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Independent Accountants'
Report on Applying Agreed-Upon Procedures

Honorable Mayor and
City Council
City of League City

We have performed the agreed-upon procedures enumerated below, solely to assist The City of Leagues City (“the City”) in evaluating the Construction of the Big League Dreams park (BLD) Facilities project:

The overall objective and purpose was to determine:

- a) that the amounts being reported to the Council and Management are fairly presented;
- b) that the amounts represents actual costs that should be included in the projects;
- c) that the processes used in handling this project were being handled properly;
- d) and to make recommendations as to handling future projects.

The Big League Dreams project was the first Private/Public Partnership arrangement for this type of facility outside of California. Not only was BLD Park Complex the first one of this type being built but it was the first one being built along the Texas Gulf Coast in a very different environment than the ones built in California.

During our review of the BLD project we:

- (a) reviewed council minutes,
- (b) reviewed contracts with BLD USA, Contractors and Architects,
- (c) reviewed the sequence of events during the project,
- (d) tested costs being charged to the contracts and
- (e) reviewed explanations of the amounts that exceed the original plan.

This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the City. Consequently, we make no representations regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The specified users of this report include the City’s Mayor and Council and the City’s administrative officials as specified by the Council.

Agreed Upon Procedures Performed

1. We obtained copies of minutes of Council meetings related to discussions and approvals of key items during the BLD project.
2. We obtained a copy of the Consulting Agreement with BLD Consulting, California, the Maintenance and Operations Agreement (MOA) with BLD LC, and some of the correspondence with BLD principals.
3. We reviewed contractor files, contractor payment applications, architect files and subcontractor files maintained by the City Engineer on the BLD project.
4. We met with the City's Personnel and reviewed the projects, and reviewed the general procedures used in managing the project.
5. We obtained from the finance department a computer download files from the City's General Ledger system of expenditures charged to the project from inception to our cut off date of November 2005.
6. We reviewed applicable costs charged to the BLD Park project, and tested a sample of costs being charged to the projects.
7. We reviewed documentation of explanations of budget overruns and reports presented to Council.

Facts

- 1) The actual construction cost to date, as of October 2005, per the download file from the General Ledger shows actual costs to date of \$22.7 million. The following cost has been coded to the BLD project:

Land	\$	1,200,136
Construction of park		15,269,470
Construction management		2,128,956
Park architects		904,985
BLD license and consulting		898,590
Other		88,828
Grand opening		5,917
Road and drainage		2,200,825
	\$	<u>22,697,707</u>

- 2) The City Council approved the following major steps in the Project:
- a. January 2003 - hired BLD Consulting to do feasibility Study on BLD sports complex project;
 - b. May 2003 - approved the BLD sports complex project, Approved Maintenance and Operations Agreement (MOA) with BLD-LP – all cost estimates clearly labeled estimates - one of the estimates showed \$13 million- excluding land- offsite costs, rough grading, construction management amount – estimate amount was just for park construction costs –BLD Consulting fees and Architect fees;
 - c. May 2003 - approved intent to issue Certificate of Obligations (\$13 million),
 - d. May 2003 - approved intent to purchase land \$1.2 using parks, general fund and water and sewer resources;
 - e. June 2003 - approved Architect, Purkiss Rose out of California, for Design Services;
 - f. October 2003 – Presentation of Master site Plan BLD Sportsplex – start of development of construction drawings;
 - g. October 2003 – approved contract with Linbeck for preconstruction services and for construction manager at risk delivery process;
 - h. November 2003- approved design services for BLD Sports Park - approved offsite stormwater, sewer water amenities and BLD parkway. Council recognized that Management District would not provide infrastructure. Determined that the infrastructure facilities were not in any agreement with the management District. These additional cost were not in BLD Consulting estimates;
 - i. February 2004 - approved contract for material testing for BLD Park construction;
 - j. February 24, 2004 - approved design for drainage on BLD Park;
 - k. April 20, 2004 – special meeting held concerning cost overruns preliminary construction costs – explanations of price increases presented – increase in steel costs, increase in cement and other construction costs;
 - l. April 27, 2004 – approved continuation of BLD Park Project with additional costs after evaluating alternatives;
 - m. May 25, 2004 – approved Linbeck Construction cost for Phase III (\$15.7 million) fixing construction cost of the park complex facilities- (During construction Linbeck stayed in line with their contracted amount);
 - n. June 28, 2004 - approved material testing on BLD parkway;
 - o. June 28, 2004 – approved Contract for BLD parkway, water/sewer system and lift station for BLD Park project;
 - p. June 28, 2004 – approved Contract for lighting at BLD park-major component that City would handle instead of Linbeck;
 - q. October 26, 2004 - approved contract for the on-site stormwater detention facility for the BLD project;
 - r. November 9, 2004 - approved detention pump station;

