

City of West Covina v. Heinbuch Golf re: Construction Management Standard of Care

Failure- an entire building, engineering system, field construction (trades), or building component does not perform as intended, per plan and specifications.

At West Covina Sportsplex Project ("Project"), the retention basin and slope adjacent to BLD (Big League Dreams) Sports Park failed following January 5-6, 2008 Storm Event. Construction of retention basin contained numerous voids within fill material and the compaction of material was below required standard for construction of basin. No anti-seep collars and slope anchors were installed for the drain pipe extending from retention basin.

Apparently, no geotechnical observation or testing was made during construction of basin. Large amounts of course material, boulders and cobbles were found in the embankment/berm of retention basin. All the above factors contributed to failure, per "Mechanism of Failure" prepared by GeoPentech and VA Consulting field investigation and report, dated August 17, 2009.

This construction failure was due to Heinbuch Golf's lack of:

- proper oversight ("serve an oversight function to facilitate and expedite proper development of the Sportsplex Project"),
- construction management responsibility to "manage all construction activities and services for the Project" in accordance with approved plans and specifications, and
- compliance "that the design must abide by all codes for construction", per City Request for Proposals, dated 6/12/2002

See Consulting and Professional Services Agreement between City of West Covina and Heinbuch Golf for The West Covina Sportsplex Project, dated 9/17/2012, page 2 paragraph 3, for which Heinbuch Golf (HG) received \$700,000. Also, see HG Proposal to City, dated 8/15/2002.

"First Amendment to Consulting and Professional Services Agreement" for "clubhouse of approximately 6,000 square feet" added \$119,409 to CM ("Consulting and Professional Services") Agreement, totaling \$819,409 date. Rossetti was paid \$148,500 to provide complete design services (ASMEP and Food Services) for same clubhouse.

Second Amendment to Agreement between City and HG, dated 8/8/06, was to "manage all construction activities and services provided for the Sportsplex Project, and to serve an oversight function to facilitate and expedite proper development of the Project", between July 2006 through October 31, 2007, for a not-to-exceed amount of \$576,000. During this 18-month period, HG provided a full-time Project Manager (172 hours per month), nearly full-time Senior PM (150

hours per month, 20 hours per week for Administrative, and 10 hours per week for Principal (Total compensation to date estimated at \$1,395,409.)

Agreement (Attachment A) and Second Amendment (Exhibit A) between City and HG ("Consultant") includes the following "Scope of Work" and "Construction Management Scope of Services":

- The performance of all services by Consultant shall be to the satisfaction of City.
- Consultant shall become familiar with all aspects and requirements of the Project.
- Consult and coordinate with City staff, Consultants, and Contractors relative to design and construction of Project.
- Record and document all verbal and written communication relating to Project. Prepare responses as required. Maintain complete project files and documentation.
- Assist in resolution of conflicts between construction documents and site conditions.
- Maintain liaison with City, all Consultants, Contractors and City **Inspectors** to facilitate communication and resolve issues quickly and fairly.
- Monitor the Contractor's work and schedule and report on status of Project.
- Review and recommend approval/modification/rejection of all Contractor and Consultant billings.
- Verify updated Contractor's as-built drawings prior to executing payment requests, and assist inspectors to verify "as-built" drawings.
- Prepare regular Activity/Status Reports for Project.
- Prepare and maintain document control logs for RFI's, Change Orders, Testing Reports, etc., including logs for "Plan Error" and "Unknown Field Conditions".
- Assist Architect to review and monitor Contractor's methods and procedures.
- Assist with **inspections** to *ensure* that materials and equipment comply with contract documents.
- Assist City **Inspectors**, Special **Inspectors** and Architect to *ensure* Contractor completes all work in accordance with approved plans and specifications, codes, and construction laws.
- Review **inspection** schedule to *ensure* adequate inspection coverage
- Coordinate punch list **inspections**, work completion, and *ensure* that non-conforming work is documented and completed.
- Assist Architect and Contractor in ***deliverance of final Project to the City in compliance with plans and specifications and all applicable codes and requirements.***
- Chair weekly progress meetings as needed.
- Submit Project Close-out Report.

