

OFFICE OF THE COMPTROLLER

ORANGE
COUNTY
FLORIDA

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November 13, 2013

Mayor Teresa Jacobs, Orange County
and
Board of County Commissioners

Attached is a copy of the "Report to the Orange County Comptroller's Office: Dr. Phillips Performing Arts Center Project Assessment" which was prepared by our consultants, KPMG LLP (KPMG). The report was limited to an assessment on the key Project governance controls, including the procedures in place to provide oversight and management of the project, by the Owner's Representative.

Responses to KPMG's Recommendations for Improvement were received from the Owner's Representative and are incorporated in the report. This Report will be on my agenda for a future Board meeting.

We appreciate the cooperation of the staff of the City of Orlando, the Dr. Phillips Center for the Performing Arts, the Owner's Representative, and the Construction Manager during the course of the engagement.

Martha O. Haynie, CPA
County Comptroller

c: Mayor Buddy Dyer, City of Orlando
James H. Pugh, Jr., Chairman of the Board, Dr. Phillips Center for Performing Arts
Katherine Ramsberger, President, Dr. Phillips Center for Performing Arts
Clint Jackson, Owner's Representative, PCL Construction Services, Inc.
Ajit M. Lalchandani, County Administrator



cutting through complexity

Report to the Orange County Comptroller's Office: Dr. Phillips Performing Arts Center Project Assessment

November 5, 2013





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November 5, 2013

J. Carl Smith, CPA
Director of County Audit
Orange County Comptroller's Office
P.O. Box 38
Orlando, FL 32802

Dear Mr. Smith:

We have completed our project assessment of the construction management of the Dr. Phillips Performing Arts Center as outlined in our contract dated June 14, 2013. This report to you represents our final report for the project assessment.

The data included in this report was obtained from you and the Dr. Phillips Performing Arts Center Owners Representative on or before November 5, 2013. We have no obligation to update our report or to revise the information contained therein to reflect events and transactions occurring subsequent to November 5, 2013.

This report is solely for your information and is not to be referred to in communications with or distributed for any other purpose to anyone who is not a member of management or board of directors of the Orange County Comptroller's Office. This is not intended to restrict distribution as required by law.

Please contact David Dennis at (407) 563-2227 if you have any questions or comments. We look forward to continuing to provide service to your company on this project.

Very truly yours,

KPMG LLP

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Executive Summary

Summary of the Project Assessment

This report presents the results of KPMG LLP's (KPMG) project assessment of the Dr. Phillips Performing Arts Center ("DPAC") project ("the Project"). The Dr. Phillips Performing Arts Center is a multi-venue performing arts center to serve the City of Orlando, Orange County and Central Florida. The venue will be managed by the not for profit entity, the Dr. Phillips Center for the Performing Arts ("DPCPA"). The Project is being constructed in two phases including a 2,700 seat amplified hall, a 1,700 seat acoustic hall and a 300 seat venue as well as 10,000 square feet of educational and multi-purpose space. The focus of this project assessment includes Phase 1, which excludes the 1,700 seat acoustic hall, being constructed in Phase II of the Project. This assessment focused on the key project governance controls including the procedures in place to provide oversight and management of the project by the Owner's Representative, PCL Construction, Inc. ("PCL" or "Owner's Representative").

The objective of this engagement was to assess existing project management processes and, where applicable, make recommendations for improvement regarding the key policies, procedures, processes and controls for the following focus areas:

- Project Strategy, Organization and Administration
- Procurement
- Cost and Financial Management
- Project Controls and Risk Management
- Schedule Management

This project assessment was performed during the period from June 27, 2013 through October 2, 2013. Our approach for developing this report focused on the identification of issues through interviews, research and analysis of key project management processes, including tests of compliance against existing processes or leading practices.

Results of the Project Assessment

Based on the assessment, the Owner's Representative has provided the appropriate level of management and oversight of the Project through prior project experience and internal processes to manage key project functions. We found that the Owner's Representative implemented a number of leading practices, including but not limited to the following:

- A quarterly risk assessment process to identify current project risks and evaluate the potential impacts (fiscal, time, quality)
- Annual construction cost audits of the construction manager to help ensure the amounts billed are in compliance with the contract terms and conditions.
- Streamlined invoice review and approval process to allow for the timeliness of vendors' payments in accordance with prompt payment requirements.

The Project may benefit from further developing and formalizing key processes to help determine that the appropriate internal policies, procedures, processes and controls are in place and operating effectively to identify and mitigate risks that could impact successful completion of the Project. A summary of the observations and related recommendations identified during the project assessment are included in the Summary of Observations Section of this Report. Our observations and related recommendations are presented to further facilitate discussion of management oversight and key controls governing the Project.

Background

Project Background

The DPAC Project is a multi-venue performing arts center, operated by the DPCPA that will serve the City of Orlando, Orange County and Central Florida. The Project is on a nine acre site located in downtown Orlando including two performance theatres, a community theatre, outdoor plaza and performance space, rehearsal rooms, administrative offices and educational programming. The City of Orlando, Orange County and the DPCPA entered into an agreement in 2007 to plan and construct the performing arts center, which will be the new performance venue for the Orlando Ballet and the Orlando Philharmonic.

Due to funding delays related to the economic downturn of 2008, the construction of the performing arts center was designed to be constructed in two major phases. Phase 1 is fully funded and currently under construction including the 2,700 seat amphitheatre, a 300 seat venue for smaller functions, a banquet hall and 10,000 square feet of educational and multi-purpose space. Phase 1 also includes the back of house and administrative support for the venue. Phase 2, which includes the 1,700 seat acoustical hall, is currently in the design phase. While the government funding commitments have been met, as of the date of this report, private funding to finance construction of the Project continues.