- s. December 2004 - approved equipment purchases- not part of BLD Park construction (Linbeck)- and outfield wall graphics – approval of \$25k for BLD Park grand opening;
 - t. February 2005 - approved change orders Linbeck;
 - u. April 12, 2005 - approved BLD-California to purchase specific equipment needed in BLD park- these were items BLD California specifically wanted to be purchased according to their specifications and BLD California could procure without going through City’s Bidding Process.
- 3) As of November 2003, correspondence showed the construction cost was coming in much higher than anticipated. This was the period when detail construction drawings were being prepared and the Contractor was going through the details of constructing the park and getting cost estimates. However, City Senior staff still believed other sections of the project would come in under budget and, therefore, did not believe the project was going to have major cost overruns.
- 4) During November 2003 was also the time period when major debate was going on in regards to the City needing the road, drainage and infrastructure at the park that the Management District could not provide.
- 5) While Linbeck and the Architect worked on the detail construction drawings and Linbeck was getting firm cost figures, the worldwide affects of steel price changes due to steel shortages, concrete and other construction material price changes were being realized. Also, the fact that the park in Texas had to be built differently due to potential hurricane winds and other climate conditions in Texas. Changes were made to the Park plans during November through April to cut costs of the project to keep within original budget. This required additional Architect time to change drawings. On March 30, 2004 a confirmation letter was signed by A. J. Harrison authorizing Linbeck to enter into subcontractor agreements for longer lead time items such as concrete, steel, drywall, electrical items to prevent delays in the project. This was signed before discussions of the cost overruns on the project and before approval from Council for the next phase of work by Linbeck.
- 6) When City Senior staff concluded that too many changes to the BLD Park would need to be made to come in at budget, City Senior staff had to go to Council to increase the park construction budget. This was done in April 2004.
- 7) Alternatives were worked out by BLD project team and given to council for a decision including an option to terminate. However, Phase 1 and II of Linbecks contract was in process and significant site work had been started. Also an authorization letter had been signed by the Mayor A.J. Harrison authorizing Linbeck to fix the prices for major construction material such as steel and concrete committing the City to Linbeck for these costs. If the City cancelled the contract, the City would have to cover the cost of the cancellation of all the contracts.

- 8) In performing the cost analysis on accepting the BLD project, the method of calculating whether the City should accept the project or not was calculated based on a calculation showing there was net savings for the City. The calculation to show there was net savings on the project included major assumptions that the City would have to pay out as much for a new park as the current Sportsplex. The calculation also assumed that the City Park operating costs would escalate over the years of the project. With the presentation given to council, City Senior staff showed that the City would have saved money by not using City resources to operate another park. This analysis, which is one way to consider the project, did not have a calculation to show what the true cost would be to the City for the project.

In presenting the option of building the BLD Park, as opposed to operating another City Sportsplex, a better analysis may have been a calculation of the total costs to the City for each option. With a park being built by the City with bond money the City has to pay out City resources. The project will still have expenditures that the City must pay. The cost presentation did not show that the City would actually have expenditures which the City would have to have a source of funds from taxpayers and others. The calculation did not show that the City had to pay out money for the BLD Park. The calculation did not show a total amount the City would spend over the life of the project. A calculation to show a comparison of the cost over the project life if the City built and maintained a basic park and then a calculation to show the costs for BLD Park could have been presented. A comparison of costs was not brought to Council's attention to show the true cost for each project and the potential savings to the City in evaluating this project. A comparison of the net present value of having a park using BLD as compared with the City building and operating just a basic 6 baseball park similar to the one in League City was not done. The intangible benefits such as economic development, increase tourism and the impact studies performed could have been used in evaluating the alternatives to help make the decision after evaluating the actual cost of the project.