In addition, page 10 of the Consulting and Professional Services Agreement between City of West Covina and Heinbuch Golf for The West Covina Sportsplex Project, dated 9/17/2012, item "18. Errors, Omissions, and Change Orders", Determination of Error or Omission, states "Errors and/or omissions include, but are not limited to the following:

- Improper, inadequate, or incorrect reviewing of designs and/or specifications, or any portion thereof, for compliance with any applicable building codes; or failing to detect and notify City of designs and/or specifications, or any portion thereof, which are otherwise impracticable or infeasible to execute.
- **Monitoring of construction that fails to comply with construction documents or specifications;**
- **Failing to monitor construction to establish that all materials utilized comply with project plans and specifications;**
- **Failing to monitor construction to establish that all craftsmanship complies with project plans and specifications;**
- **Performing inspection, oversight, or consulting services which fails to identify, account for, or notify City of any of the foregoing items (1-4 above)**

As Construction Manager (CM) and Owner's Representative for the City of West Covina during design and construction of the Project, Heinbuch Golf (HG) owed a duty and responsibility to serve and protect the City's best interests. The CM represents a Client's interests, goals & objectives using skill, judgment, expertise, technical and professional services, in this case to be the Owner's "eyes & ears".

As the Owner's Representative, HG provided constructability review & value engineering, and maintained close communication with the Project team (Owner, Consultants, Contractors, Inspectors) to coordinate, facilitate, and collaborate, as needed, in order to meet the Client's goals.

This goal or objective was to ensure that all construction be performed in a first-class and workmanlike manner, and construction of the retention basin and slope adjacent to the Big League Dream Sports Park be completed in accordance with the approved plans, specifications and geotechnical recommendations. As demonstrated during the 2008 Storm Event, HG failed in this regard.

To deliver a Project that meets the Client's objectives and achieves satisfactory performance requires the CM to be proactive, show independent judgment and analysis, not to rely on the expertise of others (to ensure adequate inspection coverage, document non-conforming work, for example), and always look out for the best interests of its Client and Owner, the City of West Covina. It is part of the CM's responsibilities to verify that all work be performed in a first-class and

workmanlike manner, in accordance with the approved plans, specifications and geotechnical report recommendations.

The CM and Owner's Representative has a fiduciary (based on trust) role and responsibility to comply with quality standards specified, and to evaluate specific requirements and risks. The CM facilitates communication and collaboration (build teamwork, open channels of communication) among all Project team members (Owner, Contractors, Consultants and Inspectors) to produce long lasting reliable results. The CM is the "expediter of information", eliminating gaps, omissions & conflicts during construction.

To properly document progress of the Project, as well as any/all design and/or scope of work changes, the CM utilizes standard and proprietary company forms, regular and periodic reviews and activity reports, memos, submittals, addenda, supplementary conditions, request for proposals (RFP), request for information (RFI), construction change directives and authorizations, field reports, technical data, clarifications, meeting minutes and change orders.

When CM fails to deliver a Project that meets the Client's goals and objectives, fails to ensure satisfactory performance of construction, and fails to comply with applicable codes and requirements, the CM's services have fallen below the Standard of Care.

The review and recommendation of approval/modification/rejection of Contractor and Consultant progress payments necessitates the CM to become familiar with all aspects and requirements of the Project, so that he/she may reject all work performed poorly and not in compliance with approved plans, specifications and code requirements. Approving payments for substandard work falls below the CM's Standard of Care.

All documentation I have reviewed to date indicates that HG was aware of all construction activities in site, and managed the flow of Project information. As an example, PSI prepared an Inspection Report, dated November 1, 2005, to Yeager Skanska, and copied HG.

Report states "Observed construction of windrows within western portion of BLD park. Oversized material was generally 1 foot to approximately 4 feet at maximum dimension. Onsite material from the slopes adjacent to the proposed entrance road was being used to fill voids. The requirement for native or imported granular soil as infill material was reiterated. If windrow construction continues without the requested granular soil jetted into the voids, the construction is done at the Contractor's risk."

This Report confirms the findings by GeoPentech and VA Consulting regarding numerous voids within fill material and presence of boulders, cobbles and large amounts of course materials in embankment/berm of retention basin.