Project Organization

In June 2007, the City of Orlando, the City of Orlando Florida Community Redevelopment Agency and Dr. Phillips Center for the Performing Arts entered into an agreement to set up the organizational structure and funding for construction of a new performing arts center. The purpose of this agreement was to establish funding requirements and the management structure for design, construction, operation and maintenance of a new performing arts center. Subsequently, in August, 2007, the City of Orlando, Orange County and the City of Orlando Florida Community Redevelopment Agency entered into an agreement to finance the design and construction of the new Performing Arts Center through various funding streams. The funding sources for the Phase 1 budget of \$270 million are detailed below and summarized in **Table 2 – Summary of Project Sources:**

- City of Orlando Funding of approximately \$129 million;
- City of Orlando Infrastructure funding of approximately \$11 million;
- Orange County Tourist Development Tax ("TDT") pledge of approximately \$53 million;
- Private Pledges in excess of approximately \$48 million;
- A State of Florida grant of \$15 million; and
- Various contingency reserves, interest earnings totaling approximately \$14 million.

In June, 2011, DPCPA, the City of Orlando and the Orlando Community Construction Corporation ("OCCC") entered into an agreement to transfer authority to manage Phase I DPAC design and construction to the OCCC. The OCCC was developed as a management and oversight board comprised of seven appointed individuals representing various organizations: Orange County, the City of Orlando, Dr. Phillips' Charities, Orlando Magic, Disney, Florida Department of Transportation and DPCPA. The OCCC is responsible for Project oversight and management and hired PCL Construction Services, Inc. ("PCL Construction") to serve in this capacity and to be the Owner's Representative on the Project.

The organizational hierarchy of the project involves multiple stakeholders responsible for the contracting, funding, and operations of the Project. A summary of the key stakeholders and vendors providing

services is summarized in **Table 1**. Additional details regarding the Project organizational structure is included in **Appendix A** to this report.

Table 1: Role of Key Vendors

Project Role	Key Stakeholders
Funding Sources	<ul style="list-style-type: none"> City of Orlando, Florida Orange County, Florida Dr. Phillips Center for Performing Arts State of Florida
Management and Oversight	Orlando Community Construction Corporation ("OCCC")
Owner's Representative	PCL Construction Services, Inc.
Development Consultant to Owner's Representative	Hines Interests Limited Partnership
Construction Manager	Balfour Beatty Construction Corporation
Executive Architect / Architect of Record	HKS Architects, Inc.
Design Architect	Barton Myers Associates, Inc.

A summary of the key contracts for each of the key stakeholders executed on this Project is included in **Appendix C** to this Report.

Project Status

DPCPA entered into a Construction Management agreement with Balfour Beatty Construction Corporation ("Construction Manager" or "BBC") under a cost plus with a guaranteed maximum price agreement in the amount of \$134.4 million. As of the date of this report, eight (8) amendments, increasing the contract value by \$13.6 million, and twelve (12) change orders, reducing the contract value by \$31.8 million, have been approved for a total amended contract value of \$116.2 million. The change orders largely represent owner direct purchases for machinery and equipment paid for directly by the City of Orlando for the purposes of achieving sales tax savings. As of August 31, 2013, the Construction Manager has billed \$50.3 million, or 43% of the current amended contract value to date.

According to the August 2013 Owner's Representative Monthly Report, the Project is currently reported to be within the approved project budget and completed on schedule. Amendment No. 8 to the Construction Manager's agreement was approved in August 2013 and reset the baseline schedule for the Project. This included revising the substantial completion for the back of house and administrative offices to April 1, 2014 and substantial completion for the remainder of the Project to June 1, 2014. The current Final Completion for the Project is December 1, 2014. The current approved budget of \$222.2 million for state and local funds remains unchanged. A summary of the approved budget sources and uses is summarized in **Table 2** and **Table 3** below.

The Project is currently on target to meet the Community Blueprint Program initiatives including Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) goals established for the project. In addition, the Project is applying for and expected to qualify as LEED Certified.

Project Funding Sources and Uses

The initial Phase 1 budget was \$251.8 million with \$201.6 million from public funding sources and \$50.2 from private funding sources. As of September 2013 the approved budget has increased \$18.7 million resulting in a revised total budget of \$270.5. The public funding has increased \$20.6 million for a revised public funding total of \$222.6 million. The private funding for Phase 1 has decreased \$2.3 million due to shifting scope from Phase 1 to Phase 2. The revised private funding through June 30th is \$47.9 million. A complete summary of the sources and uses of the initial and current approved budget as of September 25, 2013 is provided below in **Table 2 & Table 3**.

Table 2 – Summary of Project Sources

Sources	Initial Stage 1 Budget ^{1,2}	Current Budget (9/25/2013) ^{3,4}
Public Funding Sources*		
City of Orlando CRA Series 2009 and 2010	\$129,000,000	\$129,000,000
Tourist Development (TDT) Revenue Received	9,600,000	22,438,387
Future TDT Revenues	43,000,000	30,131,134
State Funding	15,000,000	15,000,000
City's Infrastructure Funds	5,000,000	11,000,000
Residual Contingency for DPCPA Funded Amendments	-	7,525,753
DPCPA Funded Amendments	-	831,920
Interest Earnings	-	6,701,969
Subtotal Public Funding	\$201,600,000	\$222,629,163
Private Funding Sources**		
Private Philanthropy	\$50,206,486	\$47,862,609
Subtotal Private Funding	\$50,206,486	\$47,862,609
Total Funding Sources	\$251,806,486	\$270,491,772
<p>Sources</p> <p>¹ – Public Funding per <i>DPAC Fact Sheet dated May 18, 2011</i></p> <p>² – Private Funding per <i>DPAC Budget update original budget as of June 1, 2011.</i></p> <p>³ – Public Funding per <i>DPAC State 1: Summary of Sources and Uses</i> provided by the City of Orlando through September 25, 2013</p> <p>⁴ – Private Funding per <i>DPAC Budget update Current Project Value as of December 31, 2011</i></p> <p>Note</p> <p>* The public funding sources were provided by the City of Orlando and were not independently verified by KPMG in performing this scope of services.</p> <p>**Public Funding Sources are for reference purposes only and were not included in the scope of the analysis performed by KPMG.</p>		