- 9) The City had to pay for the BLD parkway, water sewer and drainage which had to be put in to have the park completed and useable. There were no signed agreements that the Management District or other parties agreed to pay for this infrastructure.
- 10) The equipment to furnish the BLD Park had to be purchased by the City - City subcontracted part to BLD California to obtain specific items that BLD California wanted without going through the bid process. Correspondence showed the City Attorney agreed to allow BLD California to purchase items directly and the City would reimburse BLD California. The total budget for the furniture and equipment was split between the City and BLD California so the total furniture and equipment budget was in line with the planned amounts.

- 11) Due to rain delays BLD Sports complex was not transferred to the City until May 9th, 2005 in lieu of the February 18, 2005 planned date.
- 12) The Construction costs from Linbeck were in accordance with its contract and the City adequately monitored the subcontracting and bidding processes used by Linbeck. There were no construction allowances left that were due back to the City from the management at risk contract.
- 13) Correspondence and discussions from the minutes of the City Council meetings indicate that justification for the project was not for it to break even or make money but to:
 - a) Support Economic Development in the City;
 - b) Add needed ball park facilities;
 - c) Have a less expensive facility over time than the current sportsplex;
 - d) Have an operator who could handle the facilities so that the City did not have to operate and maintain the facilities;

Findings:

- A. The project major stages were properly approved by Council These decisions are binding on the City and committed the City to the project.
- B. At the beginning of the project, the definition of the project and what should be included in the project varied greatly. It appears from the correspondence that the estimates being given out and discussed were only on the basic park. The original estimate of approximately \$13 million was only for the baseball park. Other costs incurred, which are being added to the project, came about due to the fact that the project was defined properly on what needed to be done and who was going to pay for it. Defining whether the land was included, or not, was the parkway included or not, the drainage system, construction management fees and site work. It appears the estimates and discussion were only on the basic park and the whole project was not being discussed (i.e. roads and infrastructure to the park, etc.).

- C. The City was under pressure from BLD-California in that another City in the area wanted to do the BLD Sports Park project. Also BLD-California did not want a referendum, nor public hearings. BLD California had a tight timetable in which they wanted to get the BLD Sports Park completed. The licenses fees and consulting fees to be paid to BLD California were approved by council, but the deliverables were for BLD's benefits as well as the City's and the agreements were set up so that the park had to be ready by a certain time or BLD California could terminate the agreements. Because of the pressure to build the BLD Sports Park in League City, certain decisions and assumptions could have been made to make sure the project kept going rather than being more objective on the assumptions about continuing with the project.
- D. The limitation on the responsibility of the information coming from BLD-California Consultants and the amount of reliance that could be placed on that information was not made clear to Council by the City Senior staff. The responsibility for the estimates made by BLD-California and advice coming from BLD-California was clearly limited based on the BLD California consulting agreement that was signed. Also, the preliminary estimates clearly stated that the estimates-did not include site-work, rough grading construction management, or offsite costs. The BLD Consulting agreement specifically stated that the architect and engineers of the city had to sign off on everything being done. BLD-California Consulting was mainly concerned with the look, conceptual design, image and operational aspects of the sports park. The cost of BLD-California Consulting and the Architects on the project was approximately 10% of the construction cost. The initial \$13 million was a best guess at the time for the Ball Park but clearly in hindsight did not try to represent everything that had to be done for the total BLD Sports Park project. Correspondence or worksheets showing what the true total project would cost to the City was not in the documentation we reviewed.
- E. City Senior staff was not reactive when cost overruns were being discussed with the contractor and the costs overruns were not communicated to council timely. City Senior staff also made assumptions concerning cost estimates and incurred costs in the design plans that should not have happened (they were expecting cost savings in certain areas to pay for the additional items). City Senior staff also did not include major components such as construction management that should have been added to the cost of the park rather than assuming cost savings were going to happen during construction that would cover these costs.

