



January 30, 2015

David Corliss, City Manager  
City of Lawrence  
6 E. 6<sup>th</sup> Street  
Lawrence, KS 66044

David,

As a courtesy to the City, and partner in the Rock Chalk Park project, RCP is providing to you a series of questions posed to RCP by a local reporter and the answers we in turn provided to those questions. Below is the body of the exchange with the reporter's statements and questions in black and our responses in red:

Hi:

I'm fine with sending you these questions via e-mail. However, I would appreciate a direct response, as opposed to the past practice of sending a letter to City Hall that then gets sent to me.

Here are some questions based on the documents we have seen. I'll break them into the following categories:

Chad,

Responses are included below your statements and questions below.

First, it is important to review what the Development Agreement (DA) requires of the City, RCP and Bliss II if you want to accurately report on this matter. To summarize, RCP was to cause Bliss II to cause the Infrastructure Improvements to be financed, designed and constructed in accordance with the Infrastructure Improvement Plans that were approved by all three parties. The City had specific rights to oversee and inspect the work as it progressed and ultimately to approve the final work product, which the City has done. Upon acceptance, RCP and Bliss II were to demonstrate what its cost were to complete the project, as defined in the DA. The amount that the City would pay was to be the lesser of the demonstrated amount of the cost to construct the Infrastructure Improvements, or the cap amount calculated using the formula in the DA.

Bliss II and RCP submitted documentation of Infrastructure Improvement costs per the DA of just over \$13,390,000. The maximum amount the City is required to pay per the DA, including the assists Foundation contribution, (see city memorandum), is \$11,452,604. To the extent that

there may be perceived inconsistencies in the demonstration of the costs submitted, it is not germane to the payment once at least \$11,452,604 of the payments are clearly shown to have been spent on the project by Bliss II according to standard accounting practices, which is what we understand the City has hired a third party auditor to confirm.

## MISSING INVOICES

In the cases of Alpha Omega, the professional consultant was doing work on the City Rec Center and the Stadium improvements as well as the Infrastructure Improvements and as such the invoices contained billings for multiple projects. In those cases Bliss requested the professional consultant to review their billings and to provide in writing, the amount of those billings that applied to the Infrastructure project. RCP felt that written statements on company letterhead from these professionals was sufficient documentation (to imply something else is accusing these professionals of submitting false information without any reason to believe so).

- **Are there more invoices that haven't been turned over to the city, other than the law firm items?** Your Jan. 13 letter to the city states: "RCP is not aware of there being any other invoices except for the invoices of Polsinelli **which RCP has not seen . . .**" But the documents you provided to the city seem to contradict that statement. Some of the documents note the existence of other invoices. Two examples: **You conveniently truncated our statement, completely changing the meaning.** The statement restated is, RCP is not aware of any invoices it has not seen. Regarding the Hoss & Brown letter, we did not believe that requesting the invoice was necessary, because as previously noted, they provided a statement on their company letterhead. However, a copy of the check and invoice indicating that the services provided were for the Infrastructure Improvements has been obtained and will be sent to the City. The reason the Alpha Omega Geotech invoices were not included was explained in the January 12 letter from RCP to the City.

— Jan. 7, 2014 letter from Hoss & Brown Engineers says "Payment was received from Bliss Sports for invoice number 13439, date 7/1/2013." That invoice doesn't seem to be one that the city has.

— A Sept. 2, 2014 letter from Alpha-Omega Geotech reads: "you requested that we review our billings to give you a total of the billings we have sent to Bliss Sports that are related to our inspections of infrastructure items on site." The city doesn't seem to have copies of those bills.

- **Why weren't these invoices/bills made available to the city? See above. Why did RCP not request them when there was information available that made their existence known? See above.**

## PAUL WERNER DOCUMENT

- There is a Sept. 18, 2014 document entitled "Acknowledgement of Payment of Infrastructure Improvement Costs." This one says "the undersigned subcontractor/vendor/consultant acknowledges that it has received a total of \$470,955.98 from Bliss Sports II, LLC." The document then details the costs as they are broken out for Rec Center infrastructure and Stadium site infrastructure. It lists four companies that together received the total of \$470,955.98. They are Gould Evans, Hoss & Brown, Landplan Engineering, and Paul Werner Architects. **But the document is only signed by Paul Werner. Why is that? It is important to note that the fees charged to design the Infrastructure Improvements as a percentage of the construction cost were approximately 4.6% which is well below the City's guideline of 6.99% for a project of this**

scope. (see City Memo dated 12/2/14) Paul Werner Architects was the lead design consultant and as such coordinated the work of the other design consultants, which is the conventional way in which design services are contracted so that there is a single point of responsibility contractually. How the lead consultant contracts with his sub consultants is not something that the DA provides RCP or the City access to. Regardless of who issued checks to the design consultants, they all provided written statements saying they were paid for work they performed in the amounts shown (to imply something else is accusing these professionals of submitting false information without any reason to believe so).

- The document has a key paragraph that says “none of the above amounts represent payment for hard or soft costs provided by the undersigned in connection with the development and/or construction of either the “Recreation Center” or the “Stadium Facilities” as defined in the Development Agreement.” **If the others didn’t sign this document have they attested that none of those amounts were for stadium improvements?**

- **For example, where has Hoss & Brown ever attested to that?** See above. The only document I see from the company is the Jan. 7 letter referenced above. It makes no reference to what the work was for.