Table 3 – Summary of Project Uses

Uses	Initial Stage 1 Budget ¹	Budget as of	Actual Cost	% Complete	Balance to Complete
		9/25/2013 ²	To Date		
Public Funding Uses					
Land Acquisition	\$14,000,000	\$14,000,000	\$14,000,054	100.00%	(\$54)
Architectural & Engineering (HKS)	32,240,000	35,203,800	28,944,086	82.22%	6,259,714
Architectural & Engineering (Other)	3,750,000	3,638,268	3,228,929	88.75%	409,339
Construction (GMP)**	132,718,490	146,410,189	69,816,538	47.69%	76,593,651
Testing and Inspection	1,900,000	2,283,490	2,189,102	95.87%	94,388
Permits and Furniture Fixtures & Equipment (FF&E)	3,850,000	2,960,000	751,096	25.37%	2,208,904
OUC Usage and Connection	-	1,026,475	211,092	20.56%	815,383
Net Post GMP Costs	100,000	-	-	-	-
Owner's Representative (PCL)	-	2,500,000	1,100,939	44.04%	1,399,061
Enhanced Plaza	-	3,036,200	-	0.00%	3,036,200
Miscellaneous / Available for Other Use	41,510	393,212	-	0.00%	393,212
Project Contingency	13,000,000	11,177,529	\$0	0.00%	11,177,529
Subtotal Public Funding	\$201,600,000	\$222,629,163	\$120,241,836	54.01%	\$102,387,327
Private Funding Uses					
Land	\$17,500,000	\$17,500,000	\$17,469,575	99.83%	\$30,425
Design (Barton Myers)	11,847,001	11,361,910	11,186,757	98.46%	175,153
Design Development Consultant	-	485,091	-	0.00%	485,091
Owner's Representative (PCL)	5,643,274	5,799,397	3,252,419	56.08%	2,546,978
Owner's Representative (Funded by City)	-	(2,500,000)	-	0.00%	(2,500,000)
Consultant (Hines)	12,071,084	12,071,084	11,326,924	93.84%	744,160
Legal	656,196	656,196	408,178	62.20%	248,018
DPC Construction Staff	880,000	880,000	682,712	77.58%	197,288
Other Preconstruction Costs	1,608,931	1,608,931	1,608,931	100.00%	-
Subtotal Private Funding	\$50,206,486	\$47,862,609	\$45,935,496	95.97%	\$1,927,113
Total Funding Uses	\$251,806,486	\$270,491,772	\$166,177,332	61.43%	\$103,921,228
**Note: The construction (GMP) includes targeted owner direct purchase tax savings of approximately \$159,000 that have not been realized as of the date of this report. According to the project team, these tax savings will be fully realized as of early 2014.					
Sources					
¹ - DPAC Fact Sheet dated May 18, 2011 provided by the City of Orlando					
² - DPAC State 1: Summary of Sources and Uses provided by the City of Orlando on September 25, 2013					

Scope, Objectives and Approach

Scope and Objectives

KPMG was engaged by the Orange County Comptroller's Office to perform a project assessment of Phase 1 of the Dr. Phillips Performing Arts Center currently under construction. The Scope of our engagement included Phase 1 of the Project. The objective of this engagement was to assess existing project management processes and, where applicable, make recommendations for improvement regarding the key policies, procedures, processes and controls for the following focus areas:

- Project Strategy, Organization and Administration
- Procurement
- Cost and Financial Management
- Project Controls and Risk Management
- Schedule Management

Approach and Methodology

KPMG's approach, to accomplish the stated objective, included the following tasks for the project management services noted above:

- Interviewed eleven (11) key project personnel to understand the structure and the operational responsibilities within the organization, the current state of the project, the project outlook and forecast, and to discuss relevant processes and controls associated with the development and management of the Project;
- Requested, reviewed and analyzed PCL's current policies, procedures, and processes in order to identify any policies and procedure gaps;
- Selected a sample of contracts, purchase orders, invoices, and contract change documents for further analysis and comparison to industry leading practices;
- Tested and analyzed a sample of project cost documents including applications for payment, vendor invoices, and change orders for compliance with the contract terms and policies;
- Identified potential areas requiring further detailed review;
- Developed observations and recommendations regarding potential gaps, weaknesses, or overlap in controls which may pose potential risks and identified opportunities for further enhancement.

Summary of Observations

Project Strategy, Organization and Administration

1. Project Organizational Structure

The current project organizational structure including contractual relationships is not reflective of the current operating environment and not ideal for delivering an integrated and complex project such as the DPAC. There is one party holding the contracts, one party responsible for paying vendors and another for providing management and oversight on the Project, including reviewing and approving invoices for payment.