- F. In accordance with the CMR contract, commitments for steel, concrete, and other long lead time items were made by City Senior staff and the Mayor before Council was informed of cost overruns and before Council decided to approve continuing with the project. The City Senior Staff had made changes to the original BLD park plans with the assumption these could be worked in within the approved budget. This turned out not to be the case and these changes had to be taken out of the BLD park plans by the Architect who charged the City extra. The mayor signed a commitment to the Contractor for long lead items before Council made the decision to continue the project. Normally, this would not be a problem since the CMR contract was approved and was within the contract budget. However, this committed the City for additional cost before the construction phase was approved by Council.
- G. The Construction Manager at Risk (CMR) delivery system is designed to be used for projects that need to be built quickly. This method works best when the architect and contractor work to develop the detail construction drawings and obtain cost estimates as the project progresses. The CMR contract in some cases can fix the cost of the project and the contractor bears the risk of cost overruns. In most cases the work is done in phases (stages) and the work is being done on part of the construction project while later phases of the project is still being defined as to the scope of work, design, materials and cost. This creates a situation where cost is incurred in the project long before a firm price on the total construction project has been determined. The example is the site work that was approved which had to be completed before the building construction phase could be started. On the BLD park project, this created a situation where cost was put into the project before the total cost of the project was defined and known. When the main construction phase was finally defined, substantial cost had already been incurred by the City in early phases of the project such as site preparation work. The benefit of doing CMR type contract is that the work is started early to meet a time deadline. However, the detriment is that major portions of the construction costs may not be known until much later in the project and after the work has been started. If significant costs have already been incurred in the project then it is very difficult to stop the project. In the BLD Sports complex the amount of cost incurred and amount of work completed was used as part of the justification to continue the project.
- H. Costs overruns happened during the project due to construction material price increases which were beyond the City's control. Also, during the construction design phases the additional reinforcement steel required for expected hurricane force winds, the site work and other items that were not expected during the preliminary evaluating phase of the project caused additional costs. The costs overruns were explained to Council and valid reasons were given for the construction price increase during that time period. The increases in steel prices during that time period as well as other construction costs did happen and the cost increases would be passed on to the City.

- I. In the Cost benefit analysis, assumptions were made that the City would have cost savings on the project. A better analysis would have been comparing the net present value of expected cost for the BLD Park to a basic park the City would have built and operated such as the current sportsplex. This would have shown council a better indication of what the park would cost the City with BLD running it and then seeing the cost differential between the two alternatives rather than the belief that the BLD Park would not cost the City anything.
- J. The Council had several opportunities to stop the project during the process- However; it was a project that a majority of council believed should be completed. They believed that:
 - a) it would help resolve a shortage of ball fields,
 - b) it would provide park area that was needed,
 - c) that the costs of operating the park would be less than if the City did it themselves, and
 - d) that the Park would provide economic growth for the City.

Recommendations

- 1) On major projects, the City should assign a specific project manager that is actively involved in the project and does not have conflicting duties or so many other duties. The City needed to have someone watching more closely the overall project and protecting the City's interest. The City- relied heavily on BLD-California, which BLD-California had its own interest in making sure the BLD Park was constructed the way they wanted it – i.e. the BLD image-, getting it completed as fast as possible, using certain materials and equipment to keep operating costs and replacement costs down. The City even though they hired BLD California to do this, there was potential conflicts that could arise that the City needed to monitor, especially when cost overruns were being recognized. There is no documentation or other information indicating BLD California did not act in the best interest of getting the BLD Park completed properly for everyone involved. However, the potential conflicts of interest were present. The City in the future should appoint a person with the expertise to represent the City's complete interest on a major construction project such as BLD Park.