- These documents appear to not be accurate. Aside from the signature issue that we’ve already discussed, the Paul Werner document says \$470,955.98 was received from Bliss Sports II LLC. But that’s not accurate, according to the cancelled checks. Only \$244,000 of the funds came from checks that had Bliss Sports II on them. **Why does the document say one thing and the checks say another?** See below.

- **What’s your understanding of why some of these were paid with a Bliss Sports account instead of a Bliss Sports II account?** The vast majority of the checks issued by related Fritzel companies were issued prior to the City adopting the Development Agreement. Up until that time there was no guarantee to RCP or Bliss II that the City would participate in the project. Once the DA was adopted, with the exception of four checks, all payments were made By Bliss II. (also see notes under DFC Company) The City’s independent auditor is reviewing this issue based on the standard accounting practices by which it is conducting the audit.

- It seems that the system was set up so that Bliss Sports II had a construction loan only for infrastructure projects where it could take a draw on that loan and make payments to infrastructure subcontractors when due. One would think that the draw would be made, funds would be placed into a Bliss Sports II account and the checks were issued to the appropriate subcontractors. **Since contractors were being paid by non Bliss Sports II entities, does that mean that draws taken from that infrastructure construction loan were co-mingled with the funds of other companies?** See below.

- **How does the accounting work on that type of arrangement? Has RCP reviewed those accounting entries?** The pay application process was described in a January 13 letter from RCP to the City. Emprise Bank had a third party review the construction draws to ensure for themselves, as the lender, that subcontractor payments were being fulfilled and that the loaned amounts were not greater than the value of the installed work.

- **Did Bliss Sports II ever write any checks for non-infrastructure related work?** RCP has no knowledge regarding this matter. Nor does the question have any bearing on the project or DA. **Has RCP seen the checkbook register of Bliss Sports II to verify that?** No.

## DFC COMPANY

- Two letters dated Sept. 18, 2014 say that DFC Company of Lawrence, L.C. received a total of \$1,403,716.33 from Bliss Sports II but then your letter of Jan. 12, 2014 seems to contradict that. Your letter states: "Bliss Sports II did not issue itself or related entities checks for self-performed work." **Why do the signed documents say DFC received payments of a little more than \$1.4 million, if indeed it did not?** It is common for related companies not to issue checks to each other but rather to make intercompany transfers by logging receivables and payables on their books. The City's Independent Auditor is reviewing this issue based on the standard accounting practices by which it is conducting the audit.

- The documents provided to the city include a table that lists individuals, hourly rates, dates, and the amount they were paid to do staking work at the site. **Are those individuals DFC employees, or are they subcontractors hired by DFC to do the work?** Bliss II has represented that these people are employees of DFC or a related companies.

- **If they are subcontractors, why has DFC not provided copies of cancelled checks?** DFC has provided copies of cancelled checks to other third parties, i.e. the payment of the performance bond. Not applicable

- **Are you aware that one of the people on that list of staking contractors is [REDACTED] who does accounting work for Bliss Sports?** Yes If so, have you been given any information about what [REDACTED] role on the project was? Based on our involvement with the project, RCP is aware that [REDACTED] was the site office manager and was responsible for the coordination of all deliveries to the site and the coordination of all of the inspections and site meetings and minutes and general office management for the project. **Is there any concern that someone involved in the accounting of the project also is serving as a subcontractor?** Not applicable

- **How did DFC pay its subcontractors or employees who did this work, if it never got paid by Bliss Sports II?** DFC would have to respond to this question. The standard set by the DA is evidence that they were paid for work they completed on the infrastructure site. Not how a subcontractor made its own pay role or other company obligations.

- **Did DFC self-finance the costs and it is awaiting reimbursement, Every vendor that does work and is awaiting payment is essentially self-financing the cost until such time as it is paid. DFC has attested that it has been paid for the work it performed. or did DFC have access to make draws on the construction infrastructure loan?** Bliss II or DFC would have to respond to this question. RCP is not a party to the Emprise bank loan and would not have access to that information.

- **Did DFC also do work related to the Stadium Improvements?** Yes

## CANCELLED CHECKS

- I understand the concern about attorney-client privilege related to the invoices for Polsinelli. **But since the invoices have been paid, why have cancelled checks not been provided to the city?** See my statement under "MISSING INVOICES" The City's Independent Auditor is reviewing this issue based on the standard accounting practices by which it is conducting the audit.

Thank you for your time on this. If you have any questions, please feel free to call me at 832-6362.

Thanks,

Chad Lawhorn  
Journal-World

I hope that this helps clarify the details of the project and the expectations set out by the Development Agreement. As I have stated previously, the DA is a complex arrangement among multiple parties and needs to be analyzed as an entire body of work. The great thing about this project is that the City, University and a private developer were able to work together successfully to create what is arguably the premier youth sports venue in the region which will have a positive economic impact on the community for years to come. Ultimately the City Audit will help determine if the City received a good value for its investment.

Respectfully submitted,



Monte Soukup  
Sr. VP Property