Generally, the party that holds a contract is responsible for administration, management and oversight of that contract, as well as making payments related to that contract. However, that is not the case for this project. The key issues identified after reviewing the project organizational structure includes:

- DPCPA holds the contracts with many of the key vendors (architect of record, executive architect, construction manager, and owners representative) but is not responsible for providing contract management and oversight or paying vendors.
- The OCCC (via the Owner's Representative, PCL) is responsible for direct management and oversight of the key vendors, but does not have a contractual relationship or responsibility for paying the vendors. The Owner's Representative is responsible for reviewing and approving all of the vendor invoices prior to processing by the City of Orlando.
- The City of Orlando is responsible for paying vendors but does not hold the contracts and is not directly responsible for management and oversight of the contracts. The City of Orlando is also responsible for reviewing and approving all amendments and changes to the agreements with vendors in accordance with the Master Owner's Representative Services Agreement (MORSA). In addition, the City of Orlando has a Project Director working closely with the Owner's Representative providing oversight and management on behalf of the City.

A summary of the organizational structure and key Project relationships is summarized in **Appendix A**. A summary of the key contracting documents and parties to those can be found in **Appendix B** and **Appendix C**.

The current organizational structure is a result of the Project history and the number of the contracts procured by DPCPA, prior to execution of the MORSA agreement. The MORSA Agreement gave responsibility for overseeing the design and construction to the OCCC.

Overall, the Project has been managed effectively with all of the key parties working within the established parameters of the current organizational structure and the MORSA Agreement. However, some vendors have experienced challenges in communication and obtaining feedback on key decisions with the multiple parties (e.g., Owner's Representative and City of Orlando Project Director) involved in the oversight and management of the Project. This is further complicated by the fact that while DPCPA holds the contracts, the City of Orlando processes payments.

While the current organizational structure is not anticipated to be changed for the final year of the Project, it is an issue that the key stakeholders should be aware of as decisions are made for the balance of Phase 1 and when finalizing the Project organization for Phase 2.

Risk

The organizational structure of the project may lead to ineffective communication, delays in required project approvals or inefficient project management practices in delivering the project.

Due to multiple parties involved in managing contracting agreements, there is a risk of decisions and approvals being made not in compliance with the contract terms.

Recommendation #1

For the current project, the Owner's Representative should continue to ensure that the roles and responsibilities of all of the key stakeholders are clearly defined regarding management reporting and key decisions on the Project. The Owner's Representative may consider developing a RACI Matrix (Responsible, Accountable, Consult, and Inform Matrix) or equivalent tool to assist in clearly defining the roles and responsibilities of key parties.

For future projects, the key stakeholders should consider revising the organizational structure so the parties executing and holding the contracts are the parties overseeing and managing the project.

Management Response (Prepared by Owner's Representative):

The Owner Representatives recognize the risk summarized by the audit team and would like to note that the risk identified has been effectively managed with no documented delays in approvals nor any affect to the execution of the work. Roles and responsibilities (or "RACI" as stated in the matrix) have been presented to the audit team for individual project entities and their staffs. These individual "RACI" have been in place for the duration of the project. The recommendation made by the audit team to produce a global entity roles and responsibilities matrix is appreciated by the Owner Representatives and a document will be created for the project and published in November 2013.

2. Formal Policies and Procedures

The Project's Owner's Representative does not have formal documented policies and procedures governing the key project management activities. The Owner's Representative (PCL) relies on internal informal processes and the relevant contract terms and conditions for contract administration, as well as managing the invoice approval and change management processes. However, the Owner's Representative does not have formal documented policies and procedures for each of the following key project management processes:

- Procurement
- Change Management
- Budgeting & Forecasting
- Invoice Review and Approval
- Risk Management
- Schedule Management

Our assessment indicates that there are consistent informal processes in place to manage the key project management controls. In addition, the Owner's Representative relies on the contract terms and conditions within the Construction Management (BBC) agreement for both the invoice review and approval process and change management processes. However, there is not a formal process to show the necessary procedures that the Owner's Representative will take in reviewing and approving invoices and changes prior to approval. There is consistent reporting provided by both the Owner's Representative and Construction Manager performed on a monthly basis.

While this assessment did not identify any significant gaps or deficiencies in the informal project management processes and controls in place by the Owner's Representative, leading practices suggest that formally documented policies and procedures should be in place for key project management processes.

Risk

A lack of formally developed and documented policies and procedures may lead to inconsistent and inefficient project management processes that could have been avoided with formal policies & procedures.

Recommendation #2

The Owner's Representative should consider developing formal policies and procedures including clearly defined guidelines and detailed processes to manage project management activities including but not limited to procurement, contract administration, change management and the payment application review and approval process.

Management Response (Prepared by Owner's Representative):

The Owner Representatives recognize the risk summarized by the audit team and are developing formal procedures for the management processes bulleted in the audit report and some other key processes not listed in the audit report. Policies will only be developed if clarification to guiding contract language is warranted. The formal procedures will be published in November 2013 and will be kept in the Owner Representative's trailer for reference. We would like to note that the risks identified have been effectively managed with no documented delays in approvals nor any affect to the execution of the work.

Procurement Management

3. Procurement File Management

There is no centralized procurement file for the contracts awarded on the Project. The Project procurement files are not located in a single location and instead are maintained by the various Project stakeholders including the City of Orlando, DPCPA, and the Owner's Representative.

In requesting procurement files for testing of procurement, we found that there is not a centralized location where all procurement files from the Project are maintained. To obtain the necessary procurement files, the Owner's Representative needed to contact other stakeholders to obtain copies of the necessary documentation.

For example, in requesting the construction manager procurement file, the Owner's Representative was only able to provide the Construction Manager's submitted proposal document. The Owner's Representative did not maintain or have a copy of the Construction Manager procurement file showing all bids received, analysis, and required approvals. While this file was maintained in both the Construction Manager's trailer and at DPCPA's office, it was not maintained by the Owner's Representative because they were not a contracting party (Refer to Observation #1 regarding Project Organization).

