfill Infrastructure Capital (“LIC Fund”)

The estimated vs. actual LIC Fund contributions and the actual distributions are included in the table below. As of September 30, 2023 there have been \$671,512.70 of funds collected and \$93,369.25 of funds distributed from the LIC Fund. The balance of the LIC Fund was \$577,594.51.

The County contributes an amount equal to the tax share collected by the County for real and personal property located within the tax incremental financing (“TIF”) district. The amount was estimated to be \$20,000 annually. The actual amounts are determined by multiplying the base amount of the TIF district by County’s tax rate. BPC County Land LLC is to contribute \$127,000 annually till 2038. The annual amount will become \$136,000 in 2039 and \$186,000 in 2059.

LIC Fund Activity and Total Balance as of September 30, 2023								
	Contributions						Distributions	
	BPC County Land (Buyer)				Milwaukee County (Seller)			Foth Engineering
	Estimate	Actual	Variance		Estimate	Actual	Variance	
2019	\$ 127,000.00	\$ 127,000.00	\$ -		\$ 20,000.00	\$ 14,928.23	\$ (5,071.77)	
2020	\$ 127,000.00	\$ 127,000.00	\$ -		\$ 20,000.00	\$ 14,566.96	\$ (5,433.04)	
2021	\$ 127,000.00	\$ 127,000.00	\$ -		\$ 20,000.00	\$ 14,022.46	\$ (5,977.54)	
2022	\$ 127,000.00	\$ 127,000.00			\$ 20,000.00	\$ 13,047.63	\$ (6,952.37)	\$ (14,325.85)
YTD 2023	\$ 127,000.00	\$ 95,250.00			\$ 20,000.00	\$ 11,697.42	\$ (8,302.58)	\$ (79,043.40)
Subtotal		\$ 603,250.00				\$ 68,262.70		\$ (93,369.25)
Collected	\$ 671,512.70	Distributions	\$ (93,369.25)	Bank Fees	\$ (548.94)	Bank Stmt	\$ 577,594.51	

Note: The 2023 collected amount reflects the first three quarters contributions made by the Buyer and the Contribution made by Milwaukee County to BPC County Land in January 2023. It is expected that the Buyer will make the remaining quarterly payments before the end of the year. The total includes Bank Service Fees.

The 2023 collected amount in the table above reflects the first three quarterly contributions made by BPC County Land LLC (aka “Buyer”). It is expected that the Buyer will make the remaining quarterly payment before the end of the year. The collected amount reflects the payment made by Milwaukee County (aka “Seller”) to BPC County Land LLC in January 2023. The total also includes bank service fees.

The 2023 activity also includes \$79,043.40 of payments made to Foth Engineering for work that was approved by the Landfill Oversight Committee in May 2022. The Committee unanimously approved a motion to use \$95,000 from the LIC Fund to perform the activities identified by Foth Engineering, who is the Environmental Site Consultant. The work included:

- Monitoring well optimization
- Monitoring well improvements
- Gas probes optimization
- Gas extraction well placements
- Leachate flow investigation
- Knockout sump improvements

Purchase Price Offset

The Contribution and Participation Agreement includes a requirement for the Oversight Committee to report the annual Landfill Operating Costs incurred and the status of the Purchase Price Offset, against the purchase price.

The Purchase Price and the Purchase Price Offset were defined as part of the Option to Purchase Agreement. The Purchase price was \$840,000, less the accumulated Landfill Operating Costs. The Purchase Price was not due at closing but is deferred until the term of the TID expires. The Developer shall receive a credit or offset against the Purchase Price (“Purchase Price Offset”) equal to the Landfill Operating Costs paid by Developer during the term of the TID, but in no event shall the Purchase Price be less than One Dollar (\$1.00).

As of December 31, 2022 there has been \$786,471 of Landfill Operating Costs paid by the Developer. The remaining Purchase Price is \$53,529. It is anticipated that the ultimate Purchase Price will be \$1.

Calculation of Purchase Price Offset in Accordance with Option to Purchase Agreement			
Purchase Price		\$	840,000.00
Year		Purchase Price Offset (Credit for Landfill Operating Costs Paid by Developer)	
2018			
2019			(\$48,855.52)
2020			(\$226,941.67)
2021			(\$250,713.43)
2022			(\$259,960.29)
Remaining Purchase Price		\$	53,529.09

BACKGROUND

Since 1999, Milwaukee County owned and operated the gas migration system and monitored ground water and leachate levels at the former Franklin Landfill to stay in compliance with Wisconsin Department of Natural Resources (“WDNR”) requirements. The County contracted for the service of maintenance and testing of the landfill gas control systems.

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

LIC Fund

The LIC Fund is included in the Contribution and Participation Agreement (“Agreement”) between BPC County Land LLC (aka “the Buyer”) and Milwaukee County (aka “the Seller”). The LIC Fund was primarily intended to be used for the estimated future capital costs of replacing the landfill infrastructure, including the methane control system that is likely to be needed as long as decomposing organic wastes remain at the property.

The Buyer is responsible for administering all future capital and operating needs of the landfill infrastructure, including the methane control system, which is offset in whole or in part, by funding from the LIC Fund. The parties also intended that the LIC Funds can be secondarily sought by the Buyer to help with extraordinary operating costs of the landfill and/or methane control system subject to specific limitation of the Agreement.

The LIC Fund is governed by an Oversight Committee. The representatives of the Oversight Committee included a representative from the Buyer, the Seller, and the Ballpark Commons (“BPC”) Association. The three members are currently: Tom Johns (Chief Financial Officer, Roc Ventures), Scott B. Manske (Milwaukee County Comptroller), and Maureen O’Leary (Owner/President O’Leary-Guth Law Office, S.C.).

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RECOMMENDATION

This report is informational only. It is recommended to be placed on file.

Scott B. Manske
Milwaukee County Comptroller

Celia Benton
Director, DAS – Economic Development Division

cc: David Crowley, County Executive
Felesia A. Martin, Chairwoman, Audit Committee
Mary Jo Meyers, Chief of Staff, County Executive
Kelly Bablitch, Chief of Staff, County Board
Aaron Hertzberg, Director, Department of Administrative Services
Jennifer Folliard, Director, Office of the Comptroller – Audit Division
Stephen Cady, Research Director, Office of the Comptroller – Research Division
Tom Johns, Chief Financial Officer, Roc Ventures
Maureen O’Leary, President, O’Leary-Guth Law Office, S.C.