- 2) On future major projects, the City should have a lead architect more familiar with Gulf Coast area. In the BLD project Purkis Ross appears to be fine and did use other architects in the area, however, major problems such as drainage issues, steel strength and wind load should have been determined during feasibility study not during construction phase. An architect more familiar with building conditions in the Gulf Area may have recognized these problems earlier.
- 3) Council should continue with discussing the issues and should make decisions to the best of their abilities as done in the past. Council did not have the best information presented to them in a way to help make decisions; however they did have various discussions on the pros and cons of the project and made the decisions. These decisions were very difficult and as pointed out very political. The Council performed in accordance with what is expected of the leading decision making body of the City and made the decisions to go forward. They used workshops, had various presentations from consultants as well as City staff and council did receive citizens input. The council voted in a proper democratic forum where the majority rules. The Council should continue this process to make sure they make the best decision for the City based on the information they have available.
- 4) City Senior staff should in the future make sure the facts are disclosed and they evaluate how realistic the calculations are when preparing forecast on projects. An example is, assuming the City would have enough cost savings from BLD California's estimates to cover contract management and site work. In hindsight clearly this was not a valid assumption. Also City Senior staff assumed that they would have costs savings and therefore, added items in the park that was not approved by Council which later had to be taken out - incurring additional Architect costs. City Senior staff should review the assumptions being made in calculating forecast information to make sure the amounts are realistic and the assumptions are realistic.
- 5) City Staff should be clearer on what is included in a project estimate when presenting the project information. From the beginning of the project various estimates were used without defining what was in the estimates. There would be caveats mentioned like based on similar parks in California. However, most of these estimates were indicated as preliminary. It appears estimates given to Council were not close to actual. Senior staff needs to be careful on estimates given to Council and define what is included in the estimate. The council clearly got to a point they could not rely on amounts coming from Senior staff. Progress needs to be made when giving Council estimates to assure they are more realistic. When actual bids are received that differ significantly from estimates given to Council, these should be discussed as soon as possible.

- 6) Council should consider a Policy on Private-Public Partnerships in defining the expectations on how they will work. The policy should state whether the City expect the project to break even or not. What type of Private-Public Partnerships would be allowed. How will the partnership be monitored and what are the benefits to the City.
- 7) The City should make sure proper agreements are signed and in place before acting with the assumption that the certain actions they would like to happen will actually happen. In a project such as the BLD Sports Park, making sure proper agreements have been drafted before approval of the project is required. City Engineers had asked questions about the infrastructure during the DRC review and was advised that was being handled by the Management District. However, no agreements had been made to contractually commit anyone to the infrastructure. The City Senior Staff should have had in a contract who was supplying the road and drainage before advising the DRC review that the road and drainage was being handled by the Management District. The contracts must be put into place before approval is given to proceed with the project. Also, there was an expectation that the City 4B Corporation was going to provide funds which no agreement was signed. The City must makes sure that the proper contracts are put into place before making decisions and implementing plans with the assumption that critical items in a project will just happen.
- 8) The City should be aware of potential problems with the different deliver methods in approving construction contracts. This was the first time the City used the Contractor Management at Risk (CMR) contract and problems should have been expected. As normally done with a CMR contract, the contractor was approved to proceed before all of the construction phases were defined and before the total cost of the project was known. The CMR does help to move a project along faster when time is a major issue. The CMR allows the contractor to start doing work on the site while still developing the final cost estimates for the rest of the project. This is very typical of a CMR contract. As phases are bid out, the construction manager would get firm prices and once the firm price is approved by the City, the cost is locked in. The City can review the cost quotes and the City has the right to change vendors used by the Contractor during that process.

Based on the documentation we reviewed, Linbeck went through the process of getting bids for major portions of the project as required and quoted phases of the project as required. Linbeck also communicated cost overruns to City Senior staff. When the project is not completely defined in the beginning of a project, the Construction Management at Risk contract makes it difficult to get good total cost figure for the construction since final construction drawings are not completed until later in the project. Management at Risk contracts work well when a project needs to be finished fast and you have a proven design, a defined scope of materials, building drawings and the project has been done before.

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The City should use CMR contracts only in cases when time is a major issue and the City should try to have the contract amount approved when the majority of cost has been committed by the Contractor. The City should not allow major projects to incur large amounts of start up costs and preliminary work until commitments can be made on the total costs in a CMR contract.

We were not engaged to and did not perform an audit, the objective of which would be the expression of an opinion. Accordingly, we do not express an opinion. Had we been engaged to perform additional procedures, other matters might have come to our attention that would have been reported to you. In addition, we make no representation whatsoever regarding the sufficiency of the procedures performed.

This report is intended solely for the information and use of those specified in the third paragraph of this report and is not intended to be, and should not be, used by anyone other than these specified parties.

Null-Lairson P.C. CPA's

April 26, 2006
Houston, Texas