The Owner's Representative maintains copies of the active contract agreements in a contract administration file for which they are responsible for overseeing and managing including the Construction Manager, Executive Architect and other consultants.

While the Owner's Representative was ultimately able to obtain relevant copies of all of the requested procurement files, we recommend as a leading practice that procurement files are maintained in a central location. While this may not be practical for the current Project based on the current status of construction, this process should be considered for Phase 2 and future projects.

Risk

There is a risk that procurement files may not be adequately maintained in accordance with project requirements.

Key stakeholders may not have access to relevant procurement needed to make informed decisions.

Recommendation #3

The Owner's Representative should consider developing a central repository for all procurement files for the Project.

Management Response (Prepared by Owner's Representative):

The Owner Representative recognizes and appreciates the recommendation to centralize all procurement files. The Owner Representatives will work with other stakeholders to obtain either paper or electronic files for storage in the project's centralized file system.

Cost and Financial Management

4. Payment Application Review –Application for Payment Review Process

The Owner's Representative does not have a formal documented process in place for the review of the Construction Manager's application for payment to help ensure the underlying supporting subcontractor applications for payment include the necessary support. While the Owner's Representative does have a standard informal process to review subcontractor progress billings to ensure work is in place, we noted inconsistencies in the review process in confirming the following:

- Approval by the subcontractor;
- Reconciliation to the signed application by the subcontractor; and
- Signed and notarized subcontractor lien waivers are included.

In certain instances, we noted that the changes made to the subcontractor's progress billings during the pencil draft review were not reflected in the final invoice approved for payment. Per discussion with the Owner's Representative, we noted that the subcontractors were informed of edits in their submitted payment applications; however, we did not observe revised copies resubmitted with the final application for payment.

Based on a review of a sample of the Construction Manager's applications for payment, subcontractors did not consistently submit conditional lien waivers as a condition for payment. As a result, this control may not function as designed to assist the Owner's Representative in identifying potential future subcontractor payment disputes. The Owner's Representative confirms that the Construction Manager submits an unconditional lien waiver from the prior month with each Application for Payment, but they do not consistently confirm that the subcontractor lien waivers are provided and complete as required by the Construction Manager's agreement. As an example, our review of Construction Manager Application for Payment #44 and #45 did not include copies of subcontractor conditional lien waivers as a condition for payment.

Since the Project is on land owned by the City of Orlando and the Project has a payment and performance bond, it is our understanding that contractors and subcontractors are prevented from filing liens under Florida law. Regardless of whether contractors and subcontractors can or cannot file liens, failure to provide lien waivers or updated applications for payment can be an early indicator of potential issues or non payments to a subcontractor.

As a mitigating control, the Owner's Representative requires the Construction Manager to maintain a tracking log of all subcontractor lien waivers submitted on the Project and submit a Notice of Non-Payment log with each Application for Payment in order to identify any subcontractors that have not been paid in full. While these controls appear to be working and have not resulted in a significant issue resulting from a subcontractor lien on the property, it is a leading practice to have a formal, written process in place to ensure copies of signed and notarized conditional lien waivers are submitted with each subcontractor application for payment to assist in identifying potential non-payment issues with subcontractors.

Risk

While the risks associated with this observation primarily resides with the Construction Manager due to the contract terms, there is a risk that subcontractors do not agree with the revised applications for payment resulting in potential payment disputes that may negatively impact the project.

Recommendation #4

The Owner's Representative should consider developing and documenting a formal process to review the Construction Manager's application for payment to confirm the amounts billed has been agreed to with the subcontractor and a lien waiver is obtained from each subcontractor.

Management Response (Prepared by Owner's Representative):

The audit correctly points out the risk that adjustments made to subcontractor billings and lack of receipt of conditional lien waivers from subcontractors could lead to payment disputes with the CM. The Owner Representative also appreciates the audit team's recognition that the OR requires the CM to provide tracking logs for sub lien releases and any monies withheld to subcontractors with each application for payment as a mitigation strategy. However, the Owner Representative recognizes the value to the audit team recommendation that a formal process for pay application review be developed to add additional security to prevention of disputes. The formal written process will be finalized by the Owner Representative in November 2013.

5. Change Order Analysis – Bluebeam Mark Up on Construction Manager Changes

There is a mark up included within each Construction Manager change orders for technology costs related to Bluebeam, a building information modelling software tool, that is not clearly supported as an agreed upon mark up in the contract terms. There is a 1.81% mark up included in the owner change orders related to technology costs for the BIM/Bluebeam that does not appear to be supported by either actual costs incurred or an agreed upon rate in the contract terms. The mark up included in approved changes increases the amount of the general conditions line item for technology costs and is billed on a percentage of completion basis that may not reflect actual costs incurred.

Per Balfour Beatty Payment Application #45, through June 15, 2013, there has been an increase in BlueBeam Costs totalling \$25,389, including:

- \$20,309 of changes through Amendment #5;
- \$5,012 of changes through Owner Change Order #12; and
- \$68 of changes through BT #117.

This issue was also identified during the annual cost audit of the Construction Manager and will be addressed further to determine the actual costs incurred related to the technology support. The Owner's Representative and external audit firm who performed the cost audit are working with the Construction Manager to determine the actual costs incurred related to these costs, and will ultimately determine the actual cost billed in excess of the allowable cost per the contract terms, if appropriate.

Risk

There is a risk that the owner is being billed for costs that are not in compliance with the contract terms.

