



January 12, 2015

David Corliss, City Manager
City of Lawrence
6 E. 6th Street
Lawrence, KS 66044

David,

Per your request at the January 6, 2015 City Commission Meeting, RCP has obtained from Bliss Sports II additional information regarding the pay application and lien waiver forms provided on October 1, 2014. Copies of that additional documentation, which consists primarily of copies of canceled checks for payments made to the subcontractors and other vendors who performed work on the Infrastructure Improvements, are enclosed.

For eight subcontractors or vendors, the copied cancelled checks were for amounts that match or exceed the corresponding pay applications and lien waivers. With respect to four subcontractors or vendors, RCP has not obtained and therefore is not providing a set of canceled checks to the City. Here are explanations for each of those instances:

1. Professional Services – Testing and Inspections, Alpha Omega Geotech (AOG). As you know, Alpha Omega Geotech was hired to perform third party inspections and testing for both the Infrastructure Improvements and the Stadium Facilities (as those terms are defined in the Development Agreement) in order to achieve the economies of scale of having a single inspection team with personnel on site virtually every day of the construction process. When AOG was initially hired, the Development Agreement had not been finalized so AOG billed, and was paid for, that work on both sets of improvements at one time. Prior to submission of the Infrastructure Payment request, AOG was asked to apportion its billings as between amounts attributable to work done inspecting the Infrastructure Improvements and work done inspecting the Stadium Facilities. AOG's response stating the amount attributable to inspections of the Infrastructure Improvements is enclosed.
2. Construction Staking and Landscaping, Bliss Sports II and related entities. Bliss Sports II did not issue itself or related entities checks for self-performed work. Although it was previously sent to the City on October 1, 2014, I am re-sending to you for your convenience records of Bliss Sports II and its related entities for the hours of labor expended to complete the staking work that constituted part of the Infrastructure Improvements and the hourly rates charged by the respective employers for the persons who did that work. Similarly, I am re-sending to you backup for the landscaping and irrigation, including a list of the exact quantities installed and an

installed market unit cost for each item, which also was provided back on October 1, 2014. Lastly, I am re-sending to you the proposal letter from Bliss Sports II to RCP for the cost to design, make and install the sign. As you will recall City personnel agreed to this amount. The original estimate to perform the sign design, fabrication and installation on Exhibit I to the Development Agreement was \$150,000.

3. Loan Origination Fees and Interest, Emprise Bank. As you know, RCP previously gave to the City a transaction statement prepared by Emprise Bank for the loan obtained by Bliss Sports II to fund construction of the Infrastructure Improvements from Emprise Bank. Payments for the Infrastructure construction loan origination fees and interest payments were reflected on the transaction statement. I am also enclosing a copy of a letter from Emprise Bank which confirms that this particular loan was only for the Infrastructure Improvements.
4. Legal Fees, Polsinelli. To appropriately maintain Attorney Client privileges, Bliss Sports II will not provide RCP with copies of the individual invoices from Polsinelli for attorneys fees related to the Infrastructure Improvements. However, in the enclosed letter the Polsinelli law firm is offering a methodology by which the City Attorney, the City Auditor or an independent auditor working on behalf of the City with respect to the Infrastructure Improvements may come to Polsinelli's offices and review those billings in person.

RCP believes that the information provided with its original submission for payment of the Infrastructure Payment fulfilled the terms of the Development Agreement which, in Section 11.02, required substantiation of actual costs incurred and payments made for the Infrastructure Improvements. As an accommodation to the City, RCP is willing to provide to the City the additional information including cancelled checks that were provided last week and with this letter and to arrange for an inspection of the Polsinelli bills.

As you know, the "Infrastructure Payment" is defined in the Development Agreement as the amount calculated to be owed for the Infrastructure Improvements under Section 11.01. As is detailed in City Engineer David Cronin's November 11, 2014 Memorandum to Charles Soules, Director of Public Works, and a follow-up Memorandum dated November 19, 2014 from Charles Soules to you, when change orders to the Infrastructure Improvements are taken into account, using the equation set forth in the first paragraph of Section 11.01 of the Development Agreement, the Infrastructure Payment is determined to be \$11,598,439.03.

The second paragraph of Section 11.01 contains the further limitation that the Infrastructure Payment is not to exceed:

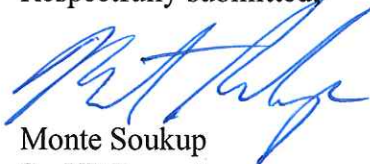
"the sum of (a) all of the hard costs and soft out of pocket costs incurred by Bliss Sports II in connection with development and construction of the Infrastructure Improvements... plus (b) a construction management fee of two and one-half percent (2.5%) on all of such hard costs and soft out of pocket costs [other than legal fees, loan original fees and loan interest for financing of the infrastructure]."(Emphasis Added)

As to soft costs Section 11.02 provides:

“Without limitation, soft costs included in the Infrastructure Improvements Cost include interest carry costs incurred in financing such costs, loan origination fees, compliance costs, engineering and architectural fees, legal fees and other professional services costs attributable to the zoning, platting, plan approval and permitting of the Recreation Center Site and the Infrastructure Improvements and to the negotiation of this Agreement, the Purchase Agreement and the Infrastructure Improvements Construction Contract.”

RCP believes that it had previously met the requirements for payment as defined by the Development Agreement with its submission of the Certificate of Completion of Infrastructure Improvements on October 1, 2014. With the additional information provided since that time and with this letter, and in the case of the legal fees, access to the hourly billings made available, RCP has provided more than is required by the Development Agreement. We trust that final acceptance and payment of the full Infrastructure Payment will occur soon.

Respectfully submitted,



Monte Soukup
Sr. VP Property

Enclosure

Cc: Harry Wigner
Dale Seuferling