Recommendation #5

The Owner's Representative should continue to follow up on the issue identified for the Bluebeam technology costs to determine whether the amounts billed and mark up included in change orders are in accordance with the contract terms.

Management Response (Prepared by Owner's Representative):

As stated in the audit, the Owner Representative has been actively following this issue and will continue to do so as recommended by the audit team.

6. Change Order Analysis – Builder's Risk Insurance Mark Up on Construction Manager Changes

The mark up for builder's risk insurance of 0.6953% that is included in the Construction Manager change orders is not clearly defined by the contract terms. Based on further analysis and discussion with the Owner's Representative, the mark up for builder's risk insurance included within each change order is an estimate based on the Construction Manager's anticipated costs. Based on the applied mark up to each change, the builder's risk component of the guaranteed maximum price is increased. However, the Construction Manager is only billing the Project actual costs incurred for Builder's Risk. The Owner's Representative will require the Construction Manager to perform a final reconciliation of the actual costs incurred at Project completion to help ensure the amounts billed are in compliance with the contract terms.

Risk

There is a risk that builder's risk is being billed to the project that is not in compliance with the contract terms.

Recommendation #6

The Owner's Representative should ensure that a final reconciliation of the Construction Manager's actual costs incurred for builder's risk insurance is performed at project close out and prior to final payment, that the proper adjustment (if necessary) is applied to the project.

Management Response (Prepared by Owner's Representative):

The Owner Representative will follow the recommendation of the audit team. Additionally, the Owner Representative requires verification by the CM of amounts billed for Builder's Risk via invoice prior to recommending payment of that line item to the CM.

Schedule Management

7. Schedule Risk

There is a risk for potential cost impacts and schedule risk related to the current Project schedule.

Amendment No. 8 to the Construction Management agreement revised the Project Schedule to extend the substantial completion date for the back of house and administrative support portion of the Project to April 1, 2014. In addition, the substantial completion date for the entire Phase 1 Project, including the theatres, was extended to June 1, 2014 with a final completion date of December 1, 2014. Within this amendment, the Construction Manager agreed there would be no costs associated with the extended schedule with the exception of a number of cost events and potential time events identified as of the date of the Amendment. According to the Owner's Representative and Construction Manager, the major task contractors, such as steelworkers, HVAC, electrical, and plumbing contractors, have agreed that there would be no additional costs due to the schedule extension included in Amendment No. 8.

While there is currently no expected cost impact to the Project, there is a risk that subcontractors will incur additional costs due to the time extension, increases for union contract labor rates or acceleration of their scope of work. According to the Owner's Representative, It appears that any risk related to additional subcontractors or lower tier subcontractors requesting additional costs is limited and expected to be funded through the contractor's contingency.

The current project schedule includes a number of key milestones and key activities that need to be completed in order to achieve the substantial completion dates within the current project schedule. This includes completing the building enclosure to allow progress on interiors and finishes in accordance with the current schedule. In addition, while not currently identified there is the risk that there may be unanticipated claims or changes submitted at the completion of the Project from subcontractors performing work on the Project.

While the potential impacts resulting from recent schedule updates are not currently known, the Owner's Representative is currently performing a quarterly risk assessment to identify any potential cost and schedule impacts, in addition to those identified in Amendment 8, and to help ensure that there is adequate Owner's contingency available.

Risk

There is a risk of future cost and schedule impacts including requests for changes or claims being applied to the project due to subcontractors incurring additional indirect and direct costs related to the Project schedule.

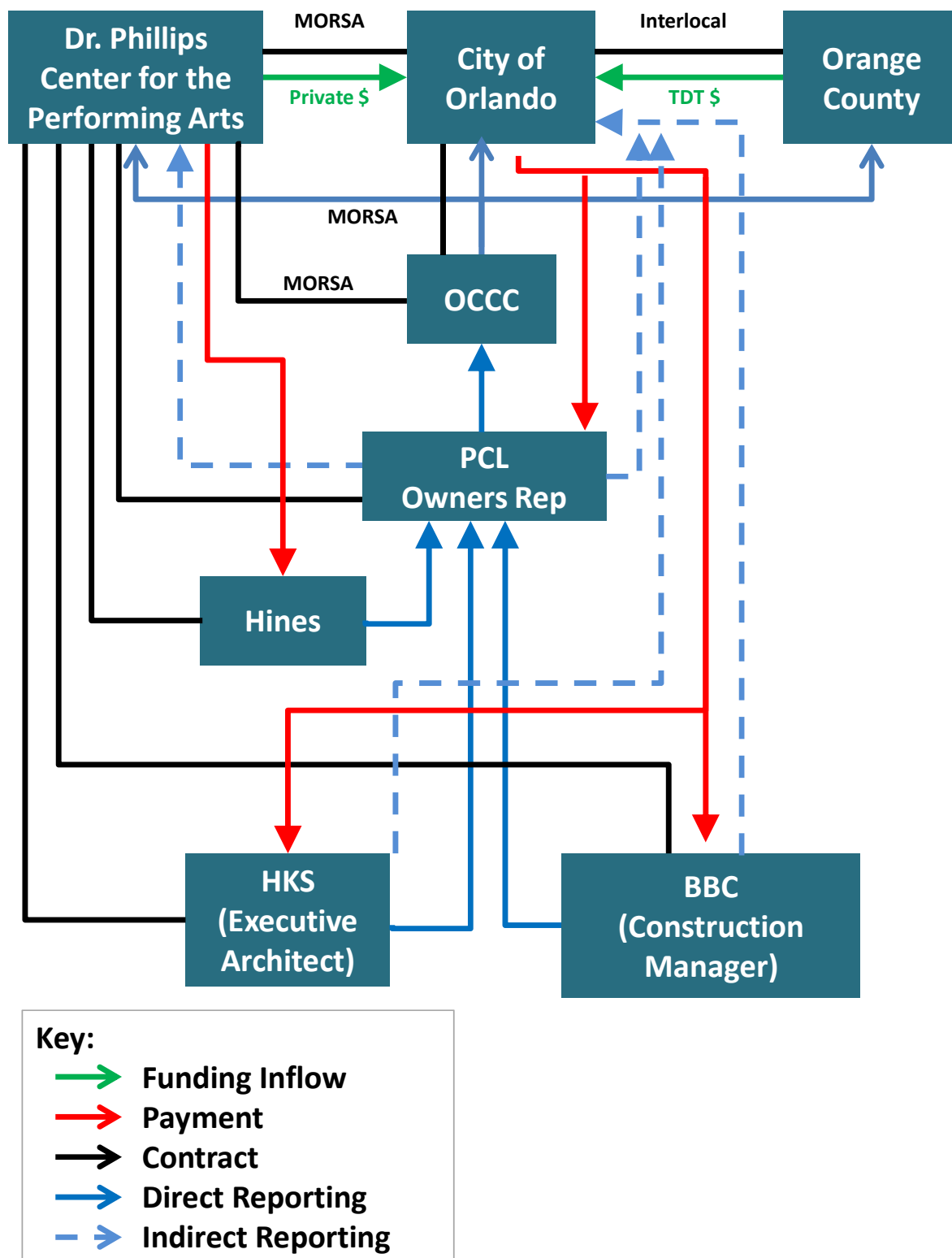
Recommendation #7

The Owner's Representative should continue to assess the potential risks associated with requests for changes and potential claims from subcontractors related to the project schedule. The potential risks should be measured against available contingencies and available funding to help ensure any potential issues do not impact the overall project's forecasted costs at completion.

Management Response (Prepared by Owner's Representative):

The Owner Representative agrees with, and will follow the recommendation of the audit team.

Appendix A – Project Organizational Structure



Appendix B – Summary of Governing Agreements

Summary of Key Governing Agreements for the Project			
Agreement	Orlando/Orange County Interlocal Agreement ("Interlocal Agreement")	Orlando Performing Arts Center Agreement ("OPAC")	Orlando Performing Arts Center Master Owner's Representative Services Agreement ("MORS Agreement" or "MORSA")
Parties	<p>City of Orlando, Florida ("City")</p> <p>City of Orlando, Florida Community Redevelopment Agency ("CRA")</p> <p>Orange County Board of County Commissioners</p>	<p>City of Orlando, Florida ("City")</p> <p>City of Orlando, Florida Community Redevelopment Agency ("CRA")</p> <p>Orlando Performing Arts Center ("OPAC") / Dr. Phillips Center for the Performing Arts ("DPCPA")</p>	<p>Dr. Phillips Center for the Performing Arts ("DPCA")</p> <p>City of Orlando, Florida ("City")</p> <p>Orlando Community Construction Corporation ("OCCC")</p>
Date of Original Agreement (Executed)	August 6, 2007	June 20, 2007	June 7, 2011
Purpose (Summary)	<p>To enter into an agreement to finance the construction and expansion of the new Performing Arts Center, new community events center and to expand and renovate the existing Florida Citrus Bowl Stadium.</p> <p>The County has agreed to contribute Tourist Development Tax ("TDT") revenues to finance up to \$130M in project costs for the Performing Arts Center.</p>	<p>To set up the structure of the OPAC and agreement between key parties regarding the funding of the new Performing Arts Center. The purpose is to provide funding, design, construction, development, operation and maintenance of the PAC.</p> <p>Public Funding = \$268M (City and County) OPAC = \$125M UCF / State Grant = \$15M</p>	<p>Transfer from DPCPA to OCCC the exclusive authority to oversee the management of the design and construction of Stage 1 of the DPAC.</p>

Appendix C – Summary of Key Vendor Contracts

Summary of Key Vendor Contracts					
Vendor:	PCL Construction	Hines	Balfour Beatty Construction	HKS Architects, Inc.	Barton Myers Associates, Inc.
Project Role:	Owner's Representative	Owner's Representative Consultant	Construction Manager	Executive Architect / Architect of Record	Design Architect
Scope Overview:	Primarily responsible for monitoring the progress of Architect, CM, and Project Consultant in the context of the Design Schedule and the Project Schedule.	Organize, coordinate, manage, and administer the development activities of the complex.	All labor and materials required for preconstruction services and the construction of the project.	Responsible for the overall design, engineering, and implementation of the project.	Design Architect responsible for initial design and engineering of the planned and executed project facility. As of December 2011, all architectural responsibilities were taken on by HKS Architects, Inc.
Formally Contracted With:	DPCPA	DPCPA	DPCPA	DPCPA	HKS
Contract Date:	6/16/2011	6/1/2011	5/25/2011	1/28/2008	12/15/2008
Direct Report To:	OCCC	PCL	PCL	PCL	N/A
Indirect Report To:	City of Orlando DPCPA	N/A	City of Orlando	City of Orlando	N/A
Receive Payment From:	City of Orlando	DPCPA	City of Orlando	City of Orlando	N/A

Appendix D – Documents Reviewed

Control No.	Document	Document Date (if available)
1	<i>Project_Team_Members_2013.pdf</i>	Unknown
2	<i>Our Team _ Dr. Phillips Center.pdf</i>	6/11/2013
3	<i>Program Org Chart 6-11-12.pdf</i>	6/11/2012
3A	<i>HKS 11472 OrgChart 2013-07-08.pdf</i> <i>OR Team Org Chart 20130703.pdf</i> <i>BBC - Organizational Chart Updated 6-30-13 (3).pdf</i>	PCL & Hines: 6/26/2012 BBC: 6/30/2013
5 & 6	<i>DPC Stage 1 City Budget Tracker 2013-05-31.pdf</i>	5/31/2013
7 & 8	<i>Owner's Project Schedule.pdf</i>	5/11/2011
9	<i>Attachments.pdf</i> <i>ORTReportMay2013.pdf</i>	4/24/2013 6/20/2013
14	<i>Dr. Phillips PAC Interim Audit Report w Exhibit - BBC 10.12.12.pdf</i>	10/12/2012
15	<i>DPAC File DirectoryR16.docx</i>	6/17/2013
17	<i>May 2013 Project Contingency Risk Analysis.pdf</i>	5/29/2013
18	<i>Developer Representative Agreement Executed 6-16-2011.pdf</i>	6/16/2011
19	<i>PCL Changes and Amendments to PCL Agreement</i>	Various
20	<i>OCCC Draw.pdf</i>	5/23/2013
21	<i>Balfour Beatty Contract Agreement</i>	5/25/2011
22	<i>GMP Amendments #1 through 7</i>	Various
23	<i>BBC Draw 69.1.pdf</i> <i>BBC Draw 69.pdf</i>	5/20/2013 5/20/2013
24	<i>Dev Agreement - Orlando Performing Arts001.pdf</i> <i>Hines DPC Amended & Restated Development Agreement.pdf</i>	9/12/2006 6/1/2011
25	<i>Amendment 1 to Amended & Restated Development Agreement.pdf</i> <i>First amendment OPAC.pdf</i>	6/21/2012 9/10/2007
26	<i>Hines Draw 69.pdf</i>	5/31/2013
27	<i>DPAC_OCCC - Master Owner's Representative Services Agreement 6-7-11.pdf</i>	6/7/2013
29A	<i>Balfour Beatty Owner Billing No. 45</i>	7/16/2013
29B	<i>Owner Draw #70</i>	7/16/2013
30	<i>No. 30 - Orig City Budget.pdf</i>	5/23/2011
31	<i>DPC Stage 1 City Budget Tracker 2013-08-30.pdf</i>	8/30/2013
32	<i>PCL Program Budget Detailed Report .pdf</i>	9/14/2013
33	<i>No. 33 - BartonMyers_executedagreementattach_12152008.pdf</i>	12/15/2008
34	<i>No. 34 - BMA Executed Separation Agreement.pdf</i>	12/1/2011
35	<i>Balfour Beatty GMP Value Engineering Proposals #4, 8A, 8B</i>	Various
36	<i>No. 36 - OF.2 - Program Budget Pre-Allocations.pdf</i>	Various
37	<i>No. 37 - DPC4 Schedule.pdf</i>	1/4/2012
38	<i>PAC Vendor Payments through June Draw.xlsx</i>	6/30/2013
39	<i>12-03 City of Orlando DPAC Audit FINAL.pdf</i>	9/11/2012
40	<i>No. 40 - DPAC Fact Sheet 5-18-11.pdf</i>	5/18.11
41	<i>OPAC Agreement & Amendments #1-4</i>	Various
42	<i>No. 42 - RCO Review Sheet.pdf</i>	N/A
43	<i>No. 43 OR Team Change LogR62.pdf</i>	7/23/2013
44	<i>Risk Analysis Assessment – Hard Copy On-Site</i>	5/29/2013
45	<i>No. 45 OCCC Risk Analysis and Cont Summary May 2013.pdf</i>	5/1/2013
46	<i>GMP Amendment 8</i>	6/25/2013

Control No.	Document	Document Date (if available)
47	<i>No. 47 12-03 City of Orlando DPAC Audit FINAL.pdf</i>	9/11/2012
	<i>Dr. Phillips PAC Final Interim Audit Report - BBC 8.21.13.pdf</i>	8/21/2013
48	<i>No. 48 - Sources Uses 8.6.13.pdf</i>	8/6/2013
49	<i>No. 49 - Land Acquisition Component Breakdown.pdf</i>	N/A
51	<i>Private Funding Draw Through June 20, 2013 – Hard Copy On-Site</i>	6/30/2013
52	<i>Project Update to Comptroller Haynie – Hard Copy On-Site</i>	12/13/2010
53	<i>No. 53 - Contract Billing Procedures.pdf</i>	N/A
	<i>No. 53 - Pay Application Review Checklist.pdf</i>	N/A
54	<i>No. 54 - Change Order Weekly Status Report - 7-19-2013.pdf</i>	7/19/2013
55	<i>Various Amendment 7 RCOs</i>	Various
56	<i>DPAC Fact Sheet 5-18-11.pdf</i>	5/18/2011
57	<i>Schedule of Annual Payments Due to City of Orlando for Venues Interlocal Agreement.xls</i>	7/16/2013
58	<i>MCOC June 11 2013.pdf</i>	6/6/2013
59	<i>Dr Phillips Center Response to Orange County - Final 12 23 104.pdf</i>	12/13/2010
60	<i>Program Schedule UD14.pdf</i>	7/1/2013
61	<i>No. 61 - Project Funding Sources & Uses.pdf</i>	6/30/13
62	<i>Orlando-Orange County Interlocal Agreement without Exhibits - DPC.pdf</i>	8/6/2007
63	<i>Various Procurement Files</i>	
64	<i>No. 64 - Support for Builders Risk Percentage with RCO.BBC.pdf</i>	N/A
65	<i>Amendment 8 and Supporting Documentation</i>	

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